

## 1 DEFINITION

In these terms and conditions (**Terms**):

**Agreement** means the agreement constituted between Home Service Solutions Pty Ltd (“**HomeStay**”, “**we**”, “**our**” or “**us**”) and each of the Customer and the Service Provider respectively, in relation to any or all of the following:

- (a) an order for Products and/or Services;
- (b) use of the Services; and/or
- (c) any ancillary purposes relating to the Products and/or Services,

and includes these Terms, the Privacy Policy, any applicable Purchase Order, any agreed written variation between the Parties and any terms that cannot be excluded by law.

“**Content**” means content, text, data, graphics, images, photographs, video, audio, information, suggestions, guidance, and other materials provided, made available or otherwise found through the Services, including Content provided in direct response to Your questions or postings.

**GST** has the meaning set out in the GST Act as amended or any other relevant legislation and regulations.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Party** is a party to the Agreement.

**Platform** means the HomeStay intelligent home platform.

**Price** means the price payable by the Customer as specified in the Purchase Order.

**Privacy Policy** means HomeStay’s privacy policy located [on our website](#)

**Products** mean any one or more of the following products:

- (a) intelligent home hub;
- (b) sensors (as particularised in a Purchase Order);
- (c) peripheral devices (as particularised in a Purchase Order);
- (d) emergency pendant; and
- (e) any other products developed and offered for sale or lease from time to time by HomeStay and described in the Purchase Order.

**Purchase Order** means the form accompanying these Terms and setting out the particulars of the Products and/or Services being purchased by the Customer and supplied by HomeStay.

**Service Provider** means a caregiver, service provider, or organisation that provides in-home care to the elderly that uses any of the Services.

**Services** means the services provided by us including:

- (a) our Website;
- (b) our Platform;
- (c) our mobile application, including our booking system, the ManageMyHealth mobile application and other mobile applications (the “**Application**”);
- (d) memberships;
- (e) installation and removal of Product(s) (as applicable);
- (f) monitoring and maintenance of Products; and
- (g) other services provided from time to time by HomeStay as described in the Purchase Order.

**User** means each of the Customer and the Service Provider together or separate as the context requires.

**Website** means HomeStay’s website <https://homestay.care/>.

**You** or **Customer** means you the consumer of Services and Products.

## 2 AGREEMENT

- 2.1 By submitting a Purchase Order, or using, or otherwise accessing, any of the Services (including by visiting the Website) and/or by creating an account with us, Users agree and acknowledge that these Terms are legally binding upon them, and that these Terms, together with the Purchase Order, Privacy Policy, any written variation, and any terms and conditions which are imposed by law which cannot be excluded, constitutes their entire Agreement with HomeStay.
- 2.2 If an individual or entity creates an account, or uses the Services, on behalf of an individual or entity, that individual or entity represents that they are authorised by such User to accept this Agreement on that User's behalf.
- 2.3 If Users do not accept these Terms, then Users should not create an account, visit the Website or use, or otherwise access, any of the Products or Services.

## 3 TERMS MAY CHANGE

- 3.1 We may change these Terms and the other documents that are part of the Agreement at any time, at our full discretion.
- 3.2 If we—
  - (1) make minor changes to the Terms without materially changing Users' rights, the modified terms will be posted on the Website; or
  - (2) modify the terms that materially changes Users' rights, we will notify Users by email (if an account has been created), through any part of the Services, or present Users with the new Terms in another way we deem appropriate.
- 3.3 Using any part of the Services after the modified terms are posted or notified to the User will constitute Users' acknowledgement of, and agreement to, the modified terms. We encourage Users to periodically review these Terms and the Agreement.
- 3.4 If at any time Users choose not to accept these Terms or the Agreement, including any modifications, then Users must stop using the Products and the Services.

