

## Terms of Use

**Effective Date of this revision:** 30/08/2019

You have subscribed for use of EPI-USE tHRive pay, a cloud based Core HR and Payroll Service as described in the Order Form which are provided by EPI-USE using SuccessFactors HR software under licence and payroll services from the cloud service provider SAP SE (the **SAP Cloud Services**) together with the establishment and personalising of your service per our Onboarding Pack, enablement and support materials (the service comprising these components is referred to collectively as the **tHRive Service** except where otherwise specified).

Your use of the tHRive Service you have subscribed for is subject to the terms and conditions contained in this document as well as the relevant Privacy Policy and other terms and conditions for the SAP Cloud Services components of the tHRive Service noted above (collectively, the **Terms**). These Terms (which includes our terms and the SAP SE terms applicable to the SAP Cloud Services noted below) may be updated from time to time and are available at <https://epiuse.com/thrive/>.

### SAP SE Applicable Terms:

The Agreements noted below apply to the SAP Cloud Services which EPI-USE procures from SAP SE and provides to you. Where specified, this is limited to the identified clauses. The agreements and identified clauses apply as if EPI-USE were named as SAP and you are named as 'Provider'.

Agreement	Applicability	Location
Cloud BPO General Terms and Conditions	The following clauses apply: 1. Definitions 2.3. Authorised Users 2.4. Acceptable Use Policy 2.5. Suspension of Cloud Service 2.6. Web Services 3.4. Acceptable Usage Rights 3.4. Acceptable Usage Rights 3.5. Platform Cloud Service 4. Modifications and Analysis 6. Verification of Use, Audit 7. Support 8. Intellectual Property and Confidentiality (except 8.4) 10.3. Wind down 11. Import and Export Controls 13. Data Protection; Access to Data 14. Warranties and Disclaimer Glossary	<a href="https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=General%20Terms%20and%20Conditions&amp;sort=title_asc#pdf-asset=8c3d65cc-e67c-0010-82c7-eda71af511fa&amp;page=1">https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=General%20Terms%20and%20Conditions&amp;sort=title_asc#pdf-asset=8c3d65cc-e67c-0010-82c7-eda71af511fa&amp;page=1</a>
Support Policy for SAP Cloud Services	Policy applies in full	<a href="https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=Support&amp;sort=title_asc#pdf-asset=64d632e8-c87c-0010-82c7-eda71af511fa&amp;page=1">https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=Support&amp;sort=title_asc#pdf-asset=64d632e8-c87c-0010-82c7-eda71af511fa&amp;page=1</a>
Service Level Agreement	Agreement applies in full	<a href="https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=Service%20">https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=Service%20</a>

		<a href="#">Level%20Agreement&amp;sort=title_asc</a>
Data Processing Agreement for SAP Cloud Services	Agreement applies in full	<a href="https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=Data%20Processing&amp;sort=title_asc#pdf-asset=16728349-a67c-0010-82c7-eda71af511fa&amp;page=1">https://www.sap.com/about/cloud-trust-center/cloud-service-level-agreements/cloud-services.html?search=Data%20Processing&amp;sort=title_asc#pdf-asset=16728349-a67c-0010-82c7-eda71af511fa&amp;page=1</a>

The above terms may be updated by SAP SE from time to time. EPI-USE will post any such changes on its website – refer section 0.

You also have the option to subscribe to and use the Flare HR Service (which is subject to its own terms and conditions) which you can elect to receive when you complete the Order Form. The Flare HR Service is provided by Flare HR Pty Ltd separately to and independently of our tHRive Services. The links in the order form will take you to the Flare HR Pty Ltd website to separately sign up for their service. We are not liable to you for any failure to provide the Flare HR Service by Flare HR Pty Ltd or for any malfunction, defect in or other problem with the Flare HR Service.

By signing the Order Form, you indicate your acceptance of the Terms for the period for which you have subscribed for use of the tHRive Service you have subscribed for in the Order Form (**Initial Term**) and appoint us as the exclusive provider of services of the nature of the tHRive Service. The agreement formed by your acceptance of the Terms (**agreement**) will continue for the Order Form Term (a minimum of 3 years) unless terminated earlier in accordance with these Terms. At the end of the Order Form Term this agreement will renew automatically for further periods of 3 years unless either party terminates by written notice to the other provided that the notice must be given at least 90 days prior to the end of the then current term. Extended terms form part of the Order Form Term.

You are accepting these Terms on behalf of your organisation (the details for which you have entered in the order form you have completed to subscribe for the tHRive Service you have subscribed for (including any additional order form you complete and submit) (**Order Form**)) and you represent to EPI-USE that you are authorized to do so. This includes your organisation's Affiliates if you have also specifically subscribed for those Affiliates in the Order Form. The terms, "you" and "your" and similar terms will refer to that named organisation and, if you have also subscribed for Affiliates, also refers to those named Affiliates.

## 1 tHRive Service Licence

1.1 **Licence to use tHRive Service.** Subject to these Terms, including, but not limited to, payment by you of the applicable fees set forth on the Order Form, EPI-USE grants to you a limited, non-exclusive, non-transferable licence, without the right to sublicense (except as permitted under Section 1.2 below), to remotely access and use that part of the tHRive Service which comprises the SAP Cloud Services, in accordance with these Terms for the term you have subscribed for in the Order Form. Your use is solely for your internal business purposes by your Users.

