

## Provider Terms and Conditions

### 1 Overview

- 1.1 Chirag Pty Ltd ACN 608 971 197 (**we, us, our**) operates the platform called **HCP Meals** with the domain name **www.hcpmeals.com.au (Platform)**, a platform developed and owned exclusively by us. These Terms and Conditions (**Terms and Conditions**) record an agreement between you (**you, your, Provider**), as a provider of aged care and / or in-home care packages and services (**Packages**) and us for the purpose of your use of the Platform.
- 1.2 We and our third-party licensors reserve the right to update, modify, replace, limit, and expand the Platform and its functionality.
- 1.3 Prior to using the Platform, you should read these Terms and Conditions carefully.

### 2 Acceptance of Terms and Conditions

- 2.1 By using the Platform, you are accepting these Terms and Conditions and agree to be bound by them.
- 2.2 We reserve the right to make changes to these Terms and Conditions from time to time without notice.
- 2.3 These Terms and Conditions apply continuously and anew each time you use the Platform. We reserve the right to make changes to these Terms and Conditions from time to time without notice, and you should check the Terms and Conditions upon each use of the Platform.

### 3 Use

- 3.1 All Providers are required to be fully authorised, accredited, qualified and approved as Providers of aged care home facilities or home care services under all applicable laws, regulations and standards.
- 3.2 To enable use the Platform, you may be required to supply the following information:
  - (a) business name, ACN and ABN;
  - (b) name of approved provider (if different);
  - (c) email address;
  - (d) address;
  - (e) description of services provided;
  - (f) copy of accreditation certificate;
  - (g) residential Aged Care Service (RACS) ID (if applicable);
  - (h) any other information required to use the Platform.

#### **(User Data)**

- 3.3 We may use the User Data for the purpose of providing the functionality of the Platform and any related purpose. In order to do so, we may share the User Data with other parties, including stakeholders and contractors.
- 3.4 Our use of any personal information provided within the User Data will be in accordance with

our Privacy Policy available at [www.hcpmeals.com.au/privacy-policy/](http://www.hcpmeals.com.au/privacy-policy/)

- 3.5 You must not use the Platform for any unconscionable behaviour or activity, including but not limited to:
- (a) Engaging in abusive, derogatory, discriminatory, or vexatious behaviour;
  - (b) Engaging in any activity that disrupts or corrupts the Platform or the networks that host the Platform; or
  - (c) Attempting to hack, reverse-engineer, disable, circumvent, or otherwise gain access to any security, database, or other secure aspect of the Platform.
- 3.6 You may link to the Platform only:
- (a) With our prior express permission;
  - (b) In a way that is fair, unbiased, legal and does not damage or exploit our reputation; or
  - (c) In a way that does not suggest either express or implied any association or endorsement by us.
- 3.7 You must remove or procure the removal of any link to the Platform immediately upon receiving notice from us to do so. We may give such notice at our absolute discretion without justification.
- 3.8 You must not modify, adapt or hack the Platform or modify another website or software so as to falsely imply that it is associated with the Platform or us. You must use the Platform for its intended purpose. You may not use the Platform for any illegal or unauthorised purpose, including the transmission of malware. You must not use the Platform to violate any laws in any jurisdiction, including but not limited to copyright laws. For the avoidance of doubt, you must not infringe upon the copyrights of any other person in using the Platform.

#### **4 Advertisements**

- 4.1 We may display advertisements by third party sponsors on the Platform (**Ads**). In doing so, we do not warrant the functionality of the business, product, or service being advertised in the Ad. We do not hold ourselves out as partners, affiliates, guarantors, or as having any other type of legal or professional relationship with the third-party sponsors.
- 4.2 Where Ads link to third party websites, we do not warrant the safety, functionality, or suitability of these websites. We are in no way liable for any loss, damage, risk or liability incurred from you visiting any third-party websites accessible through Ads.
- 4.3 Advertised third party websites may be subject to their own terms and conditions. We do not verify or warrant the legality or suitability of those terms and conditions, and we encourage you to read them before accessing or using the linked site.

#### **5 Marketplace only**

- 5.1 The Platform provides a marketplace through which Customers (**Customers**) can order food (**Meals**) through the Platform from food suppliers (**Suppliers**) by applying any discounts or other concessions under a Package (**Transaction**). Our involvement in the Transaction is limited to that of a facilitator to the Transaction. We are not and do not purport to be a contractual party to the Transaction. We are not responsible for the performance of either party's obligations under the Transaction.