## 4 PRIVACY POLICY

- 4.1 In using, or accessing, any part of the Services (including visiting the Site), or purchasing a Product, HomeStay may collect and maintain information that Users voluntarily share with HomeStay, which may include Users' name, address, and contact information, medical history and current in-home care needs, billing information, and other information (collectively, "**Personal Information**").
- 4.2 Any Personal Information that HomeStay collects through Users' purchase of Product, use of, or access to, the Services is subject to our Privacy Policy available [on our website](#), which forms part of this Agreement.
- 4.3 By submitting your Personal Information, Users authorise HomeStay, its employees, its agents and others operating on its behalf to use and/or disclose such information in accordance with our Privacy Policy.



## **5 WE DO NOT PROVIDE MEDICAL ADVICE OR MEDICAL CARE**

5.1 Users acknowledge, and agree, that—

- (1) HomeStay will not, and does not provide any medical services or emergency response services or any other physical services in any capacity whatsoever.
- (2) HomeStay Products and Services are only to be used as—
  - (a) a conduit to assist Customers in identifying potential Service Providers; and
  - (b) a monitoring technology and companion ecosystem that enables data driven decision making for Service Providers, connection to family members and caregivers, emergency assistance functionality that allows for an escalation to emergency service providers, as well as other functionalities.
- (3) in relation to monitoring and alert services provided through HomeStay Products, the technology used predicts patterns that are outside of the norm and may not register or properly classify an event, and accordingly these Services are not 100% accurate.
- (4) the Content that You obtain, or receive, from HomeStay, its employees, contractors, partners, sponsors, advertisers, licensors or otherwise through the Services, is for informational, scheduling and payment purposes only;
- (5) doctors, dentists, nurses, and other medical professionals use the Services to share Content with You, but Your use of this Content is not a substitute for healthcare;
- (6) all medically related Content, including information shared via the Site or our Platform(s), news feeds, blogs, social channels, emails and text messages, and advertising, comes from independent healthcare professionals and organisations, and is for informational purposes only; and
- (7) although some Content may be provided by healthcare professionals, the provision of such information when You use, or access, the Services or Content does not create a medical professional/patient relationship, and does not constitute an opinion, medical advice, or diagnosis or treatment, but is provided to assist You in choosing a Service Provider.

## **6 NO GUARANTEES FOR SERVICE PROVIDERS**

In relation to Your use of the Services to locate and schedule appointments with Service Providers, You acknowledge, and agree, that—

- (1) HomeStay has made reasonable efforts to ensure that the Service Providers participating in the Services hold all the active licences required by law to provide the services offered by them;
- (2) HomeStay may exclude Service Providers who, in HomeStay's discretion, have engaged in inappropriate or unprofessional conduct;
- (3) some Service Providers listed through the Services enter into contracts with us, and may pay us a fee in order to be marketed through the Services;
- (4) to help You find Service Providers who may be suitable for Your needs, we will provide You with lists and/or profiles of Service Providers based on information that You provide to us, including—
  - (a) insurance information, geographical location, and in-home care needs; and



- (b) other criteria (for example, Service Provider availability, Your past selections, ratings given by You and other HomeStay users of the Service Providers, and past experience of HomeStay users with Service Providers);
- (5) to the extent that You use the Services as provided, or required, by Your insurance provider, HomeStay may provide lists and/or profile previews based also on criteria determined by Your insurance provider, and their agents or advisors;
- (6) HomeStay does not make any warranties, or guarantees with respect to the Service Providers or the quality, or type, of in-home care services they may provide;
- (7) while HomeStay encourages the Service Providers to use the Services responsibly—
  - (a) we have no control over, and cannot guarantee the availability of, any Service Provider at any particular time; and
  - (b) You acknowledge, and agree, that: we will not be liable for cancelled or unfulfilled appointments by a Service Provider, or any resulting injuries, or loss, from cancelled or unfulfilled appointments; or for any other injury, loss or damage resulting, or arising from, or related to, the use of the Site whatsoever; and
- (8) HomeStay may show You sponsored results (“**Sponsored Results**”) on the Site for which HomeStay has received additional fees from Service Providers for providing Sponsored Results. Sponsored Results shown through the Services are not, and should not be considered, an endorsement, recommendation or guarantee by HomeStay of the Service Provider.

