

## TERMS AND CONDITIONS OF USE

### 1. APPLICATION

- 1.1. By submitting the Application, you accept these terms and conditions as amended from time to time, and agree to be bound by them.
- 1.2. Your participation in the Platform is at our discretion and we have the right to approve or reject your Application.
- 1.3. If we notify you in writing that we accept and approve your Application, on the date such acceptance and approval is communicated to you, an **'Agreement'** will be formed between us and you on the terms and conditions set out in your Application and on these terms and conditions which will enable you to use the Platform in accordance with clause 3.
- 1.4. Once an Agreement is formed under clause 1.3, we will, in consideration of the payment of the Fees described in clause 9, provide you with the Services in accordance with the terms of this Agreement.

### 2. VARIATION, SUSPENSION AND TERMINATION

- 2.1. Unless otherwise prevented by law, we may, by at least 30 calendar days' notice to you, alter or vary this Agreement. We will do this by displaying a notice on the Platform or emailing you when such revisions have been made or by such other means as we deem appropriate.
- 2.2. You may terminate this Agreement if:
  - (a) the variation under clause 2.1 has a material adverse effect on your rights or obligations under this Agreement, you do not agree with the variation and you give us notice of such termination within 30 calendar days after we gave you notice of the variation; or
  - (b) you give us 30 calendar days' notice of such termination for any reason whatsoever.
- 2.3. We may, at any time, by 30 calendar days' notice to you, terminate this Agreement for any reason whatsoever.
- 2.4. We may, at any time, by notice to you, temporarily, or indefinitely, suspend or terminate your right to use the Platform, if any one of more of the following applies:
  - (a) such suspension or termination is reasonably required for the maintenance (including preventative and routine maintenance), support, operation or security of the Platform;
  - (b) we believe on reasonable grounds that you are in breach of any provision of this Agreement;
  - (c) we believe on reasonable grounds that you have engaged in any conduct which may bring us or any of our service providers, or the Platform, into disrepute; or
  - (d) your telephone, internet, electronic email facilities and any other hardware and software systems are not adequate and do not meet the necessary minimum requirements for you to use the Platform.
- 2.5. At the end of this Agreement:
  - (a) you must pay us any outstanding Fees in accordance with clause 9;
  - (b) the licence set out in clause 7.1 will cease and you must cease, and must ensure that each of your Authorised Users ceases, to access and use the Platform and any material and Intellectual Property Rights relating to the Platform;
  - (c) both parties must stop using and return all Confidential Information and each party's obligations of confidence (but not the right to use and disclose) in clause 12 (Confidential Information) continue;
  - (d) we will suspend your account for the Platform;
  - (e) clauses 8 (Intellectual Property), 12 (Confidential Information), 13 (Privacy), 14 (Warranties and Liability), 15 (Insurance) and 2.5 (Effect of Termination) continue; and
  - (f) accrued rights or remedies of either party are not affected.

2.6. You must not assign, dispose of, or otherwise deal with, this Agreement without our prior written consent, which we will not unreasonably withhold as long as the assignee lodges an application in our then approved form to participate in the Services and otherwise complies with all of our requirements in relation to training.

### 3. **COMPLIANCE WITH APPLICABLE LAWS AND PROFESSIONAL STANDARDS**

3.1. You must ensure that all Authorised Users undertake the training required by us from time to time relating to the Platform. You, and any Authorised Users, will not be permitted to use the Platform until you and they have completed our initial training to our satisfaction.

3.2. You must use the Platform in accordance with all applicable Laws and professional codes of conduct.

3.3. Nothing in this Agreement prevents or relieves you or any of your Personnel from complying with, or in any way limits or prejudicially affects, any legal and ethical responsibilities applicable to your profession, and you will ensure that each of your Personnel, comply with any such legal and ethical responsibilities.

3.4. You must immediately notify us of any disciplinary action taken against you or any of your Authorised Users.

3.5. You will immediately notify us in writing of any failure to comply with this clause 3.

### 4. **MEAL PLANS AND NUTRITIONAL ADVICE**

4.1. The Platform generates meal plans automatically, based on parameters submitted by you. We cannot provide medical advice, dietary recommendations or diagnoses for any Clients, or provide you with dietetic services.

