



Terms of Use

The **MobileHR** software, mobile application located at MobileHR on the GOOGLE PLAY APP STORE, www.welcome.MobileHR.com and website located at www.MobileHR.com (collectively, the “**Software**”) are copyrighted works belonging to FutuHR,LLC (“**FutuHR**”). MobileHR grants you the right to use the Software subject to the following terms and conditions of use (the “**Agreement**”). This Agreement also applies to any resources, tools, functionalities or services provided through the Software (the “**Services**”). PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING “I ACCEPT” BELOW AND USING THE SOFTWARE OR SERVICES, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY, AND AGREE THAT THE COMPANY, AND ALL OF THE COMPANY’S EMPLOYEES AND USERS WILL BE BOUND BY THIS AGREEMENT. IF YOU AND YOUR COMPANY DO NOT WISH TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE THE SOFTWARE OR SERVICES.

1. **Definitions.** The terms below, in addition to any other terms defined herein, shall have the following definitions:
 - a. “**Access Permissions**” and “**Security Levels**” shall refer to the levels of access and security requirements for access to different categories of data.
 - b. “**Customer**” or “**User**” or “**you**” or “**your**” shall each refer, as appropriate, to the entity, organization, group or individuals accessing the Software and Services and agreeing to this Agreement.
2. **License.** FutuHR, LLC, DBA MobileHR owns and operates the Software, which is protected by intellectual property laws, including copyright and trademark laws, throughout the world. A limited license is granted to use the Software and Services only in accordance with this Agreement. Customer is hereby granted a limited, non-transferable, non-exclusive license to use and access the Software as hosted on MobileHR’s secure servers for the conduct of Customer’s own business as is necessary or required to utilize the Services during the term of this Agreement. Customer shall not (i) transfer, lease, license, sublicense, sell, assign, use on behalf of third parties, or otherwise dispose of the Software; (ii) use the Software in a service bureau environment; (iii) adapt, modify, decompile, disassemble, reverse engineer, modify, copy, develop derivative works from, or otherwise interfere with the operation of the Software or use the Software for purposes other than those expressly stated in this Agreement; or (iv) permit other service providers, vendors, or third parties access to, or use of, the Software; provided, however, that this license may be transferred as part of a change-of-control, merger or acquisition such that 50% or more of Customer is owned by a third-party, provided further, that the third-party assumes this Agreement in its entirety. At the termination of this Agreement, MobileHR will terminate Customer’s access to the Software and Customer will have no further rights thereto. Any unauthorized reproduction or

modification, distribution, or performance of the Software is strictly prohibited. MobileHR and its affiliates reserve all rights not granted in this Agreement.

- 3. Intellectual Property.** "MobileHR" and other related graphics, logos, service marks, and trade names used on the Software are the trademarks of MobileHR and may not be used without our written permission. Other trademarks, service marks, and trade names that may appear in the Software are the property of their respective owners. The Software programming, protocols and source code, including both client-side code and server-side code are copyrighted by MobileHR, and may not be reverse engineered, decompiled, disassembled, altered, modified, adapted or translated. You agree not to use, reproduce, or prepare derivative works of any portion of the Software, or attempt to determine the source code, algorithms or structure of the Software.
- 4. Ownership of Content:** You acknowledge and agree that MobileHR owns all legal rights, title and interest in and to the Software, including any MobileHR trade names, trademarks, service marks, logos, domain names, and other distinctive brand features therein (whether those rights happen to be registered or not, and wherever in the world those rights may exist), and that they are protected by worldwide copyright laws and treaty provisions. They may not be copied, reproduced, modified, published, uploaded, posted, transmitted, or distributed in any way without MobileHR's prior written permission. Except as expressly provided herein, MobileHR does not grant any express or implied right to you under any patents, copyrights, trademarks, or trade secret information.
- 5. Customer Data.**

 - a. Data Security.** Customer shall assume all responsibility for the entry of its data ("**Customer Data**") into the Software. MobileHR represents that it has implemented a comprehensive written information security program ("**WISP**") that incorporates administrative, technical, and physical safeguards designed to ensure the security, confidentiality, and integrity of the Customer Data, and will maintain the WISP in force at all times while either providing Services to Customer or maintaining Customer Data. MobileHR shall use commercially reasonable efforts to protect the Customer Data from loss or destruction.
 - b. Customer License to Customer Data.** All Customer Data is and remains the exclusive property of Customer, and will only be accessed, processed or transferred in accordance with this Agreement. Customer grants MobileHR a license to access, process, compile, aggregate and prepare derivative works from the Customer Data transmitted to MobileHR during the Term. MobileHR shall provide the Customer Data to Customer in a format reasonably designated by MobileHR upon termination at no additional cost. This format shall be the MobileHR standard reports by which the Customer can download her/his data in a timely basis. . Customer represents and warrants that it has obtained all necessary consents, waivers or permissions required to transmit Customer Data to MobileHR under applicable state, federal or international law, and that no Customer Data has been transferred or transmitted in violation of any such law or statute.
 - c. Accuracy and Completeness:** Customer is solely responsible for the content and accuracy of the Customer Data. MobileHR shall not be liable for any errors or discrepancies in the Customer Data, or for any actions taken in reliance thereon. MobileHR (i) makes no warranties or representations with regard to the accuracy or completeness of the Customer Data, including, but not limited to, any warranty as to the general accuracy, historical accuracy, completeness,