## **7 PRICE AND PAYMENT**

- 7.1 The Price means the amount payable by the User to HomeStay in relation to HomeStay’s supply of Products and/or Services.
- 7.2 The Price is specified in the Purchase Order, and unless otherwise stated, will be exclusive of any GST, and payable in Australian dollars.
- 7.3 The Price specified for monitoring and alert Services, is subject to HomeStay’s right to vary the Price by written notice to the User, and includes monitoring and a maximum of 30 emergency responses in each three-month period of the Agreement (unless otherwise stated in the Purchase Order), additional charges may be incurred for monitoring and emergency response in excess of that number described in the Purchase Order.
- 7.4 HomeStay will invoice the User on:
  - (1) the date the Product(s) is ordered and purchased by way of a Purchase Order;
  - (2) in respect of installation, where not stated in the purchase order, on the date the installation is performed;
  - (3) in respect of removal of Product(s), on the date the removal is performed;
  - (4) in respect of monitoring and alert Services, on a monthly basis (in advance) for each month in which monitoring services are provided; and/or
  - (5) in respect of any other Services as specified in the Purchase Order.

- 7.5 Subject to clause 7.6, and unless otherwise agreed in writing by HomeStay, payment by the User to HomeStay must be made as per the payment terms stated on the invoice. Time for payment is of essence of the Agreement. Where payments are overdue, HomeStay may, in addition to any other rights it may have, in its sole discretion either cancel orders or suspend or terminate the Services.
- 7.6 In respect of monitoring and alert Services, payment by the User to HomeStay must be made on the 1<sup>st</sup> day of each month in advance of the monitoring and alert Services being provided, such payment to be made by way of direct debit authority or credit card details which must be provided in the Purchase Order.
- 7.7 If the Price is not paid by the due date then interest will accrue on that amount from the date of delivery of the Products until the price is paid in full. Interest will be payable at a rate of 5% per annum. Interest will accrue on a daily basis and be payable on demand.

## **8 GST**

HomeStay and the User agrees that:

- 8.1 GST is payable on certain supplies of Products and/or Services;
- 8.2 Words defined in the GST Law have the same meaning in these terms and conditions unless specifically defined in this clause;
- 8.3 All charges and amounts payable by one Party to another under the Agreement are stated exclusive of GST; and
- 8.4 For each taxable supply under or in connection with the Agreement:
- (1) HomeStay will be entitled to charge the User for any GST payable by HomeStay in respect of the taxable supply;
  - (2) The User must pay to HomeStay the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Agreement;
  - (3) HomeStay must provide a valid tax invoice (or a valid adjustment note) to the User in respect of the taxable supply.

## **9 DELIVERY AND PERFORMANCE**

- 9.1 HomeStay will deliver the Products nominated on the Purchase Order to the address specified in the Purchase Order on a date notified to the User.
- 9.2 HomeStay reserves the right to withhold delivery if HomeStay in its sole discretion, considers that there is a high risk of non-payment, or the terms of payment for any Products have not been strictly adhered to by the User.
- 9.3 If, due to any act, matter or thing beyond the control of HomeStay, the address for delivery is unattended, delivery cannot otherwise be effected or the Product(s) cannot be dispatched, HomeStay in its sole discretion may store the Product(s) at the User's risk and expense or take such other steps as it considers appropriate.
- 9.4 If the Purchase Order specifies particular Services (being installation, removal and/or monitoring services) to be performed by HomeStay, HomeStay will use its reasonable efforts to ensure performance of those Services as described in the Purchase Order, however, HomeStay does not accept any liability:



- (1) where the SIM supplied by HomeStay has been removed or used for any purpose other than for use in the intelligent home hub;
- (2) in respect of charges associated with SIM and/or data usage; or
- (3) for network failure or network blackspots connected with the relevant network provider.

9.5 HomeStay will not be liable in any way for any failure or delay in delivery or performance or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Products or performance of Services, except where such failure, delay or loss or damage arises directly from HomeStay's gross negligence.

