

Terms of Use – Bulk Associated Provider Notifications API



Australian Government

Aged Care Quality and Safety Commission

*Choice
Dignity
Respect*



1. Terms of Use

- a) The Bulk Associated Provider Notifications API, including its endpoints, documentation, developer portal, Developer Sandbox environment and production environment (the **Services**), is managed by the Aged Care Quality and Safety Commission (**ACQSC, us, we** or **our**). Services in this document also includes any component of the Services.
- b) In these terms of use, **you** and **your** refer to the [aged care service provider] that is seeking to use, or is using, the Service.
- c) 'Services' includes any changes to any components to the Services and includes altered, reduced or additional components introduced by us from time to time.
- d) These terms of use contains the terms and conditions for the use and access of the Service.
- e) Your use of the Services is deemed to be your acceptance of these terms of use.

2. Definitions

2.1. In these terms of use unless the context indicates a contrary intention:

- a) **Access Software** means the software you (or someone on your behalf) develop or use to access or use the API;
- b) **Agency** means a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Cth);
- c) **API** means the application programming interface within the Services known as the **Bulk Associated Provider Notifications API**, being the Bulk API for change in circumstance add, change and remove associated providers;
- d) **API Key** means a unique alphanumeric key issued by us that can be used to access the API;
- e) **API Specifications** means the specifications, including usage guide, as may be amended from time to time, published at <https://www.agedcarequality.gov.au/providers/provider-governance/associated-provider-notifications-api/connect-to-the-api/api-endpoints>;
- f) **Approved Use** means your access to and use of the Services to:
 - a. build and test the integration of the Access Software with the API; and
 - b. use the Services to facilitate the lodgement of 'change in circumstances' notifications to us, pursuant to section 167 of the *Aged Care Act 2024* (Cth);
- g) **Authorised User** has the meaning given in clause 4(a);
- h) **Business Day** means a day on which banks are open for general banking business in New South Wales, excluding Saturdays and Sundays;



- i) **Commonwealth** means the Commonwealth of Australia as represented by the Aged Care Quality and Safety Commission;
- j) **Confidential Information** means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, relating to the business, technology or other affairs of ACQSC or its service providers in connection with the Services including the Approved Uses and the API Specifications, but does not include information:
 - a. that is or becomes part of the public domain other than through breach of these terms of use or an obligation of confidence;
 - b. which you can prove by contemporaneous written documentation was:
 - i. already known to you at the time of disclosure by us (unless such knowledge arose from disclosure of information in breach of an obligation of confidence); or
 - ii. independently developed by you without reference to the Confidential Information; or
 - c. which you acquire from a source other than us or our representatives where such source is entitled to disclose it without breaching an obligation of confidence;
- k) **Control** means, in relation to you:
 - a. the ability to exercise, control the exercise, the right to vote in respect of more than 50% of the voting shares (or other form of voting or other equity, as relevant)
 - b. the ability to appoint or remove a majority of your directors;
 - c. the ability to exercise or control the exercise of the casting of a majority of the votes at a meeting of your board of directors; or
 - d. any other means of dominating your decision making and financial and operating policies;
- l) **Corporations Act** means the *Corporations Act 2001* (Cth);
- m) **Data** means data of any kind of ours, or of a customer or supplier of ours, that you access in the course of performing these terms of use or the activities contemplated in them, and includes Personal Information and Confidential Information;
- n) **Data Breach** means:
 - a. unauthorised access to, or unauthorised disclosure or loss of, Data; or
 - b. a breach or potential breach of security, or a security vulnerability related to any Data accessible via the Services;
- o) **Developer Material** means Material communicated by you or on your behalf to us in connection with the process and activities described in section 5, or in connection with your use of the Services;



- p) **Developer Sandbox** means a workspace maintained by ACQSC for the purpose of testing and verifying usage of the Services in a non-production environment, made available to aged care providers who have registered for the Services;
- q) **Digital Infrastructure** means:
 - a. digital infrastructure and websites (including pages and content); and
 - b. online applications required to enable product features, made available by us in relation to the Services;
- r) **Disabling Code** means any computer virus or other code that is intended to or has the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting the security, performance, access to or use of any technology or telecommunications systems, data or network, and may be in the form of a worm, spyware, adware, keyloggers or trojan horses or such other similarly classified threat;
- s) **Documentation** means the user guide, materials, description of the functionality and features of the Workato Platform that is made publicly available at <https://docs.workato.com>;
- t) **Information Commissioner** means the Office of the Australian Information Commissioner;
- u) **Insolvent**, in relation to you, means if you:
 - a. are (or you state that you are) under administration or insolvent (each as defined in the Corporations Act);
 - b. have a controller appointed or are in liquidation, in provisional liquidation, under administration or are wound up or have had a receiver appointed to any part of your property;
 - c. are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us);
 - d. have an application or order made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with you, which is preparatory to or could result in any of paragraphs (i), (ii) or (iii) above;
 - e. are taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
 - f. are the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or make a statement from which we reasonably deduce you are so subject);
 - g. are otherwise unable to pay your debts when they fall due; or