4.2. If you or a Client require dietetic services (including nutrition advice) we can refer you or your Client to a suitably qualified dietitian for the appropriate advice which can be provided on a fee for service basis.

4.3. You must only use the Platform to provide meal plans to natural persons who are at least 18 years old, and who have not been excluded due to risk assessment answers provided.

4.4. If you generate any kind of nutrition-related document from the Platform, including meal plans, recipes, reports, and food analysis, we will not take any responsibility and will not be liable for any consequences of your Client implementing the suggestions set out in the document.

4.5. You take full responsibility in advising your Clients. We are not liable for any adverse effects, issues, or complications any Client may experience after implementing a meal plan generated by the Platform.

4.6. We will endeavour to keep all nutritional facts, including nutrient data, recipe and diet information as accurate and up-to-date as possible. However, we will not be liable for any reasonable errors or inaccuracies in the nutritional data provided.

4.7. We will not be responsible for generating any meal plans that contain allergens or restricted ingredients the Client should, or wishes to, avoid. It is your responsibility to double-check and to ensure any meal plans or recipes generated are free of allergens or restricted ingredients if these documents are to be provided to any Client that may suffer from food sensitivities or allergies.

### 5. **OUR OBLIGATIONS**

5.1. We agree to use all reasonable efforts to:

- (a) provide you with, and maintain, the Platform as a means of enabling you to provide meal plans to Clients and to perform the Services in accordance with this Agreement; and
- (b) provide you with training, support and technical assistance (which may involve remote access) in connection with your use of the Platform and the Services.

5.2. We will use all reasonable endeavours to maintain the availability of the Platform on the Hosted Site to but we do not guarantee 100% availability.

5.3. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:

- (a) a Force Majeure Event;
- (b) a fault or failure of the internet or any public telecommunications network;

- (c) a fault or failure of your computer systems or networks;
- (d) any breach by you of this Agreement; or
- (e) scheduled maintenance carried out in accordance with this Agreement.

## 6. **SUPPORT SERVICES**

- 6.1. We will provide Support Services to you during the Term.
- 6.2. We will make available to you a helpdesk in accordance with the provisions of this main body of this Agreement.
- 6.3. We will provide the Support Services with reasonable skill and care.
- 6.4. You may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services. You must not use the helpdesk for any other purpose.
- 6.5. We will respond promptly to all requests for Support Services made by you through the helpdesk.
- 6.6. We may suspend the provision of the Support Services if any amount due to be paid by you to us under this Agreement is overdue, and we have given you at least 7 days' written notice, following the amount becoming overdue, of our intention to suspend the Support Services on this basis.

## 7. **YOUR ACCOUNT**

- 7.1. Upon acceptance of your Application, we will create an account for you. The information we require to verify your Application and set up your account is currently set out in the Application Form. This information may change from time to time and we may at our discretion request further information or refuse your Application based on the information provided.
- 7.2. Upon creation of an account, we will issue each of your Authorised Users with unique login information (if required), instructions and training materials.
- 7.3. Subject to clause 6.5, we grant to you a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable license to:
  - (a) access, install and use the Platform through the Hosted Site ; and
  - (b) reproduce any forms the Platform requires you to reproduce in order to conduct the Services, for the sole purpose of delivering the Services in accordance with this Agreement.
- 7.4. You must not disclose any part of the Platform, any documentation relating to the Platform, or any other confidential or proprietary information relating to the Platform to any person, except to your Authorised Users.
- 7.5. You and your Authorised Users must only access and use the Platform in accordance with the terms and conditions of this Agreement. You must not, and must ensure that Authorised Users do not:
  - (a) decompile, delete, reverse engineer, modify, copy, reproduce, disassemble, adapt, translate, or create any derivative works of the Platform, or any Intellectual Property Rights, products, or services obtained from us in respect of the Platform; or
  - (b) disseminate, distribute, transmit, display, perform, publish, directly or indirectly sell, transfer, offer for sale, license, assign, rent, timeshare or sublicense any part of the Platform or any copies of the Platform.
- 7.6. You are responsible for acquiring and installing any telephone, internet, electronic e-mail facilities and any other hardware and software systems that we consider necessary for you to access and use the Platform.
- 7.7. You are responsible for your use of the Platform, and for the supervision, management and control of the use of the Platform by your Authorised Users.
- 7.8. You must use your best endeavours to ensure that the Platform is protected at all times from unauthorised access or use and from physical misuse, damage or destruction by any person.