- 5.2 Our involvement in the Transaction is limited to the following capacity:
- (a) Facilitating the Transaction by allowing the Customer to buy Meals from Suppliers;  
and
  - (b) Collecting payment from the Customers and Providers and remitting it to the Supplier.

## **6 Platform Use and Management**

- 6.1 We require Customers to provide certain information when they sign up to the Platform. Where a Customer is a party to a Package, the Customer will provide details of the relevant provider. If you are the relevant provider, we will require you to verify the Customer and Package details through the Platform, including without limitation:
- (a) The details of the relevant Customer;
  - (b) The details of the relevant Package;
  - (c) Any spending limit applicable to the Customer's Package (**Limit**);
  - (d) Where the Package includes the Provider paying for a portion of a Meal, details of the relevant portion payable by you, and by the Customer (**Split**).
- 6.2 It is your responsibility to ensure the Customer and Package details provided are accurate and correct.
- 6.3 It is your responsibility to set the Split and the Limit for each Customer for whom you are a Provider, as per the applicable Package.
- 6.4 We accept no liability for, and release us from any liability for, loss or damage resulting from your failure to maintain accurate information pertaining to a Customer, Split or Limit.
- 6.5 You may grant carers and case managers access to the Platform to use on behalf of a Customer, or on your behalf (**Provider Users**). In doing so, you must ensure that all Provider Users comply with these Terms and Condition.
- 6.6 It is your responsibility to update us through the Platform where:
- (a) a Provider User is onboarded or removed from the Platform;
  - (b) a Provider Users details change;
  - (c) the details of a Customer or a Customer's Package change; or
  - (d) where you cease being a Provider for any Customer

## **7 Orders and Payment**

- 7.1 When a Customer places an order for a Meal through the Platform (**Order**), As a Provider you will be able to view the following information;
- (a) cost breakdown of the Order;
  - (b) what was ordered;
  - (c) who placed the Order (Provider User or Customer); and

- (d) consolidated view of payments made.
- 7.2 The Customer will pay the portion of the Order in accordance with the Split (if applicable), and you will be required to pay the balance as follows:
- (a) at the end of each week, we will generate and send a consolidated statement to each Provider showing the balance of Orders to be paid for by the Provider for each Customer (**Balance**);
  - (b) Providers will be required to remit us the Balance within 14 days. It is the responsibility of the Provider to ensure that payment is made within this timeframe;
  - (c) We will thereafter distribute the funds to the Suppliers on behalf of the Provider.
- 7.3 In some circumstances, Provider may be awaiting payment of expenses claims from government bodies. Unless otherwise agreed, the Balance must be paid in accordance with clause 7.2 even in circumstances where you are awaiting payment of expense claim that relates to the Balance.
- 7.4 You indemnify us for any loss or damage suffered as a result of your failure to pay the Balance on time.

## **8 Third party payment service**

- 8.1 We use a third-party payment service provider to process payments on the Platform. Payments submitted through the third-party payment service provider is subject to their terms and conditions.
- 8.2 We are not liable for any issues, including charges from your financial institution, which may arise as a result of this service.

## **9 Provider Obligations**

- 9.1 You are at all times required to remain compliant under Australian law as an aged care home facility or an in home care provider, including without limitation:
- (a) Compliance with all standards required or recommended by the Aged Care Quality and Safety Commission, including in relation to in home care and services provided under the National Disability Insurance Scheme (NDIS);
  - (b) Compliance with each of the following laws and regulations that are applicable:
    - (i) *Aged Care Act (1997) (Cth)*;
    - (ii) *Aged Care Quality and Safety Commission Act (2018) (Cth)*;
    - (iii) *Aged Care Quality and Safety Rules (2018) (Cth)*;
    - (iv) *Charter of Aged Care Rights*.
    - (v) *National Disability Insurance Scheme Act 2013 (Cth)*.
    - (vi) *NDIS Code of Conduct*.
  - (c) Maintenance of all applicable certificates, licences and accreditations required of the Provider and Provider Users;

9.2 You are responsible for ensuring that all Provider Users are duly qualified and compliant with any relevant laws and regulations. This encompasses their qualifications, training, and adherence to professional standards, as set forth in relevant Australian laws and other applicable regulations.

## **10 Refunds**

10.1 If a Customer requests a refund, we will review the request and, at our discretion, determine whether or not a refund is appropriate.