Use of the tHRive Service is for your nominated Users. Access credentials for the SAP Cloud Services may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the SAP Cloud Services.

Screen Access means use of the SAP Cloud Services by you and your Users solely through remote access and solely for the following purposes:

(a) entering and accessing Data (this is defined in Section 16 below) and processing such Data,

(b) to complete the execution of business processes in accordance with the parameters of the SAP Cloud Services and these Terms.

- 1.2 **Third-Party Vendors.** EPI-USE acknowledges and agrees that you may use certain third-party vendors for purposes of performing some of your internal business processes (Third-Party Vendors). You may allow your Third-Party Vendors (other than our direct competitors or those of SAP SE to access and use the tHRive Service subject to these Terms, solely for your internal business processing services, subject to the following conditions:
- (a) you agree to be fully responsible for all use of the tHRive Service by your Third-Party Vendors,
  - (b) you will ensure the Third-Party Vendors are under and comply with obligations as stringent as these Terms, including without limitation, Section 3 (Privacy and Confidential Information),
  - (c) you will notify EPI-USE of any such Third-Party Vendors (such notification provided when requesting passwords for such Third-Party Vendors) and will ensure that each such Third-Party Vendor uses its own unique password as detailed in Section 0 below, and
  - (d) upon termination of your relationship with such Third-Party Vendors or of this agreement, you will ensure that all access to the tHRive Service by such Third- Party Vendors ceases immediately.
- 1.3 **Set-up and personalisation.** EPI-USE will provide standard Personalisation Services for set up and establishment of your tHRive Service as described in the Order Form and the Onboarding Pack. EPI-USE will use reasonable endeavours to set up the tHRive Service for use by you and your Users, by the Target Launch Date. If you require any additional professional services (for additional configuration, integration or customised versions of the tHRive Service), EPI-USE will provide those services but subject to a separate professional services agreement, which shall include any support services applicable to those additional professional services, which we will provide to you on request. The scope of those professional services and applicable additional support services will need to be agreed and the professional services agreement signed before EPI-USE will proceed with the professional services and applicable support services.
- 1.4 **Provision of the tHRive Service.** On completion of Personalisation Services for setup you have subscribed for, you will be able to use the tHRive Service including allowing your Users to access input Data (see below) and use the tHRive Service in accordance with these Terms from the Go-Live Date. By deciding to go-live with the solution on the Go-Live Date, you will be deemed to have tested the tHRive Service as EPI-USE has set it up for you, and have confirmed that it meets your requirements.
- 1.5 **SAP Maintenance and Support Services.** The SAP Cloud Services is supported and maintained by SAP SE – refer to section headed 'SAP SE Applicable Terms' above with EPI-USE operating as the interface for all support requests and issues as described in the Order Form. The support services provided by EPI-USE under this agreement are described in the Order Form. (This will not cover support services relating to any additional professional services as those are covered separately under the professional services agreement).
- 1.6 **EPI-USE Maintenance and support Services.** Corrections, changes, or workarounds for any Defects, discovered by you or EPI-USE will be remedied in accordance with EPI-USE's standard procedures (which may include a work around procedure or other remediation). Maintenance of the tHRive Service may be either scheduled or carried out on an emergency basis. Where maintenance will require the tHRive Service to be made temporarily unavailable (during which period it will not be operational or usable, EPI-USE will use its best endeavours to schedule the maintenance works during low traffic times and will notify you not less than 5 Business Days prior to the maintenance being carried out. Maintenance periods (except in the case of emergency maintenance when EPI-USE will provide you with as much notice as is practical in the circumstances) are not included for the purposes of the Service Level Agreement.

You must document and promptly report all Defects in the tHRive Service to EPI-USE or its assigned agents and representatives as soon as practicable for error rectification to commence.

EPI-USE is under no obligation to provide the tHRive Service or maintenance and support services specified in this Section **Error! Reference source not found.** if they are requested as a result of or related to:

- (a) operation of the tHRive Service with other media and hardware, software or interfaces not authorized or maintained in accordance with these Terms or the tHRive Service Documentation;
- (b) use of the tHRive Service that deviates from any operating procedures established by EPI-USE in the applicable tHRive Service Documentation;
- (c) any modification, alteration or addition or attempted modification, alteration or addition of the tHRive Service (other than those produced by EPI-USE or authorised by EPI-USE in writing);
- (d) failure of a data provider or failure of a telecommunications connection, hardware, software, web services, third party content or software, or equipment; or
- (e) support for any third party supported applications or systems used in connection with the tHRive Service other than the notification and escalation to the relevant third-party support supplier.

In the event that you abuse the maintenance and support services specified in this Section an "Abuse Incident" will be lodged, and EPI-USE will notify you of such. If more than 3 Abuse Incidents are lodged within a 30 day period, you will be charged on a time and materials basis for diagnosis and response of subsequent Abuse Incidents within the period.