## **10 INSTALLATION AND REMOVAL OF PRODUCTS**

- 10.1 If required by the Customer, and as specified in an applicable Purchase Order, HomeStay will arrange for installation (or removal if arranged with HomeStay) of a Product in the Customer's premises at a time pre-arranged with You.
- 10.2 HomeStay will perform any installation and/or removal of Product with due care and skill. Except to the extent required by law, HomeStay will not be liable in any way for loss or damage resulting directly or indirectly from the installation or removal of the Products as a result of the exercise of due care and skill in performing these Services. For the avoidance of doubt, the Customer agrees that in some cases, the installation of Products may cause minor damage to property including minor damage to paint and that such minor damage may be unavoidable and not indicative of a lack of exercising due care and skill in performance of the installation or removal of Products.
- 10.3 If, at any time, the Product(s) are installed or removed by the Customer or any person other than HomeStay, HomeStay will not be liable in any way for loss or damage resulting directly or indirectly from the installation or removal of the Products.

## **11 TITLE AND RISK IN PRODUCTS**

- 11.1 Notwithstanding any other provisions in the Agreement and notwithstanding that the Customer has possession of the Products, title to any and all Products supplied and installed (if applicable) will remain with HomeStay and no legal or equitable interest or property in the Products whatsoever will pass to the Customer until the Customer has paid the full Price for all Products supplied by HomeStay under all invoices.
- 11.2 Until title passes the Customer must:
  - (1) refrain from encumbering the Product;
  - (2) store and mark the Product so that it can be identified and distinguished as the property of HomeStay and in particular must refrain from mixing the Product with any other Products owned by the Customer or any other person;
  - (3) allow HomeStay full and free access to the Customer's premises where the Product is located to retake possession of such Products if the Customer is in any way in breach of these Terms.
  - (4) not dispose of the Product(s).
- 11.3 The Customer indemnifies HomeStay against any claim, action, damage, loss, liability, cost, expense or payment which HomeStay suffers, incurs or is liable for in respect of HomeStay's exercise of its rights under this clause.

- 11.4 Risk in the Product passes to the Customer on delivery of the Product and from that time, the Customer assumes all risk of loss and damage to the Product(s).

## **12 STATUTORY PRODUCT WARRANTY**

- 12.1 The Customer is responsible for ensuring appropriate maintenance of the Products is undertaken in accordance with HomeStay's recommendations. If Products are not maintained in accordance with HomeStay's recommendations, the Products may not work as intended or may be damaged. HomeStay does not accept any liability for damage to Products or failure of Products to work as intended, where the Product(s) has not been maintained in accordance with HomeStay's recommendations.
- 12.2 HomeStay is not liable for any damage, deterioration or malfunction resulting from any alteration, modification, improper or unreasonable use or maintenance, misuse, abuse, accident, neglect, exposure to excess moisture, fire, improper installation by a person other than HomeStay, lightning, power surges, or other acts of nature. HomeStay is not liable for any damage, deterioration or malfunction resulting from installation or removal of the Product from any installation/removal by a person other than HomeStay, any unauthorised tampering with the Product, any repairs attempted by anyone unauthorised by HomeStay to make such repairs, or any other cause which does not relate directly to a defect in materials and/or workmanship of this Product.
- 12.3 Without limiting any other exclusion, HomeStay does not warrant that the Product including without limitation, the technology and/or integrated circuit(s) included in the Product, will not become obsolete or that such items are or will remain compatible with any other product or technology with which the Product may be used.
- 12.4 If you are a consumer (as defined by the Australian Consumer Law as contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**)) our Products come with guarantees under the ACL that cannot be excluded. Under the ACL, You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, and You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure. With the exception of the consumer guarantees provided by the ACL, and to the extent permitted by applicable law, any other condition or warranty in connection with HomeStay Products, whether express or implied, is excluded, including without limitation any implied warranties with respect to merchantability, quality or fitness for any purpose.
- 12.5 Subject to this clause 12, HomeStay may at its sole and absolute discretion, provide one of the following three remedies to whatever extent it shall deem necessary to satisfy its obligations under the ACL:
- (1) elect to repair any defective Product within a reasonable period of time, free of any charge for the necessary parts and labor to complete the repair and restore the Product to its proper working condition;
  - (2) replace the Product with a direct replacement or with a similar product deemed by HomeStay to perform the same function as the Product; or
  - (3) issue a refund of the original purchase price.