integrity or any other aspect of the Customer Data; (ii) does not scrub or verify the accuracy of any data input into the Software; and (iii) has not, and will not, even if requested by Customer or any other person, make any inquiry into the accuracy of any such Customer Data or other content. Although MobileHR offers functions for organizing, accessing, storing and processing Customer Data, Customer acknowledges that it is Customer's sole responsibility to check the accuracy of any results, data or Customer Data exported or transmitted to third-parties.

6. Technical Support. MobileHR or its consultants will provide technical support for the Software and Services, but cannot correct errors in the Customer Data or provide human resources advice or guidance. By utilizing technical support, you authorize MobileHR or its consultants to access Customer Data as necessary to provide technical assistance. All technical support is provided "as is" and without any warranty or obligation by MobileHR.

a. Uptime. MobileHR endeavors to make the Software and Services available 24 hours a day, 7 days a week, 365 days a year. However, from time to time, the Software and Services may be unavailable due to scheduled or unscheduled downtime. We will keep you updated as to any downtime that prevents access to the Software or Services.

b. Platforms and Operating Systems. The Software and Services may not be compatible with every computing platform or operating system. Please check our website to view our current list of compatible and incompatible platforms and operating systems.

7. Term and Termination.

a. Term. The initial term for the Services shall be one calendar month, commencing on the activation of the Software (the "**Initial Term**").

b. Termination. This Agreement may be terminated by the Customer or by Google Play in accordance with the Google Play termination rules in effect at the time of termination.

c. Rights on Termination. Upon termination: (i) all licenses granted herein shall automatically terminate, including but not limited to the Software and Services; (ii) Your data will be accessible to the designated Owner User in read only access format, as specified by Google Play after the effective date of termination. (not the date of the termination request). The Owner User may download the data using the standard MobileHR reports.

8. Fees. The fees for the Software and Services ("**Fees**") shall be provided to you by Google, LLC. Google Play will provide you with advance notice prior to any changes to the Fees, which shall become effective upon the first Renewal Term after the price change. You agree to pay all Fees owed to Google, LLC.

9. Modification. MobileHR reserves the right, at any time, to modify the Software or Services, with or without notice, provided such modification(s) does not reduce the level of functionalities or features of the previous version. You agree that MobileHR will not be liable to you or to any third party for any modification of the Software or Services.

10. Amendment. MobileHR may, at any time, revise this Agreement by updating this Agreement and providing you with actual notice in accordance with the provisions herein. You will be required to accept the updated Agreement before enrolling in a Renewal Term.

11. Accounts, Password, and Security. Each individual user of the Software or Services (each, a “User”) must have a unique account (“Account”). You (the “Owner Account”) must complete the registration process by providing us with current, complete and accurate information as prompted by the applicable registration form, including Access Permissions and Security Levels for each Account. All information in the Owner Account must be current. . You are entirely responsible for maintaining the confidentiality of your password and Account. Furthermore, you are entirely responsible for any and all activities that occur under your Account. You agree to notify MobileHR immediately of any unauthorized use of your Account or any other breach of security. MobileHR will not be liable for any loss or liability that you may incur as a result of someone else using your password or Account, either with or without your knowledge. However, you may be held liable for losses incurred by MobileHR or another party due to someone else using your Account or password. No User may use another User’s Account at any time. You are responsible for terminating or modifying the Access Permissions and Security Levels for each Account, including in case of termination of a User.

12. Use Terms

- a. United States Build.** You acknowledge that the Software and Services are designed to be used for companies governed by domestic United States compliance requirements, and is not intended to, and may not, support non-United States compliance requirements.
- b. No Unlawful or Prohibited Use.** You agree that you will not use the Software or Services for any purpose that is unlawful or prohibited by this Agreement. Unless otherwise specified or as provided in this Agreement, you may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software, products or services obtained from the Software. You may not:
 - i.** upload, post, email, transmit or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
 - ii.** use the Software, or other activities to "stalk" or otherwise harass or harm another, or improperly access another’s information;
 - iii.** impersonate any person or entity, including, but not limited to, a MobileHR employee or administrator or falsely state or otherwise misrepresent your affiliation with a person or entity or collect or store personal data about other users in connection with the prohibited conduct and activities;
 - iv.** forge headers or otherwise manipulate identifiers in order to disguise the origin or destination of any content transmitted through the Software;

- v. upload, post, email, transmit, submit, share or otherwise make available any content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- vi. upload, post, email, transmit, submit, share or otherwise make available any content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
- vii. upload, post, email, transmit, submit, share or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- viii. upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or intercept, download or transmit unauthorized data;
- ix. you may not use the Software in any manner that could damage, disable, overburden, or impair any MobileHR server, or network(s) connections, disobey any requirements, procedures, policies or regulations of networks connected to the Software or interfere with any other party's use and enjoyment of the Software;
- x. you may not attempt to gain unauthorized access to the Software, other accounts, computer systems or networks connected to any MobileHR server, through hacking, password mining or any other means or obtain or attempt to obtain any materials or information through any means not intentionally made available through the Software;
- xi. you may not intentionally or unintentionally violate any applicable local, state, national or international law; and
- xii. you may not provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to Section 219 of the Immigration and Nationality Act.