- 1.7 **tHRive Managed Services.** If you have opted in your Order Form to subscribe for Managed Services, EPI-USE will provide those Managed Services as described in the Order Form and attached documentation and the Service Level Agreement and will use commercially reasonable efforts to provide such services in accordance with the applicable service levels contained in the Service Level Agreement – see Section 0. You acknowledge that EPI-USE's ability to provide the Managed Services is dependent on performance by you of the obligations specified in the description of the Managed Services as set out in the Service Level Agreement. In the event that you do not perform your obligations, or if any adverse third party acts or omissions occur, you acknowledge that EPI-USE may be unable to provide the Managed Services and will not be in breach of this agreement or the Service Level Agreement as a consequence. If your failure or the act or omission of a third-party causes EPI-USE any additional cost, you will be responsible for that cost.

One of those responsibilities will be that you appoint one or more individuals within your organisation to act as the principal point of contact for any queries EPI-USE needs to raise with you as part of provision of the Managed Services and to act as a single point of contact for reporting any issues arising in relation to the Managed Services. We will need the contact details for each person you nominate who must be able to respond to any queries raised and have the authority to give instructions to EPI-USE as necessary in order to execute the Managed Services.

- 1.8 **SAP Service Level Agreement.** The SAP Cloud Services are provided in accordance with the SAP SE Service Level Agreement for SAP Cloud Services – refer to section headed 'SAP SE Applicable Terms' above except that your service requests should be made to EPI-USE direct and EPI-USE will liaise with SAP SE on your behalf to process the service request. EPI-USE is not responsible for compliance with the Service Level Agreements by SAP SE but will use reasonable endeavours to manage SAP SE to provide the SAP Cloud Services to the Service Level Agreements. Any liability of EPI-USE arising as a result of the failure by SAP SE to meet the Service Level Agreements is limited to the amounts (if any) recoverable from SAP SE for breach of that Service Level Agreements.

- 1.9 **EPI-USE Service Level Agreement.** EPI-USE will use commercially reasonable efforts to ensure the tHRive Service is available in accordance with the Service Level Agreement as it is expressed to apply to the tHRive Service (which may be amended and revised from time to time) but EPI-USE does not guarantee error-free or uninterrupted service and excludes all liability for any failure to comply with the Service Level Agreement resulting from errors caused by the Flare HR Service. If you have subscribed for Managed Services, the service levels contained in the Service Level Agreement applicable to the Managed Services will also apply to those services and EPI-USE will use commercially reasonable efforts to comply with those service levels which are expressed to apply to the Managed Service in the Service Level Agreement. . If you have subscribed for additional professional services, the service levels contained in the additional professional services agreement will apply to those professional services apply to those services.

Where EPI-USE has not complied with the Service Level Agreement (which may be reported by either EPI-USE or you), EPI-USE will conduct an investigation and root cause analysis to remedy any such failure and to ensure as far as practicable, that the failure does not reoccur.

## 2 Fees and Payments

- 2.1 **Fees for tHRive Services.** Pricing of the tHRive Service is variable and based on the number of Users you have subscribed for on the Order Form. Pricing for the tHRive Services you have subscribed for is located in the Order Form. tHRive Service fees are invoiced quarterly (this means on 31 March, 30 June, 30 September and 31 December each calendar year) in advance unless otherwise stated in the Order form (which may not be less than quarterly). Where the tHRive Service commences on a date other than one of these dates, the first invoice will be due on the next of the above dates to occur but will be proportionalised (as determined by EPI-USE) to reflect the tHRive Services actually provided in that quarter.

Subject to the minimum subscription level stated in the Order form or as required by SAP SE, you may increase the number of Users from time to time by signing an additional Order Form

EPI-USE may from time to time adjust the pricing tiers and introduce additional free or fee based modules or tiers (including where SAP SE changes its pricing of the SAP Cloud Services to EPI-USE). If you subscribe to a tier or module which is affected by a material change in pricing structure, you will be notified at least three (3) months prior to the change taking effect.

- 2.2 **Invoices and Payment Terms.** EPI-USE will issue detailed invoices to you in respect of any applicable fees. You agree to pay the amount specified in each invoice upon receipt within thirty (30) days net of the date of the invoice. Any past due are subject to suspension or cancellation. Fees paid by you are non-refundable, except as provided in these Terms or when required by law.
- 2.3 **Disputes.** If you withhold any amounts EPI-USE have invoiced, you must, within fifteen (15) days from receipt of invoice (Dispute Period), provide EPI-USE with a reasonably detailed written explanation of the reason why you have withheld such amount and the nature of the dispute, including the dollar amounts withheld and the reasons for withholding such amounts. If you do not dispute the applicable invoice during the Dispute Period, any such dispute will be deemed waived. You must pay EPI-USE for all portions of the applicable invoice that are not under reasonable and good faith dispute.
- 2.4 **Late fees.** A late fee may be charged by EPI-USE on all undisputed (or disputed fees which are found to have been invalidly withheld) fees not paid within thirty (30) days after receipt of the invoice at the lesser of the maximum amount chargeable by law or equal to 2% above the prevailing base lending rate quoted by the bank and rate referred to in the Order form to be calculated on a daily basis on outstanding

payments from the date on which the payment was due until paid. You will be liable for all costs of collection of such undisputed, overdue amounts including, without limitation, all court costs and attorneys' fees incurred by EPI-USE. Fees due from you may not be withheld or offset by you against other amounts EPI-USE may owe you or which you allege are owed by us to you, for any reason.