- 12.6 Subject to this clause and any liability HomeStay may have which cannot be excluded by law, HomeStay does not otherwise accept any liability for any direct loss, indirect loss, consequential loss (including without limitation: loss of profits, or losses flowing from delays, or interruption to business) or damage, however caused (including through negligence), which You may directly or indirectly suffer in connection with Your use of the Product.
- 12.7 Subject to any liability we may have under the ACL which cannot be excluded, where any of our Products are NOT acquired for personal, domestic or household use or consumption, any liability we do have under the ACL in connection with our Products is limited to (at our election) one or more of the following: (i) replacement of the relevant product or the supply of equivalent product; or (ii) the payment of the cost of replacing the relevant product or of acquiring equivalent product.
- 12.8 Nothing in this Agreement excludes any guarantees or liability arising under the ACL, or any other statute or law, if and to the extent that liability cannot be lawfully excluded.

### 13 SERVICES WARRANTIES, GUARANTEES AND REPRESENTATIONS

#### 13.1 Users acknowledge, and agree, that—

- (1) HomeStay's Services including but not limited to membership services and Services provided via the website, intelligent home platform, and/or Application ("**Resource Services**") are an informational and educational resource having the purpose of aiding Customers to find suitable Service Providers for their individual needs;
- (2) to the maximum extent permitted by law, HomeStay offers the Resource Services and the Site on an "as is" basis and without warranties, express or implied by virtue of this Agreement;
- (3) while we make reasonable efforts to provide Users with accurate Content, we make no guarantees or warranties, whether expressed or implied, with respect to professional qualifications, expertise, quality of work, suitability of the services, price or cost information, insurance coverage or benefit information, or any other Content available through the Resource Services;
- (4) we make no representations, or warranties, regarding suggestions or recommendations of services, or products, offered or purchased through the Site and/or the Services except as provided in this Agreement in respect to HomeStay Products;
- (5) in no event will HomeStay be liable to Users or anyone else for any decision made, or action taken, by Users in reliance on any Content made available through the Resource Services (other than as provided in the Agreement in respect to HomeStay Products);
- (6) HomeStay does not in any way endorse, or recommend, any individual, or entity, listed or accessible through the Resource Services; and
- (7) except as expressly provided in these Terms, HomeStay—
  - (a) makes no warranties about the information systems, software and functions made accessible through the Services or any other security associated with the transmission of sensitive information; and
  - (b) does not warrant that the—



- (i) Services will operate error-free, bug-free or free from defects, that loss of data will not occur; or
  - (ii) Services, software or Site are free of computer viruses, contaminants or other harmful items.
- 13.2 HomeStay may, but has no obligation to, publish Content on the Site, Platform or Application that is reviewed by our editorial personnel. No party (including HomeStay) involved in the preparation, or publication, of Content guarantee that the Content is timely, accurate or complete, and they will not be responsible, or liable, for any errors or omissions in, or for the results obtained from the use of, such Content.
- 13.3 Service Providers' Content is intended for general reference purposes only. Service Providers' Content may be provided by the Service Provider, and collected from multiple other data sources that may not be confirmed by the Service Provider. Such Content can change frequently and may become out of date, incomplete or inaccurate. You acknowledge, and agree, that HomeStay does not provide any advice, or qualification certification, about any particular Service Provider's Content.
- 13.4 The procedures, products, services and devices discussed and/or marketed through the Services are not applicable to all individuals, customers or all situations. Any procedures, products, services or devices represented through the Services by advertisers, sponsors, and other participants of the Services, either paid or unpaid, are presented for Your awareness and do not necessarily imply, and we make no claims as to—
  - (1) safety;
  - (2) appropriateness for any particular individual; or
  - (3) prediction of effectiveness, outcome or success.