13. Warranty Disclaimer. MOBILEHR PROVIDES THE SOFTWARE AND SERVICES ON AN "AS IS" BASIS FOR USE AT YOUR OWN RISK. MOBILEHR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND QUIET ENJOYMENT. MOBILEHR DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE INFORMATION INPUTTED INTO THE SOFTWARE, AND DOES NOT SCRUB OR VERIFY THE CUSTOMER DATA FOR ACCURACY OR COMPLETENESS. MOBILEHR DOES NOT WARRANT THAT THE SOFTWARE WILL BE COMPATIBLE ON ALL DEVICES.

14. Limitation of Liability. IN NO EVENT SHALL MOBILEHR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT MOBILEHR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ON ANY THEORY OF LIABILITY.

NEITHER MOBILEHR, NOR ANY OTHER PERSON OR ENTITY ASSOCIATED WITH THE DESIGN, MAINTENANCE AND PROVISION OF THE SOFTWARE AND/OR SERVICES SHALL BE HELD LIABLE OR RESPONSIBLE IN ANY WAY FOR ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF THE SOFTWARE OR SERVICES, OR ANY CHANGES MOBILEHR MAY MAKE TO THE SOFTWARE OR SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SOFTWARE OR SERVICES; OR IF APPLICABLE, YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL; THESE LIMITATIONS ON MOBILEHR'S LIABILITY SHALL APPLY WHETHER OR NOT MOBILEHR HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES.

MOBILEHR'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, OR USE OF THE SOFTWARE OR SERVICES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT SPENT LICENSING THE SOFTWARE AND SERVICES FROM MOBILEHR IN THE TERM PRECEDING THE OCCURRENCE OF THE DAMAGE.

15. Indemnification: You agree to indemnify, defend and hold MobileHR and its officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any party due to or arising out of: (i) content you submit, post, transmit or otherwise make available through the Software; (ii) your use of the Software; (iii) your connection to the Software; (iv) your violation of this Agreement; or (v) your violation of any rights of another. You further agree to indemnify, defend and hold MobileHR and its officers, agents, employees, partners and licensors harmless from any claims that you did not have the authority to enter, use, access, transmit or share any or all of the Customer Data, and all inaccuracies, errors, violations of privacy rights of third persons or violations of the laws of the United States.

16. Notice. Notice shall be given in writing.

a. If to MobileHR, by email at support@theMobileHR.com.

b. If to Customer, by email at the email account listed for the Owner Account , or by certified mail at the mailing address listed for the Owner Account.

17. Dispute Resolution. Customer and MobileHR agree to arbitrate all disputes and claims that may arise out of this Agreement. Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. If a claim, demand, disagreement, controversy or dispute (collectively, a “**Dispute**”) arises related to the making, enforceability, validity (including any issue of the authority or capacity of the persons agreeing to this Agreement), performance, breach, construction or interpretation of the Agreement, and if the Dispute cannot be settled through direct discussions, the parties agree to settle the dispute by binding arbitration (the “**Arbitration Requirement**”) initiated by

written notice by any party to the others of the intent to arbitrate and the Dispute(s) to be arbitrated (the “**Notice of Arbitration**”). The arbitration shall be conducted in English, held in New Jersey and administered by the American Arbitration Association (the “AAA”). The parties shall agree on a single arbitrator. If the parties cannot agree on a single arbitrator then each party shall designate one arbitrator within ten (10) business days of the receipt of the Arbitration Notice and the two appointed arbitrators shall jointly designate a third arbitrator within ten (10) business days of their appointment who shall be the sole arbitrator. The failure of any party to make such appointment within ten (10) Business Days shall constitute a waiver of the right to appoint and the AAA shall make the appointment. The arbitrator shall, among other things, determine the validity, scope, interpretation and enforceability of this arbitration clause. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the Arbitration Requirement shall not apply to any claims by MobileHR for injunctive or equitable relief, which may be heard by a court of competent jurisdiction in the state or federal courts of New Jersey, and both parties expressly consent to the personal jurisdiction and venue of such court.

18. General Provisions. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of New Jersey, without giving effect to any conflicts of laws principles that require the application of the law of a different state. This Agreement may be assigned by MobileHR without consent. Sections 2, 3, 4, 5, 6, 7, 10, 14, 15, 16, 18 and 19 shall survive termination of this Agreement.

If you have any questions about the foregoing, please contact us at the following e-mail address: support@theMobileHR.com.

Effective September 1, 2019