- 2.5 **Taxes.** You will pay all sales, GST, value-added or other similar taxes imposed by applicable law that EPI-USE must pay associated with the tHRive Service, except for taxes based on EPI-USE's income.

### 3 Privacy and confidentiality

- 3.1 **Privacy.** The parties will, in performing their respective obligations under these Terms, comply with the Privacy Act 1988 and the Australian Privacy Principles (the Applicable Privacy Laws), and neither party will put the other in breach of the Applicable Privacy Laws. In the course of using the tHRive Service, that of your employees, you may load content into the SAP Cloud Services (including your personal information and the personal information of others). Where you submit personal information of third parties (including your employees' personal information) to EPI-USE through our tHRive Service, you must:

- (a) ensure that you are entitled to transfer the relevant personal information to EPI-USE so that EPI-USE may lawfully use, process and transfer the personal information in accordance with EPI-USE Privacy Policy at <https://epiuse.com/thrive/> and the SAP SE Data Processing Agreement (refer to section headed 'SAP SE Applicable Terms' above); and
- (b) ensure that the relevant third party has been informed of, and has given their consent to, such use, processing and transfer of the personal information as required by all applicable privacy laws.

- 3.2 **Privacy Policy.** EPI-USE Privacy Policy details the manner in which EPI-USE will treat your Data and personal information and describes the key features of how EPI-USE will protect your personal information. We agree to adhere to the Privacy Policy. You agree that EPI-USE may use and share personal information you provide to EPI-USE in accordance with our Privacy Policy.

- 3.3 **SAP SE's Data Processing Agreement.** EPI-USE relies on SAP SE in order to deliver the tHRive Service. Accordingly, personal information and data hosted by or processed through tHRive Service is under the control of SAP SE once entered or stored into the SAP Cloud Services and is subject to SAP SE's Data Processing Agreement (refer to section headed 'SAP SE Applicable Terms' above) which you should carefully review.

- 3.4 **Confidentiality.** EPI-USE will treat the Data you input to the SAP Cloud Services as confidential information and only use and disclose it in accordance with these Terms (including our Privacy Policy). Again, the SAP SE Data Processing Agreement is relevant – refer above your Data is not considered to be confidential information if such Data:

- (a) is publicly available through no fault of EPI-USE or SAP SE;
- (b) was rightfully received by EPI-USE or SAP SE from a third party without restriction and without breach of an obligation of confidentiality; or
- (c) was independently developed by EPI-USE or SAP SE without reference to your Data.

EPI-USE and SAP SE may disclose your Data when required by law (including under the rules of any stock exchange).

- 3.5 **Security.** EPI-USE aims to comply with established industry practice in relation to your Data security, including: regular rotating backups; firewalls; encryption; redundancy; access control; and intrusion detection and prevention. As we have noted above, the SAP SE is the SAP Cloud Services provider and

your Data with be backed up by SAP SE and protected by SAP SE in accordance with the SAP SE Data Processing Agreement – refer above.

## 4 Your Data

- 4.1 **You Retain Ownership of your Data.** You retain all right, title and interest (including any intellectual property rights) in and to your Data. Neither EPI-USE nor SAP SE has and will claim ownership over any of your Data.
- 4.2 **Limited License to your Data.** You grant EPI-USE a limited, non-exclusive, royalty-free, non-transferable license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, and otherwise use your Data solely as necessary to provide tHRive Service to you and as otherwise permitted by EPI-USE's Privacy Policy and or SAP SE's privacy policy which is the Data Processing Agreement referred to above. This includes the right to sublicense these rights to SAP SE and any other third parties to the extent necessary to permit you to take the full benefit of the tHRive Service (including the necessary consents in relation to personal information). You represent and warrant that you have the rights necessary to grant EPI-USE such a licence.
- 4.3 **Responsibility for your Data.** You are solely responsible for your Data which includes content submitted through the SAP Cloud Services by third parties. You must ensure that you have obtained all necessary rights, releases and consents to allow your Data to be collected, used and disclosed in the manner contemplated by these Terms and to grant EPI-USE the rights herein. You are solely responsible for the accuracy and appropriateness of your Data.
- 4.4 **Data Review.** EPI-USE reserves the right to remove or disable access to any of your Data that, in EPI-USE's sole discretion, violates the law or these Terms or is adversely affecting the performance of the tHRive Service. EPI-USE may take these actions without prior notification to you.
- 4.5 **Data Disclosure.** EPI-USE reserves the right to disclose any of your Data that EPI-USE deems necessary to comply with any applicable law, legal process or government request including, without limitation, account information (i.e. name, e-mail address etc), and your Data residing on within the SAP Cloud Services.
- 4.6 **Exporting your Data.** You will have full access to your Data through the tHRive Service and you will always have the option to retain a copy of your data on your own databases. With regard to any of your Data that is held within the tHRive Service, SAP SE through the SAP Cloud Services provides you with the functionality to export your Data including, where you terminate your tHRive Service, for up to 30 days' following termination or expiry or such longer period as we may agree with you subject to a limit of 90 days. Please note, additional charges may apply for any period longer than 30 days. The export functionality is made available as part of SAP Cloud Services but it is your choice as to whether you elect to use this optional feature. EPI-USE is not responsible for any incompatibility between third party systems and tHRive Service.
- 4.7 **Third Party Resources and Links to other websites.** Links to other websites maintained by third parties may be provided through the tHRive Service for the convenience of users. The inclusion of a link does not imply endorsement of the content of the external site by EPI-USE. EPI-USE is not responsible for and accepts no liability for the content or services provided by any third-party websites, or whether the information contained on those websites is suitable for your needs.