- 7.9. We may issue to each Authorised User a unique user ID and password for use of the Platform, and we may at any time revoke any such user ID or password if we believe that the security of that user ID or password has, or may have been, compromised. We may, from time to time, issue your Authorised Users with new login information. You agree to use your best endeavours to ensure that your Authorised Users keep any login information secure and do not disclose it to any other person.
- 7.10. If applicable, we are not obliged to provide a replacement user ID or password to you if we believe on reasonable grounds that you or an Authorised User has failed to use responsible security practices in respect of the Platform.
- 7.11. You must immediately inform us if you suspect that the security of any user ID or password has, or may have been, compromised, if you suspect that there has been unauthorised access to the Platform or if an Authorised User has failed to use responsible security practices in respect of the Platform.
- 7.12. You must not, and must ensure that your Authorised Users do not, disclose their user ID or passwords to any other person (including by training and regularly reminding Authorised Users not to make such disclosures). You and each Authorised User must only use the user ID that has been allocated to them, and must not allow any other person to use the user ID.
- 7.13. Upon creation of an account, you will be issued with capacity for a number of Client accounts based upon your level of subscription. You and your Authorised Users must use a unique Client account for each of your Clients, and must not use a Client account to generate meal plans for any person other than the relevant Client.
- 7.14. The Platform may be accessed and used throughout Australia. We make no representation that our Platform complies with the laws of any country outside of Australia. If you access the Platform outside Australia, you do so at your own risk.
- 7.15. We may regularly update the features and functionality of the Platform to reflect developments in Laws, technology or changes in our business model and processes.
- 7.16. In using the Platform you must not, and must not permit any Personnel to:
- (a) send unsolicited communications;
  - (b) disclose any Personal Information, unless authorised by the terms of this Agreement, or applicable Laws;
  - (c) defame, harass, threaten, menace or offend any person;
  - (d) interfere with any third party using the Platform;
  - (e) tamper with, or modify the Platform, or knowingly transmit viruses or other disabling features that may interfere with the operability and functionality of the Platform; or
  - (f) contravene Laws.

## 8. **INTELLECTUAL PROPERTY**

- 8.1. You acknowledge and agree that:
- (a) as between the parties, and without regard to the ownership rights of third parties, our right, title, and interest in and to the software, trade marks and any other Intellectual Property Rights in and to the Platform the Hosted Site, the Services (including all content and documentation located on the Platform and Hosted Site) and any branding associated with the Platform, the Hosted Site, the Services and our business (including any goodwill or other benefits accruing from your use of the above software, trade marks and other Intellectual Property Rights), shall inure to our benefit;
  - (b) we own the Intellectual Property Rights that comprise the Platform, the Services (including all content and documentation located on the Hosted Site) and the Hosted Site or sites on which the Platform is hosted; and
  - (c) we own any IPR and any material in which IPR is incorporated and are entitled to exploit that IPR at our discretion and without reference to you.

- 8.2. You must not take any action, or cause any third party to take any action, challenge, contest or in any way impair the rights, title, interest and ownership rights set out in clause 7.1.
- 8.3. You must ensure that all copyright notices and other indications of ownership that appear in or on the Platform are not deleted or obscured by you or any Authorised User.
- 8.4. You must do all things reasonably requested by us to give effect to clause 7.1.
- 8.5. You acknowledge and agree that you will not have any rights in the Platform, our business or the Hosted Site, except those limited rights expressly granted by us in this Agreement; and that all licenses, rights, and interests not specifically granted to you will be, and are specifically and entirely, reserved by us, and may be fully exploited by us without regard to the extent to which such rights may be competitive with this Agreement or the rights granted to you under this Agreement.
- 8.6. Without limiting the generality of clause 7.5, we reserve the right to make modifications and upgrades to the Platform and the Hosted Site from time to time.
- 8.7. You must promptly notify us of any claim that the Platform, the IPR, Hosted Site or any associated trade marks infringes the IPR of any person.