## 14 CUSTOMER RESPONSIBILITIES

- 14.1 The Customer remains fully responsible for all of the Customer's in-home expenses, including any applicable customary, and other, charges for services rendered by Service Providers obtained through the Services.
- 14.2 In using the Services, the Customer—
  - (1) acknowledges, and agrees, that the Customer is responsible for ensuring that all payments made through the Services are correct;
  - (2) must ensure that all payment details, and account information, are up-to-date to ensure payments for all services obtained through any of the Services are processed correctly; and
  - (3) must resolve any dispute arising from any transaction between You and any Service Provider directly with the Service Provider.

## 15 SERVICE PROVIDER RESPONSIBILITIES

- 15.1 In using the Services, Service Providers—
  - (1) acknowledge, and agree, that the Service Providers are responsible for ensuring that all payments made through the Services are correct;

- (2) must ensure that all payment details, and account information, are up-to-date to ensure payments for all services provided through any of the Services are processed correctly; and
- (3) must resolve any dispute arising from any transaction between Service Providers and the Customers directly with the Customers.

15.2 All Service Providers acknowledge, and agree, that they will not use the Services—

- (1) to view, access or otherwise use, directly or indirectly, other Service Providers' prices, availability, or other Content for any purpose other than their own personal use as a customer or prospective customer.
- (2) to establish, attempt to establish, or enforce, directly or indirectly, any agreement or coordination of—
  - (a) the prices charged for any product or service;
  - (b) the kinds, frequencies or amounts of any product or service offered;
  - (c) the customer, or customer categories, for any product or service; or
  - (d) otherwise engage, or attempt to engage, in price fixing, output restriction, or customer or market allocation.
- (3) directly or indirectly, to engage in any anti-competitive, deceptive or unfair practices, or otherwise violate applicable antitrust, competition or consumer protection laws, or regulations.

## 16 USERS' RESPONSIBILITIES

16.1 In using the Services, Users must—

- (1) keep all account information, including their account username and password (collectively, "**Credentials**"), private and confidential;
- (2) immediately notify us if their Credentials, or account information, has been stolen or compromised by sending an email to [hello@homestay.com](mailto:hello@homestay.com);
- (3) only use the Services for lawful purposes and for non-commercial purposes;
- (4) not use the Services in any manner that could—
  - (a) damage, disable, overburden, or impair our servers or networks; or
  - (b) interfere with any other party's use, and enjoyment, of the Site or the Services;
- (5) not attempt to gain unauthorised access to any of the Services, user accounts, or computer systems or networks, through hacking, password mining or any other means; and
- (6) not accumulate or index, directly or indirectly, any Content or portion of the Site and/or Services (including Service Provider Content, appointment availability, price information) for any purpose whatsoever.

16.2 For the avoidance of doubt, Users are solely responsible for use of the Services and for all use of their Credentials, including use by others to whom a User has given the User's Credentials.

- 16.3 In addition to our rights in the Agreement, we may take any legal action and implement any technological measures to prevent violations of the restrictions detailed in clause 16.1 and to enforce the Agreement.

## 17 CHANGES TO SERVICES

17.1 HomeStay may, from time to time and at our full discretion—

- (1) add new features to the Services;
- (2) substitute a new service for one of the existing Services; or
- (3) discontinue, or suspend, one of the existing Services.

17.2 For clarity—

- (1) all new services, or substituted services, will be governed by this Agreement; and
- (2) under no circumstances will HomeStay be liable for any suspension, or discontinuation, of any part of the Services.

17.3 Users acknowledge, and agree, that—

- (1) some Services may have additional terms (including policies, guidelines, and rules) that will further govern the use of that particular Service, and supplement this Agreement;
- (2) if a User chooses to register for, access or use any such Services, Users may be presented with additional terms, which, by using those Services, they agree to comply with in addition to this Agreement;
- (3) any additional terms will be read subject to the terms of this Agreement; and
- (4) where there is any ambiguity, inconsistency or conflict between this Agreement and the additional terms, this Agreement will take precedence over the additional terms only to the extent of any ambiguity, inconsistency or conflict.

## 18 LINKS TO OTHER WEBSITES

Users acknowledge, and agree, that—

- (1) where any part of the Services provide links to other websites, these links are provided for convenience only and we do not endorse these sites, or the products and services they provide;
- (2) although HomeStay attempts to link only to trustworthy websites, it is possible that they will contain materials that are objectionable, unlawful, inaccurate or that may cause damage, or loss, to Your systems and devices; and
- (3) HomeStay is not responsible, or liable, for the content or accuracy of these other websites or for the legality, security or decency of the material contained in, or accessed through, those websites.