## 5 tHRive Service Software and IP

- 5.1 **tHRive Service Software and IP.** You acknowledge that EPI-USE or its service providers (this is SAP SE in relation to the SAP Cloud Services) are the sole and exclusive owners of all intellectual property rights in software used in providing the tHRive Service and the SAP Cloud Services (as applicable). You undertake that you will not disassemble, reverse engineer or decompile, modify, copy translate or make derivative works nor otherwise create or attempt to create the source code from the object code of any software in any manner. Neither these Terms nor your use of the tHRive Service grants you ownership in Software or the processes EPI-USE or SAP SE employ in the tHRive Service or SAP Cloud Services or the content you access through tHRive Service (other than your Data). These Terms do not grant you any right to use EPI-USE or SAP SE's trademarks, business names or logos.

## 6 Account Management and your obligations

- 6.1 **Your account.** You are liable for all activity on your account. You agree you that you will take sole responsibility for any activities or actions undertaken using your account, whether or not you have authorised such activities or actions. You will immediately notify EPI-USE of any unauthorised use of your account.
- 6.2 **Keep Your Details Accurate.** You warrant that all registration information you provide when opening the account is complete, true and accurate in all respects and that you will maintain and promptly update such information and material to keep it true, accurate, current and complete. Where applicable, you must keep your contact details and payment details associated with your account current and accurate.
- 6.3 **Remember to Backup.** To the extent permitted by applicable law, neither EPI-USE nor SAP SE will be liable for any failure to store, or for loss or corruption of, your Data which is under the control of EPI-USE or SAP SE and in the event that either EPI-USE or SAP SE is held to be liable, EPI-USE or SAP SE's liability is limited to restoration of the most recent version of your Data that SAP SE has backed up as part of the SAP Cloud Services.
- 6.4 **Separate Protocols.** You must implement appropriate separation protocols for processing and approving your payroll through the tHRive Service and you are responsible for ensuring your Users comply with those separation protocols and EPI-USE will not be liable for any failure of a User failing to comply with them.
- 6.5 **Payroll Responsibility.** You are responsible for all payroll processing through the tHRive Service if the Self-Managed Option is specified in the Order Form.
- 6.6 **Managed Service.** For the Managed Service Option, EPI-USE will be responsible for the payroll processing based on the payroll Data provided by you in accordance with the Service Level Agreement. You are responsible for ensuring that the Data is accurate, complete and provided in accordance with the Service Level Agreement. EPI-USE will not be liable for any delay or error in payroll processing your payroll through the tHRive Service as result of any error in, or delay by you in providing, the Data.
- 6.7 **Responsibility for Payroll.** Regardless of whether the Self-Managed Option or Managed Service Option applies, you are accountable for the correct payment of salary, tax and superannuation to your employees as required by law. In the event of any overpayments or underpayments made through the tHRive Service to your employees and you are, at all times:
- (a) responsible for recovering any overpayment from employees;
  - (b) responsible for making any further payment to employees if there has been an underpayment.

EPI-USE will provide any information it has in its possession that may assist you to undertake the activities in (a) and (b) above.



- 6.8 **You are Liable.** You are liable for and must pay:
- (a) any charges, fees or other costs charged in connection with payroll transactions processed through your or your employees nominated bank account;
  - (b) any charges, fees or other costs charged in connection with automated superannuation clearing processed through your or your employees nominated bank account; and
  - (c) any penalty imposed by the Australian Taxation Office for the underpayment of superannuation to employees resulting from the information provided by you through the tHRive Service.