## 9. FEES AND PAYMENTS

- 9.1. We charge you a three month, six month or annual Subscription Fee per user which you will have the choice of paying upfront or by monthly direct debit. We will also charge you a one-off training fee per Authorised User prior to commencing the training. .
- 9.2. Any changes to our Fees will be notified to you via the Platform or by an email at least 30 calendar days in advance of any changes taking effect.
- 9.3. We may set off any amounts owned to us by you (including in relation to any penalty, payment reversal or similar charges or fees we incur from any card scheme, merchant acquirer or card issuer or any costs we incur as a result of a breach by you of the terms of this Agreement) against any amount owned by us to you at any time in relation to our entitlements described in this Agreement or under the Laws applicable to this Agreement.
- 9.4. Unless otherwise provided in this Agreement, all moneys payable under this Agreement are calculated without regard to taxes, duties or levies including GST.

## 10. CLIENT COMPLAINTS AND QUERIES

- 10.1. You agree to respond to any queries received from Clients in relation to any meal plans provided to them. You will provide the Client with all reasonable assistance as required by Laws and professional and industry practices. You agree that we are not responsible for, and have no obligation to provide Clients with, nutritional advice and support services in connection with meal plans generated by the Platform.
- 10.2. You agree to notify us in a timely manner of any complaint or correspondence you receive from or on behalf of a Client relating to use of the Platform or the provision of a meal plan through the Platform.

## 11. GOODS AND SERVICES TAX

- 11.1. In this clause:
  - (a) 'GST' means GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time ('GST Act') or any replacement or other relevant legislation and regulations; and
  - (b) words used in this clause which have a particular meaning in the 'GST law' (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.
- 11.2. Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 11.3. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that

consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

- 11.4. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- 11.5. Each party warrants to the other party that it is registered for GST at the time this Agreement is entered into and will promptly notify the other party if this ceases to be the case.

## **12. CONFIDENTIAL INFORMATION**

- 12.1. Each party acknowledges that they may obtain knowledge of or access to Confidential Information of the other party in the performance of this Agreement and the Services. In relation to this Confidential Information, each party agrees to:
  - (a) keep it confidential using the same degree of care normally exercised by the recipient party to protect their own proprietary or confidential information and Client data (and in any event at least a reasonable degree of care);
  - (b) use it only for the purpose for which it was provided and only to perform the parties respective obligations under this Agreement;
  - (c) not disclose it to any person other than those of members of Personnel (**'Representatives'**) who have a legitimate need to know (and only to the extent of that need to know) and who are bound by an obligation to keep it confidential and to use it only as permitted under this Agreement (**'Confidentiality Undertaking'**);
  - (d) advise all Representatives of their obligations with respect to the Confidential Information;
  - (e) use best endeavours to enforce each Confidentiality Undertaking at their own cost;
  - (f) not copy or duplicate the Confidential Information or any part of it other than as reasonably necessary in connection with the Services or the performance of the parties obligations under this Agreement and where possible mark any such copy 'Confidential';
  - (g) implement security practices against any unauthorised copying, use and disclosure (in any form);
  - (h) notify the other party immediately of any suspected or actual unauthorised copying, use or disclosure; and
  - (i) comply with any direction issued by the other party regarding a suspected or actual breach.
- 12.2. Any and all information provided by you to us that could or might relate to the IPR or our proprietary technology, its use, capabilities, features, functionality, methodology, or implementation, or other processes or transactions that could be run on the Platform or for which it could be used, will not constitute your confidential information and will be information that we shall be free to use without restriction, and which you hereby authorise us to use, in our business.
- 12.3. The obligations in clause 12.1 will not apply to any information that:
  - (a) was previously known to you or us, free of any obligation to keep it confidential ;
  - (b) is or becomes generally available to the public other than as a result of disclosure through a breach of this Agreement or an obligation of confidence owed to either party;
  - (c) you or we can prove by contemporaneous written documentation was independently acquired from a third party whose disclosure would not violate any confidentiality obligation to the disclosing party, direct or indirect, express or implied;
  - (d) is information that the disclosing party has explicitly approved for release.
- 12.4. Notwithstanding the obligations in clause 12.1, the party in receipt of that other party's Confidential Information may disclose that Confidential Information to the extent required by an order of the court or other Governmental Agency, but only after having notified the party claiming the confidential nature of the

Confidential Information of the required disclosure, and having allowed that party the opportunity, if possible, to obtain reasonable protection for that information. Any Confidential Information disclosed pursuant to this clause 12.4 shall remain Confidential Information and the exclusions set out in clause 12.3 will not apply as a result of that disclosure alone.