10.2 All refunds must be requested either by the Customer or on behalf of the Customer through the carer or case manager.

10.3 If we are required or decide to refund a Customer, the funds will be disbursed to the respective parties through the Platform or our third parties. Any refunds will be distributed based on the applicable Split.

## **11 Intellectual Property**

11.1 Your use of the Platform is pursuant to a non-exclusive license between you and us which is granted subject to these Terms and Conditions. Nothing in these Terms and Conditions or otherwise creates an assignment of any rights in the Platform or the Product beyond the ability to use it for its intended use.

11.2 Nothing in these Terms and Conditions or otherwise creates the right for you to sublicense the Platform.

11.3 You undertake not to reverse engineer, replicate, or otherwise copy the Platform. We reserve all our rights to seek compensation, damages, injunctions, or any other remedy available to us at law if any attempt to do so, whether successful or unsuccessful, is made by you or any of your affiliates.

11.4 You must not reproduce, duplicate, copy, sell, resell or exploit any portion of the Platform or any products ordered through the Platform, use of the Platform, or access to the Platform without our prior express written permission. We claim copyright and all other intellectual property rights over the Platform, its other products and services and reserve all of our rights.

11.5 All intellectual property and ownership rights subsisting in the Platform (including the user interface and the software comprising the Platform), the data derived from use of the Platform, and any other documentation, information or materials that are supplied by us to you, remain our or our third party licensors' exclusive property. For the avoidance of doubt, nothing in this agreement assigns any ownership rights to you.

## **12 Operation of the Platform**

12.1 You warrant that you will comply fully with all the Platform operating instructions. Any failure to comply fully with operating instructions may result in the sub-par or faulty performance of the Platform.

12.2 We accept no liability, and you release us from any such liability, associated with faults or errors caused by your non-compliance with all operating instructions.

12.3 We may suspend the Platform for any one or more periods of time if we are unable to provide the Platform due to a fault or dysfunction with our servers.

### **13 Backend Support**

- 13.1 We may provide backend support to Providers from time to time, including functionality that will enable Providers and us to have enhances views of Customer data and additional functionality of the Platform as required (**Backend Support**).
- 13.2 You may, but are not required to, make use of our Backend Support, in which case we will advise you in advance of the fees, if any, associated with the Backend Support.
- 13.3 We may offer to provide you with equipment, for example and without limitation computers, phones and additional software (**Equipment**).

### **14 Modifications to the Platform**

- 14.1 We reserve the right to modify or discontinue, temporarily or permanently the Platform and its other products and services with or without notice.

### **15 Warranties**

- 15.1 You represent and warrant that we will not be liable for any direct or indirect expense, damage or injury (including indirect loss of revenue, profits, goodwill or business opportunity) howsoever caused, including arising directly or indirectly from or in connection with your use of the Platform.
- 15.2 Subject to any of the rights you may have under Australian Consumer Protection Law, we exclude to the fullest extent possible all implied terms and warranties, whether statutory or otherwise, relating to the Platform or any other matter under these Terms and Conditions.
- 15.3 The Platform is made available to you on an “as is” basis. We make no warranties, representations or conditions of any kind, express, statutory or implied as to:
  - (a) The operation and functionality of the platform;
  - (b) the accuracy, integrity, completeness, quality, legality, usefulness, safety and IP rights of any of the software content; and/or
  - (c) the products and services associated with the Platform or its content.
- 15.4 We further disclaim all warranties, express, statutory or implied, including, but not limited to, implied warranties of merchantability, merchantable quality, durability, fitness for a particular purpose and/or non-infringement. No advice or information, whether oral or written, that you obtain from us shall create any warranty, representation or condition not expressly stated herein.

### **16 Limitation of liability**

- 16.1 We disclaim all liability for any:
  - (a) indirect, special, incidental, punitive, exemplary, reliance or consequential damages;
  - (b) loss of profits;
  - (c) business interruption;
  - (d) network interruptions;
  - (e) loss or damage to reputation of us or any third party;

- (f) loss of information or data;
- (g) all liability for any loss or damage,

relating to or arising out of your use of the Platform.