## 7 Your General Obligations and Things You Must Not Do

- 7.1 **Third party services.** You will establish and maintain, at your own expense, all telecommunications equipment and internet access necessary to gain access to tHRive Service. You acknowledge that EPI-USE will not have any responsibility or liability with regard to any third party services used by you on or through tHRive Service and any use of such third party services will be at your own risk. While EPI-USE will use reasonable endeavours to maintain compatibility between third party services and tHRive Service, EPI-USE is not responsible for any incompatibility between third party services and the tHRive Service. This clause does not apply to the Flare HR Service (if you have opted for it) in relation to which, EPI-USE will use reasonable endeavours to maintain compatibility of operation with the Software and the Flare HR Service.
- 7.2 **Security obligations.** You must comply with the following requirements when using tHRive Service:
- (a) ensure there is no unauthorized access to tHRive Service and must not share your password or User ID, let anyone else access your account, or do anything that might jeopardise the security of your account;
  - (b) not cause harm or damage to any part of the tHRive Service;
  - (c) not use tHRive Service to upload, post, email, transmit or otherwise make available or initiate any Data that contains software viruses, worms, Trojan horses or any other computer code, files or programs that interrupt, destroy or limit the functionality of tHRive Service that may impact the ability of any tHRive Service user to access tHRive Service;
  - (d) not commit, cause or allow any breach (or do anything which might put EPI-USE in breach) of any law, regulation, government direction or industry standard or code;
  - (e) not use tHRive Service to breach a person's rights (including committing defamation or infringing a person's intellectual property rights);
  - (f) not attempt to or actually access tHRive Service by any means other than through the portals or interfaces provided by tHRive Service;
  - (g) not attempt to or actually override any security component included in or underlying tHRive Service;
  - (h) not attempt or engage in any action that directly or indirectly interferes with the proper working of or place an unreasonable load on tHRive Service; and
  - (i) notify EPI-USE immediately of any unauthorised access, security breach (suspected or otherwise) of tHRive Service, or loss or misuse of confidential password or login.
- 7.3 **Right to suspend Service.** EPI-USE reserves the right to suspend provision of your tHRive Service if you are in breach of your obligations in Section **Error! Reference source not found.** or otherwise, by your act or omission, prevent or jeopardise the provision of services to other customers or compromise or jeopardise the security of other customers' data. EPI-USE will provide as much notice to you as is practicable in circumstances where it proposes to suspend Service provision having regard to the nature of the circumstances causing the proposed suspension.
- 7.4 **Unauthorised access to tHRive Service.** You indemnify and keep EPI-USE and SAP SE indemnified against any loss or damage (except where and to the extent that such loss or damage is consequential in

nature) which EPI-USE or SAP SE suffers as a result of any unauthorised access to tHRive Service, to the extent such unauthorised use arises from a breach of these Terms.

- 7.5 **Limitation.** Neither EPI-USE nor SAP SE will be responsible or liable for any failure in tHRive Service or your inability to use the tHRive Service resulting from or attributable to:
- (a) your internet access, network, telecommunications or other service or equipment;
  - (b) your, or third parties' products, services, negligence, acts or omissions;
  - (c) scheduled maintenance; or
  - (d) unauthorised access by third parties.

## 8 Suspension, Cancellation and Termination of tHRive Service

- 8.1 **Termination.** In the event that you or EPI-USE materially default in the performance of any of our respective duties or obligations under these Terms and the defaulting party does not substantially cure such default, or commence a cure, within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice to the defaulting party, terminate this agreement. EPI-USE may, by written notice to you, terminate your rights to use the tHRive Service without liability to you, if you fail to pay the applicable fees for the tHRive Service within thirty (30) days after the date on which EPI-USE gives you notice of such non-payment.

Any suspension or termination of access to the tHRive Service does not relieve you from paying any past due amounts and any future amounts due to EPI-USE through to the expiration date of this agreement or what would have been the expiration date had this agreement continued.

- 8.2 **Effects of Cancellation.** Upon cancellation of your account:
- (a) all access to tHRive Service and EPI-USE's obligations to provide the tHRive Service will cease immediately as your account will be disabled;
  - (b) you will be invoiced for any outstanding fees owed for tHRive Service provided together with any fees for which EPI-USE is liable to SAP SE for the remainder of the Term, which must be paid within 30 days from the date of cancellation; and
  - (c) you will be able to access your Data on tHRive Service for 30 days (or such other period as we may agree – see section 0 above) following cancellation to allow you to export your Data. All of your Data in tHRive Service will no longer be available 31 days following cancellation of your account EPI-USE will purge all of your Data from tHRive Service and all of your Data will be destroyed, unless otherwise agreed by the parties in writing.

## 9 Warranty Disclaimer

- 9.1 **Disclaimer of Warranties.** TO THE EXTENT PERMITTED AT LAW, EPI-USE FOR ITSELF AND SAP SE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER IMPLIED, WITH RESPECT TO THRIVE SERVICE (INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT). EPI-USE MAKES NO WARRANTY THAT THRIVE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT PERFORMANCE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EPI-USE OR THROUGH THE BPO SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

## 10 Indemnification

- 10.1 **Your Indemnity to EPI-USE and SAP SE.** You agree to defend, indemnify and hold harmless EPI-USE and SAP SE, and their respective employees and parent corporation from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:
- (a) your breach of any of these Terms;
  - (b) your breach of any third-party right, including without limitation any intellectual property right or privacy right; or
  - (c) any claim against EPI-USE or SAP SE, their respective employees and parent corporation arising as a consequence of your Data.