- 12.5. On request, the party in receipt of that other party's Confidential Information will return, or destroy, all Confidential Information and copies made of it, including all videotapes, photographs, paper, recordings on electronic media, and all compilations, notes, reports, or other reproductions containing Confidential Information. The party in receipt of that other party's Confidential Information must certify this return or destruction of all Confidential Information.

### 13. **PRIVACY AND ACCESS TO DATA**

- 13.1. The parties agree to comply with the Privacy Laws in performing their respective obligations under this Agreement.
- 13.2. Each party must, with respect to Personal Information that it receives from the other party in connection with this Agreement:
- (a) protect the confidentiality of that Personal Information;
  - (b) comply with all applicable Privacy Laws; and
  - (c) implement policies and procedures to protect the privacy and security of that Personal Information.
- 13.3. You, and your Personnel, must check and satisfy yourselves of the identity of any Client before using the Platform to generate a meal plan.
- 13.4. You must ensure that each of your Personnel who will or may have access to any Personal Information in connection with this Agreement is (before being given access to the Personal Information) briefed on or otherwise made aware of the restrictions on the use and disclosure of Personal Information imposed by applicable Privacy Laws and by your obligations under this Agreement in relation to Confidential Information and Personal Information.
- 13.5. You must promptly comply with any reasonable direction we give you regarding Personal Information and any guidelines, directions or policies issued by a Governmental Agency.
- 13.6. You acknowledge and agree that we may use information relating to you, your business and your participation in, and use of the Platform (including, without limitation, information relating to your identity and the address of your business, the number of Clients who participate in the Platform) for internal management, administration, analytical and evaluation purposes.
- 13.7. You acknowledge and agree that we may collect and use information relating to Clients and their use of meal plans for internal management, administration, analytical and evaluation purposes. You must ensure that the Client is aware of this and obtain the Client's Informed Consent. You will comply with any reasonable guidelines or directions we give you (such as the use of template forms) to ensure that each Client gives their Informed Consent to our collection and use of their Personal Information.
- 13.8. You acknowledge and agree that we may de-identify the information referred to in clauses 12.6 and 12.7, aggregate it with de-identified information of other users and Clients, and use that de-identified and aggregated data to evaluate the effectiveness and efficacy of the Services and meal planning services generally, and commercialise and disclose this data to any person.
- 13.9. We will not disclose any Personal Information relating to Clients other than in a manner consistent with the Client's Informed Consent and relevant Laws.

### 14. **WARRANTIES AND LIABILITY**

- 14.1. We warrant that your use of the Platform in accordance with the terms and conditions of this Agreement does not infringe the Intellectual Property Rights or other rights of any third party. We indemnify you for breach of this warranty.

- 14.2. Except for the conditions, warranties and guarantees described in clause 13.1 and 13.3, we and our service providers exclude all terms, conditions, warranties and guarantees implied by custom, the general law or statute.
- 14.3. Any condition, warranty or guarantee that legislation applies to the supply by us to you of services under this Agreement is taken to be included in this Agreement, if that legislation renders void or prohibits contractual provisions which:
- (a) exclude, restrict or modify; or
  - (b) which have the effect of excluding, restricting or modifying,
- the application of, exercise of a right conferred by, or any liability under, such condition, warranty or guarantee (**'Non-excludable Guarantee'**).
- 14.4. To the maximum extent permitted by law, we limit our liability for any breach of any Non-excludable Guarantee to the supplying of the services again, or the payment of the cost of having the services supplied again.
- 14.5. You acknowledge and agree that, to the maximum extent permitted by law:
- (a) we and each of our service providers, exclude all liability to you for consequential damage (including but not limited to, lost revenue, business, profit, goodwill or data) suffered by you in any way relating to this Agreement, the Platform, or the delivery of, or your participation in, the delivery of any Services, regardless of the basis of such liability and even if advised of the likelihood of such damage; and
  - (b) we and each of our service providers, limit our aggregate liability to you in connection with this Agreement, the Platform and Services, to an amount equal to the total Fees that you have paid to us in the preceding 12 months.
- 14.6. You must indemnify and defend us and our Personnel and hold us and our Personnel harmless (collectively the **'Indemnified'**) from any loss, cost, damage and expense (including legal costs on a full indemnity basis and whether incurred by or awarded against an Indemnified) suffered or incurred by any of the Indemnified arising from or in connection with:
- (a) a breach by you of this Agreement;
  - (b) the negligent, unlawful, or wilfully wrong, act or omission of you or your Authorised Users or Personnel in connection with this Agreement, the Platform or the delivery of, or your participation in, the Services; or
  - (c) any claim made or threatened by a third party arising out of or in connection with any negligent, unlawful, or wilfully wrong, act or omission of you or your Authorised Users or Personnel.
- 14.7. Without, in any way limiting the above, you expressly acknowledge and agree that we and our services providers do not make any warranty and/or representation that:
- (a) the Platform or Services will meet your requirements, or will be uninterrupted, timely, secure, or error free;
  - (b) the results that may be obtained from your use of the Platform or Services will be accurate or reliable; or
  - (c) the information or other material downloaded or obtained by you through the Platform or Services will meet your expectations or requirements.
15. **INSURANCE**
- 15.1. You must take out and maintain, with reputable insurers, appropriate professional indemnity and public and products liability insurance policies to cover any liability you might incur to us in connection with this Agreement, and workers compensation insurance as required by law.