## 19 CONTENT YOU POST OR SUBMIT

19.1 Subject to clause 19.2, in using the Services, you will have the opportunity to—

- (1) submit feedback regarding Your experiences with Service Providers you find through the Services;

- (2) submit inquiries concerning possible medical needs; and
- (3) participate in the other interactive or community features of the Site (collectively, “**Posted Information**”).

19.2 You must, at all times, act responsibly, and reasonably, when submitting any Posted Information.

19.3 HomeStay reserves the right to investigate and, at our discretion, take appropriate legal action against anyone who contravenes the Agreement, including removing any offending communication from the Services, and terminating the account of such violators or blocking your use of the Services.

19.4 By posting Posted Information through the Services, you grant, and you represent and warrant that You have the right to grant, to HomeStay—

- (1) an irrevocable, perpetual, royalty-free, fully sublicensable, fully paid up, worldwide licence to use, copy, publicly perform, digitally perform, publicly display, and distribute such Posted Information; and
- (2) to adapt, edit, translate, prepare derivative works of, or incorporate into other works, such Posted Information.

19.5 The licence described in clause 19.4 is non-exclusive, except you agree that HomeStay will have the exclusive right to utilise this licence to the extent of combining your Posted Information with the Posted Information of other HomeStay users for the purposes of constructing, or populating, a searchable database of reviews and information related to the in-home care industry.

## 20 USERS’ USE OF CONSENT

Users acknowledge, and agree, that---

- (1) all of the Content is owned by us, or our licensors, and is protected by copyright, trademark, patent and trade secret laws, other proprietary rights, and international treaties;
- (2) the Services, Products and any underlying technology, or software, used in connection with the Services contain HomeStay’s proprietary information;
- (3) HomeStay gives Users permission to use the Content for personal, non-commercial purposes only and does not transfer any intellectual property rights to Users by virtue of permitting the use of the Services and the Products;
- (4) Users may print, download, and store information from the Site for their own convenience, but Users may not copy, distribute, republish (except as permitted in this paragraph), sell, or exploit any of the Content, or exploit the Site, Services or Products in whole or in part, for any commercial gain or purpose whatsoever; and
- (5) except as expressly provided in this clause 20—
  - (a) neither HomeStay, nor its suppliers, grant Users any express, or implied, rights to the Site or the Services; and
  - (b) all rights in the Site and the Services not expressly granted by HomeStay to Users are retained by HomeStay.

## 21 DISCLAIMER

21.1 Users acknowledge, and agree, that HomeStay has: no control over, and no duty to take any action regarding:



- (1) No duty to take any action regarding which Users gain access to the Site and/or the Services;
- (2) No control over, and no duty to take any action regarding Content provided by third parties to the Site or via third party websites;
- (3) what effects any Content may have on Users;
- (4) how Users may interpret, or use, Content; or
- (5) what actions Users may take as a result of having been exposed to Content.

21.2 For clarity—

- (1) Users release us from all liability resulting from Users having acquired, or not having acquired, Content, and from their use of the Content; and
- (2) we have no special relationship with, or fiduciary duty to, Users.

## 22 GENERAL LIMITATION OF LIABILITY

- 22.1 Subject to any condition, warranty or right implied or imposed by the ACL or any other law which cannot by law be excluded by agreement, or any express provision of these Terms, the aggregate liability of HomeStay in contract, in tort (including negligence), under statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any loss or damage arising directly or indirectly out of or in any way attributable to the Products or Services, or their delivery, or performance of the Agreement will not exceed 10% of the amount payable to HomeStay under the Agreement.
- 22.2 To the extent permitted at law HomeStay will not be liable to You (or to any third party claiming under, or through, You) for any indirect, special, incidental, consequential or exemplary damages arising from Your use of, or inability to use, the Site and/or the Services.
- 22.3 For the sake of clarity, the exclusions provided in this clause 22 apply to any claims for lost profits, lost data, loss of goodwill, computer failure or malfunction, any other commercial damages or losses, or medical malpractice, or negligence, of Service Providers utilised through use of the Services, even if we knew, or should have known, of the possibility of such damages.