## 11 Limitation of Liability

- 11.1 **Exclusion of liability.** To the full extent permitted by law, neither EPI-USE, nor its Affiliates or SAP SE, will be liable to you, or your Affiliates, (whether in common law, equity, contract, tort (including negligence), breach of statutory obligation or duty, for repudiation, anticipatory breach or otherwise) for:
- (a) any special, exemplary or punitive damages;
  - (b) loss of Data, loss of profit, loss of revenue, lost opportunity, loss of anticipated savings, loss of goodwill, work stoppage or business interruption, computer failure or malfunction, economic loss, cost of management time or the cost of any third parties engaged to provide services in place of the tHRive Service; or
  - (c) any indirect or consequential loss, regardless whether such party has been made aware of the likelihood of such losses.
- 11.2 **Limit of liability.** To the extent permitted by law, EPI-USE's, its Affiliates' and SAP SE's collective, cumulative liability to you (or your Affiliates), for all claims arising under or in relation to this agreement in relation to a specific service, whether in common law, equity, contract, tort (including negligence), breach of statutory obligation or duty, repudiation, anticipatory breach or otherwise), will not exceed when aggregated, the lesser of the actual fees received by EPI-USE under these Terms for the portion of the tHRive Service giving rise to such claim during the six (6) month period immediately preceding the date on which the most recent such claim arose (as agreed or determined by a Court).
- 11.3 **Exclusion of implied terms and limitation.** Nothing in this agreement will operate so as to exclude, restrict or modify the application of any of the provisions of the Competition and Consumer Act 2010 (Cth) or any equivalent State or Territory legislation (Relevant Legislation), the exercise of a right conferred by such a provision, or any liability of a party for a breach of a condition or warranty implied by such a provision, where the Relevant Legislation would render it void to do so. To the extent that it is able to do so, EPI-USE expressly limits its liability for breach of any condition or warranty implied by virtue of any Relevant Legislation to:
- (a) in the case of goods, at EPI-USE's option replacement or repair of the goods or the cost of doing so; and
  - (b) in the case of services, at EPI-USE's option, resupply of the services or the cost of doing so.
- 11.4 **Benefit of service providers.** To the extent that the provisions of this Section 11 are expressed to protect or are for the benefit of third parties including EPI-USE's affiliate's and SAP SE, EPI-USE holds the benefit of such provisions for on behalf of such third parties as trustee which you acknowledge are enforceable on behalf of those third parties in accordance with their terms. To give effect to the obligations, limitations and liabilities contained in this agreement in relation to the SAP Cloud Services, you agree that SAP SE will be entitled to claim damages or seek equitable relief through EPI-USE under this clause, in relation to any breach by you or your Users of any of these Terms relating to the SAP SE. Nothing in this agreement operates to prevent SAP SE from pursuing an action against you for an infringement of its intellectual property rights by you.

## 12 Changes and Updates

- 12.1 **Changes to Users.** If the actual User count exceeds the number of Users subscribed for in the Order Form, client must subscribe for the additional Users which subscription will apply from and must be paid for, from the date that the number of Users subscribed for was exceeded. The pricing per additional User will be determined at the time of such adjustment.
- 12.2 **Changes to tHRive Service.** EPI-USE reserves the right to add, alter, or remove functionality from the tHRive Service at any time without prior notice to you. EPI-USE may also limit, suspend or discontinue tHRive Service at its discretion. EPI-USE will not make changes to the tHRive Service which are material and detrimental to the tHRive Service unless required to do so by SAP SE. EPI-USE also reserves the right to discontinue the tHRive Services at any time where it is required to do so by SAP SE. In those circumstances, if EPI-USE is unable to transition to a replacement software or platform provider (as applicable) offering a service with similar functionality to the tHRive Services, tHRive will give you as much notice as is practicable and provide you with reasonable time to export a copy of your Data from tHRive Service to an alternate provider of your choice. If EPI-USE discontinues the tHRive Service, EPI-USE will give you reasonable advance notice to provide you with an opportunity to export a copy of your Data from the tHRive Service.
- 12.3 **Changes to Terms.** EPI-USE may, in its sole and absolute discretion, change these Terms or pricing from time to time.
- 12.4 **Objection to changes.** If EPI-USE makes any material changes under this clause it will post notice of such changes on this EPI-USE website <https://epiuse.com/thrive/> and notify you in writing via email to the email address contained in the Order Form. If you object to any such changes, your sole remedy is to cease using tHRive Services and to terminate this agreement. By not giving notice and continuing to use tHRive Services following any such changes, you indicate your agreement to be bound by the updated Terms.

## 13 Right to Audit

- 13.1 **Measurement of Use.** Subject to limitations under contract and law and without gathering or transmitting any Data or other Confidential Information belonging to you, you agree that EPI-USE may implement software so that it system generates and transmits to EPI-USE and to SAP SE, information related to your use of the tHRive Service and that of your Users
- 13.2 **Underpayment.** In the event a report or an audit reveals that you have underpaid fees, you must pay such underpaid fees and/or for such excess usage based on the then current fees applicable at the time of the audit.

## 14 General Terms

- 14.1 **Force Majeure.** Neither EPI-USE nor SAP SE is responsible or liable to you or any other person, firm or entity for any failure to perform any obligation it is required to perform under these Terms to the extent that it is caused by any act, event, omission or non-event beyond EPI-USE or SAP SE's reasonable control, which will be deemed to include riots, war, acts of terrorism, fire, flood, storm or earthquake.
- 14.2 **Entire Agreement.** These Terms, the Order Form (as may be added to or updated from time to time by you) and the documents referenced in these Terms are the entire agreement and understanding with regard to the tHRive Service and supersede any prior agreement or understanding on anything connected

with the tHRive Service. You have entered into this agreement without relying on any representation by us or any person purporting to represent us.