- 15.2. You must, if requested to do so by us, produce sufficient evidence that the insurances required under clause 15.1 have been obtained, are current and comply with clause 15.1.
16. **NOTICES**
- 16.1. A party notifying or giving notice under this Agreement must give notice in writing left at or sent by prepaid post, e-mail or by fax to the address set out in the Application or such other address as may be notified to the other party from time to time.
- 16.2. A notice given in accordance with this clause 16 will be deemed received:
- (a) if left at the recipient's address, on the date of delivery;
  - (b) if sent by prepaid post, 5 calendar days after the date of posting;
  - (c) if sent by e-mail, on the business day after it is sent; and
  - (d) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission to the recipient of the total number of pages of the notice.
- 16.3. We may nominate any other electronic means of giving you notice under this Agreement, in which case we may give you notices by using that electronic means. A notice given to you in this way is taken to be given on the business day after it is sent.
- 16.4. If we nominate an electronic means by which you may be notified that notices are available, and an electronic means you may use to access such notices, we may give you a notice by notifying you that the notice is available and how you may use our nominated electronic access means to access the notice. A notice given to you in this way is taken to be given on the business day after the day on which you are notified that the notice is available.
17. **GENERAL**
- 17.1. If the whole or any part of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.
- 17.2. Both parties acknowledge that this Agreement is non-exclusive and either party is entitled to enter into agreements with third parties to provide similar services.
- 17.3. This Agreement:
- (a) accurately reflects the agreement between the parties as to their subject matter;
  - (b) records the entire agreement between the parties with respect to the subject matter of this Agreement; and
  - (c) supersedes all prior representations and agreements in connection with that subject matter.
- 17.4. Our failure at any time to insist on your performance of any obligation under this Agreement is not a waiver of our right:
- (a) to insist on performance of, or claim damages for breach of, that obligation unless we acknowledge in writing that the failure is a waiver; and
  - (b) at any other time to insist on performance of that or any other obligation under this Agreement.
- 17.5. This Agreement does not create a relationship of employment, agency or partnership between the parties.
- 17.6. Neither party will be liable for any delay in the performance of or any failure to perform any of its obligations under this Agreement (except an obligation to pay the Fees) that is caused by any event which is beyond its reasonable control, including the failure, malfunction or unavailability or necessary telecommunications, data communications and/or computer services, power supply failure or shortages, acts or omissions of third parties (including service providers and network operators), acts of government or Government Agencies, or telecommunications network congestion.
- 17.7. We may, without the need to obtain your consent, transfer all or any part of our rights, interests, obligations or liabilities under this Agreement by assignment or by novation.

17.8. We may subcontract the performance of the whole or any part of our obligations under this Agreement or any part of it.

17.9. This Agreement is governed by the laws and the parties submit to the non-exclusive jurisdiction, of the courts of New South Wales, Australia.