## 23 TERMINATION

23.1 Users acknowledge, and agree, that—

- (1) HomeStay reserves the right, at its full discretion, to terminate, suspend or deactivate your account immediately, without notice—
  - (a) if there has been a serious breach of—
    - (i) the Agreement; or
    - (ii) other policies and terms posted on the Site or through the Services, by you or by someone using your Credentials; or
  - (b) for inactivity for an extended period;
- (2) you will not attempt to use the Site and/or the Services after any such termination, suspension or deactivation; and
- (3) in the case of deactivation due exclusively to your inactivity, you may be permitted to create another account.

- 23.2 HomeStay will not be liable to Users, or any third party, for any termination, suspension or deactivation of your access to the Site and/or the Services.
- 23.3 Users may terminate the Services by giving seven (7) days written notice to HomeStay, and by ceasing to use and/or access the Services.
- 23.4 If the Services terminated by a User comprise monitoring and alert services, Users agree that the monitoring and alert services will continue until the end of the month in which those Services are provided with fees for those services to continue for that period, and Users agree to pay that fee in accordance with clause 7.
- 23.5 Clauses 12, 4, 5, 7, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25 survive termination or expiration of this Agreement:

## 24 INDEMNIFICATION

- 24.1 Subject to clause 24.2, where requested to do so by HomeStay, Users agree to defend, indemnify, and hold harmless HomeStay, our employees, contractors, officers, directors, agents, parent and other affiliates, from all liabilities, claims, demands and expenses, including legal fees, that arise from or are related to—
  - (1) your use of the Site and/or Services; or
  - (2) the breach of this Agreement, or of any intellectual property or other right of any person or entity, by you or any person using your Credentials.
- 24.2 Clause 24.1 does not apply to liabilities, claims and expenses arising as a result of HomeStay's own gross negligence or intentional misconduct.

## 25 MISCELLANEOUS

- 25.1 Nothing in this Agreement has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal, invalid or void for any reason, then it is severed, and the other provisions of this Agreement remain valid, operative and enforceable.
- 25.2 User's affirmative act of completing and submitting a Purchase Order and/or using the Services and/or creating an account constitutes your electronic signature to this Agreement, which includes our Privacy Policy, and User's consent to enter into such agreements with us electronically.
- 25.3 Subject to any supplemental terms referred to in clause 17.3 which may be included in this Agreement, this Agreement represents the entire agreement between Users and HomeStay and supersedes any previous representations, or agreements, whether recorded in writing or otherwise.
- 25.4 HomeStay's failure, or delay, to exercise a power or right does not operate as a waiver of that power or right. HomeStay does not waive its rights under this Agreement because it grants an extension of time to Users. Waiver of a power or right is not effective unless it is in writing. However, 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. Waiver of a power, or right, in that instance will not affect HomeStay's right to exercise other powers or rights in this Agreement.

- 25.5 HomeStay may assign this Agreement at any time, including to any parent, subsidiary, or any affiliated company, or as part of the sale to, merger with, or other transfer of our company to another entity. Users may not assign, transfer or sublicense this Agreement to anyone else and any attempt to do so in violation of this section shall be null and void.
- 25.6 Unless the context otherwise requires, this Agreement must be interpreted in accordance with the following, a reference to—
- (1) the singular includes the plural and the plural includes the singular;
  - (2) the words “include, “includes” and “including” means “including without limitation”;
  - (3) if an example is given of anything in this Agreement (including a right, obligation or concept) by using “such as”, “for example” or other similar phrases, the example does not limit the scope of that thing;
  - (4) headings are for convenience only and do not affect the interpretation of this Agreement;
- 25.7 This Agreement is governed by and construed in accordance with the laws of New South Wales. The Parties to this Agreement irrevocably accept the jurisdiction of the courts of New South Wales in relation to any legal proceedings arising in connection with this Agreement.