- 14.3 **Representations.** You acknowledge that you have relied on your own independent assessment and judgment in determining whether the tHRive Service meets your requirements.
- 14.4 **Assignment.** You may not assign any of your rights or obligations under this agreement without the prior written consent of EPI-USE, which must not be unreasonably withheld. EPI-USE may assign or novate its rights and obligations under this agreement as it may determine which assignment or novation you are deemed to have agreed to without the need for any further action on your part.
- 14.5 **Waiver and invalidity.** A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 14.6 **Severability.** If any provision of our agreement is held to be invalid or unenforceable, such provision will be severed without affecting the enforceability and validity of the remaining provisions which will remain in full force and effect.
- 14.7 **Relationship of the parties.** You agree that EPI-USE is not your employer, employee, agent, partner, joint venturer or subcontractor in relation to your use of tHRive Service.
- 14.8 **Entire Agreement.** This agreement is governed by the law in force in the jurisdiction specified in the Order Form. The parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction and courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms. In the event that no jurisdiction is specified, the jurisdiction selected will be deemed to be New South Wales.

## 15 Contracting entity

- 15.1 **Contracting Entity.** References to "EPI-USE" are references to the entity identified in the Order Form as the EPI-USE contracting entity.

## 16 Defined Terms

In this agreement, the following terms have the meanings given to them unless the context otherwise requires:

**Affiliates** means, in relation to a party the holding company of the party, a subsidiary of the party or a subsidiary of the holding company of the party.

**agreement** means this agreement comprising the Order Form, any updated Order Form, the Terms and the schedules, appendices and documents incorporated by reference.

**Business Days** means a day other than Saturday or Sunday or a gazetted public holiday in New South Wales.

**Confidential Information** means, in relation to a party (for the purposes of this definition, the **Discloser**):

- (a) all information relating to or used by the Discloser or any of its Affiliates, including know-how, trade secrets, ideas, marketing strategies and operational, technical, pricing and commercial information;

- (b) all information concerning the business affairs (including products, services, customers and suppliers) or property of the Discloser or any of its Affiliates, including any business, property or transaction in which the Discloser or any of its Affiliates may be or may have been concerned or interested;
- (c) any other information disclosed by or on behalf of the Discloser or any of its Affiliates; and
- (d) in the case of Customer, includes Customer's Data,

including information disclosed pursuant to this agreement, but excluding any information:

- (e) which is publicly known or becomes publicly known other than by breach of this Agreement or any other obligation of confidentiality;
- (f) which is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or
- (g) is developed independently by the other party without reliance on any of the Discloser's Confidential Information.

**Data** means the information, data and personal information you input to the SAP SE Cloud Service or tHRive Service.

**Defects** means defects, errors, or malfunctions in the tHRive Service, including, but not limited to, any nonconformities with the tHRive Service Documentation.

**Flare HR Service** means the optional modules offered by FlareHR Pty Ltd which you may subscribe for in the Order Form noting that you will need to enter into a contract with FlareHR Pty Ltd to receive those services.

**Go Live Date** means the date on which the parties agree to go live to allow Users to access and use the tHRive Service.

**GST** means goods and services tax as defined in A New Tax System (Goods and Services Tax).

**Initial Term** is the term of this agreement as set out in the Order Form.

**Managed Service Option** mean the option to subscribe for Managed Services as described in the Order Form.

**Managed Services** mean the managed services of that name as described in the Order Form and the Service Level Agreement, under which EPI-USE will manage delivery of the tHRive Service on your behalf.

**Onboarding Pack** means the document of that name provided or made available to you by EPI-USE.

**Personalisation Services** means the services to establish, personalise and configure the tHRive Service as described in the Onboarding Pack.

**Order** means your completed and submitted Order Form.

**Order Form** means the Order Form you complete when subscribing for any tHRive Services.

**Relevant Legislation** is defined in Section 0.

**Self-Managed Option** means the option you can select in the Order Form where your use of the tHRive Service is on a self-service basis and excludes Managed Services.

**Target Launch Date** is defined in the Order Form.

**tHRive Service** means the service comprising services to be provided by EPI-USE to implement and manage delivery of, and includes, the SAP Cloud Services which are made available for your use under this agreement as described in the Service Level Agreement.

**Renewal Term** is the term for which this agreement may be renewed referred to in Order Form.

**SAP Cloud Services** are defined in the opening paragraph of these Terms.

**Service Level Agreements** or **SLA** means the documents referenced in section 1.7.

**Start Date** is defined in the Order Form.

**Term** means the Initial Term and all Renewal Terms.

**Terms** means these terms and conditions.

**Third-Party Vendors** are defined in Section 1.2.

**tHRive Service Documentation** means the documentation EPI-USE provides or makes available electronically in relation to your use of tHRive Service.

**Users** means your employees and the users of those parties specifically authorised under Section 1.2 who you have nominated within the SAP Cloud Services.