- 16.2 Your use of the Platform is at your own discretion and risk, and you will be solely responsible for any resulting loss or damage, including but not limited to, any loss of data or damage to your computer(s) or networks from viruses that may be downloaded to your computer in the course of using the software. Some jurisdictions do not allow the exclusion of certain warranties, the limitation or exclusion of implied warranties, or limitations on how long an implied warranty may last, so the above limitations may not apply to you. If you reside in such a jurisdiction, the above limitations shall apply to you to the fullest extent permitted under applicable law.
- 16.3 You fully release and discharge us from any claims, actions, demands or proceedings which may arise from a Transaction. We are in no way liable for any obligations arising from a Transaction and you fully indemnify and hold us harmless against any dispute arising from a Transaction for reasons including but not limited to:
- (a) Performance of a Transaction;
  - (b) Reimbursement, compensation or damages arising from a Transaction;
  - (c) Any warranties and obligations placed on the Transaction under a relevant law; or
  - (d) Any failure to comply with clause 9.
- 16.4 Our maximum aggregate liability to you for any claims, damages, injuries or causes whatsoever, and regardless of the form of action (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason), will at all times be limited to the amount paid, if any, by you to us in connection with the Platform in the 6 months prior to the action giving rise to liability.

## **17 Indemnity**

- 17.1 You defend, indemnify and hold harmless us, our members, managers, subsidiaries, affiliates, any related companies, contractors, licensors and partners, and the officers, directors, employees, agents and representatives of each of them, including costs, liabilities and legal fees, from any claim or demand made by any third party due to or arising out of:
- (a) Your access to or use of the Platform;
  - (b) Your violation of this agreement;
  - (c) Any failure of Provider Users to abide by these Terms and Conditions;
  - (d) Any infringement by you of any intellectual property or other right of any person or entity.
- 17.2 We reserve the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us and you will cooperate with our defence of these claims. You will not to settle any matter without our prior written consent. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **18 Transfer of rights and obligations**

- 18.1 These Terms and Conditions are binding on you and us and on our respective successors and assignees.
- 18.2 You may not transfer, assign, charge or otherwise dispose of your rights or liabilities under these Terms and Conditions, or any of your rights or obligations arising under it, without our prior written consent.
- 18.3 We may transfer, assign, charge, sub-contract or otherwise dispose of any of our rights or obligations arising under these Terms and Conditions, at any time without your prior consent.

## **19 Force Majeure Events**

- 19.1 We will not be liable or responsible for any failure to perform or delay in performance of any of our obligations under these Terms and Conditions that is caused by events outside our control (**Force Majeure Event**).
- 19.2 A Force Majeure Event includes any act, event, non- happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
- (a) Strikes, lock-outs or other industrial action;
  - (b) Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
  - (c) Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
  - (d) Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
  - (e) Impossibility of the use of public or private telecommunications networks;
  - (f) Epidemic, pandemic or other health emergency (whether declared or not), including without limitation lockdowns or any other restrictions imposed as a result of the COVID-19 pandemic or any other pandemic or epidemic at any time; and
  - (g) The acts, decrees, legislation, regulations or restrictions of any government.
- 19.3 Our performance under these Terms and Conditions is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period.

## **20 General**

- 20.1 To the extent permitted by law, we reserve the right to create, collect and / or store any metadata resulting from your use of the Platform. To the extent permitted by law, we may use metadata for a variety of functions including (but not limited to) conducting investigations, helping us manage and administer the Platform, for purposes of search engine optimisation and to drive traffic to the Platform. To the extent permitted by law, we reserve the right to share your information (including metadata) with government agencies and authorities to the extent this is required or requested of us.
- 20.2 We may use third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, payment gateway and related technology required to run the

Platform.

- 20.3 Verbal, physical, written or other abuse (including threats of abuse or retribution) of any of our employees, members, representatives, or officers will result in immediate termination of your access to the Platform.
- 20.4 Our failure to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision. The Terms and Conditions constitutes the entire agreement between you and us and govern your use of the Platform, superseding any prior agreements between you and us.
- 20.5 Any part of these Terms and Conditions that is invalid, prohibited or not enforceable will not void the balance of the Terms and Conditions. All other parts will be enforced without regard to the invalid provision and continue to be valid in accordance with their terms.
- 20.6 We make no representations or warranties that the content of the Platform complies with the laws (including intellectual property laws) of any country outside of Australia.
- 20.7 Any queries about the Terms and Conditions should be sent to us by email at **info@hcpmeals.com.au**
- 20.8 These Terms and Conditions are governed by the laws of the Victoria, Australia. Disputes arising from your use of the Platform are exclusively subject to the jurisdiction of the courts of Victoria, Australia.