## 18. **DICTIONARY AND INTERPRETATION**

18.1. In this Agreement:

**Agreement** has the meaning ascribed to that term in clause 1.3 and includes any Annexures and other attachments.

**Application** means the expression of interest submitted by you, applying to use the Platform to provide meal plans to Clients.

**Authorised Users** means professionals using your account who have completed all required training and who have a legitimate business need to access and use the Platform.

**Client** means a client who is provided with a meal plan by you or another user which has been generated by the Platform.

**Confidential Information** means, in respect of a party (**disclosing party**) any information that:

- (a) is by its nature confidential;
- (b) is designated or treated by the disclosing party as confidential; or
- (c) the other party (**recipient**) knows or ought to know is confidential,

and is disclosed to, or obtained by, the recipient under this Agreement or in relation to the Services (including without limitation, Client information entered into the Platform, any part of the IPR, any part of the Platform, any IPR relating to the Platform, any information relating to the Platform provided by us from time to time).

**Fees** means the fees payable under this Agreement and referred to in clause 9.

**Force Majeure Event** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Hosted Site** in relation to the Platform, means the website on which the Platform may be accessed of which we give you notice from time to time.

**Informed Consent** of a Client in relation to the Client's Personal Information, means that the Client, having been given sufficient information to enable the Client to make an informed decision about the matter and having the capacity to provide such consent, has voluntarily consented to the collection, use or disclosure of the Client's Personal Information (as the case may be).

**Intellectual Property Rights** or **IPR** means all intellectual property rights that arises during and as a result of you or your Personnel using the Platform including, without limitation, any information or data (excluding Client data) entered into or incorporated into the Platform (regardless of whether that information or data is entered or incorporated by you or your Personnel or otherwise), including but not limited to the following rights:

- (d) patents, copyright, rights in circuit layouts, plant breeders rights, registered designs, trade marks and any right to have confidential information kept confidential; and
- (e) any application or right to apply for registration of any of the rights referred to in paragraph (a),

including, without limitation, any error corrections or translations to that material or intellectual property and derivatives of that material where such derivative work cannot be used without infringing the IPR in the underlying material.

**Laws** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by law whether commonwealth, state, territorial or local.

**New Release** means the software which we make generally available from time to time to our licensees of the Platform produced primarily to provide an extension, alteration, improvement or additional functionality to the Platform.

**Personal Information** means all information about a person that is 'personal information' as defined in the *Privacy Act 1988* (Cth) which is collected or held by any of the parties in connection with this Agreement.

**Personnel** of a party are the employees, officers, consultants, contractors, representatives and agents of the party.

**Platform** means our diet and meal planning software platform and any other Platform that is hosted by us and provides a platform that enables you to generate meal plans for Clients based on the information you enter into the Platform's questionnaire.

**Subscription Fee** means the fee payable by you to us annually for your use of the Platform in accordance with your level of subscription.

**Privacy Laws** means the *Privacy Act 1988* (Cth) and any other Laws that regulate the collection and use of Personal Information in Australia.

**Services** means our services in connection with providing and maintaining the Platform.

**Support Services** means support in relation to the use of, and the identification and resolution of errors in, the Platform, but shall not include the provision of training services. For the avoidance of doubt, Support Services do not include the provision of any services to you or your Clients that fall within the scope of dietetic practice.

**Software** means the software (consisting of a set of instructions or statements in machine readable form) licensed by us to you in accordance with clause 5.3(b) and includes any copies of that software and any Updates or New Releases of that software (or any part of it) provided by us to you under this Agreement.

**Update** means Software which we make generally available from time to time to our licensees of the Platform produced primarily to overcome defects, errors or limitations in, or to improve the operation of, the Platform.

**you, your** or derivatives of any of those terms, means the applicant set out in the Application.

**we, us**, or derivatives of any of those terms, means Lean Software Technologies Pty Ltd (ACN [642 426 579]) of 39 Darebin Rd, Thornbury, Vic 3071.

1.2. All other words starting with a capital letter have the meaning ascribed to them in the Application.

1.3. A reference to any legislation or statutory instrument or regulation in this Agreement is a reference to that legislation or statutory instrument or regulation as amended or replaced from time to time.

1.4. No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

1.5. If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

1.6. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

1.7. A reference to dollars, is to Australian dollars.

1.8. A party, which is a trustee, is bound both personally and in its capacity as a trustee.