- h. are the subject of substantially similar action to paragraphs (i) to (vii) above in connection with that party under the law of any jurisdiction;
- v) **Intellectual Property Rights** means all intellectual property rights, including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, Confidential Information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967;
- w) **IT Systems** means the software, hardware, networks, platforms and other equipment used by us;
- x) **Machinery of Government** includes the reconstitution of us into a new body or entity, and the transfer of relevant functions, programmes or services to a different body or entity;
- y) **Material** includes documents, records, information and data stored by any means;
- z) **Personal Information** means any personal information as defined in the Privacy Act;
- aa) **Privacy Act** means the *Privacy Act 1988* (Cth);
- bb) **Related Body Corporate** has the meaning given to it in the Corporations Act;
- cc) **Service** has the meaning given to it in clause 1(a);
- dd) **State** means a state or territory of Australia;
- ee) **Update** means a new version of the API or any API Specifications, which may include bug-fixes and patches, modifications, enhancements or other updates;
- ff) **Workato Platform** means the online platform maintained by Workato, Inc which is used by us to provide the Service; and
- gg) **Workato Privacy Policy** means the Workato privacy policy at <https://www.workato.com/legal/privacypolicy/services-privacy-policy> (as amended or replaced from time to time).

3. Changes

- a) We may periodically change these terms of use, including the privacy notices and policies referred to in them, the API Specifications and the Documentation. Changes may be required for a number of reasons, including due to changes to the terms of the products and services provided to us by our service providers.
- b) To keep using the Portal, you need to accept the latest version of these terms of use. Your continued use of the Portal constitutes your acceptance to the latest terms of use.
- c) These terms of use replace any Portal terms of use you have accepted before.



4. Authorised Users

- a) In connection with your use of the Service under these terms of use, you may allow:
 - a. your officers and employees; and
 - b. personnel of a service provider you retain to develop your Access Software, to access and use the Service on your behalf (your **"Authorised Users"**).
- b) You are responsible for ensuring that Authorised Users comply with your obligations under these terms of use.
- c) Each Authorised User must create and maintain unique access credentials in connection with their use of the Services (**"Access Credentials"**), and will keep all Access Credentials secret and confidential. You acknowledge and agree you are responsible for all activities that occur using such Access Credentials.
- d) You acknowledge and agree that:
 - a. you and your Authorised Users are responsible for ensuring their personal details communicated to us are correct and up to date; and
 - b. you are responsible for regularly reviewing your list of Authorised Users (and any permissions granted to them, if relevant) and notifying us immediately if they cease to meet the descriptions in clauses 4(a)(i) or 4(a)(ii) (as relevant) so that their access credentials can be revoked.

5. Requirements for your Access Software

- a) In order to be able to use the Services, you are responsible for:
 - a. developing any Access Software; and
 - b. complying with the requirements in this clause 4 relating to the development of the Access Software.
- b) The following process applies:
 - a. Step 1 – you request an eligibility assessment by completing and submitting an API Registration Form as described at <https://www.agedcarequality.gov.au/providers/provider-governance/associated-provider-notifications-api/learn-about-our-api>;
 - b. Step 2 – once notified of your eligibility, you are provided access to the Developer Sandbox and API Specifications in order to allow you to design and build your Access Software in accordance with the API Specifications;



- c. Step 3 – once your Access Software is ready for testing, you perform integration testing in accordance with the API Specifications and conformance requirements described at <https://www.agedcarequality.gov.au/providers/provider-governance/associated-provider-notifications-api/connect-to-the-api/conformance> and share the results with us;
 - d. Step 4 – if integration testing is passed to our satisfaction, we perform a conformance review;
 - e. Step 5 – if we are satisfied with the results of the conformance review, our requirements for release readiness are completed to enable go-live of your access to the Services by an agreed go live date.
- c) We will assess your eligibility to proceed to each subsequent step and may at any time for any reason terminate the process.

6. Development and delivery of the Service

6.1. Delivery of the Services

- a) We will reasonably endeavour to notify you in advance where a system change or other issue is expected to occur (including planned technology upgrades or system Updates) that will impact the delivery of the Services. However, we may conduct maintenance or otherwise temporarily or permanently cease to provide the Services at any time and without notice to you.
- b) Updates may give rise to a need for you to implement changes to your Access Software.

6.2. Access Software

Unless otherwise agreed in writing, you acknowledge and agree that you:

- a) are responsible for developing the Access Software;
- b) if requested by us, must provide a copy of the Access Software and/or information relating to the Access Software;
- c) must maintain the Access Software in accordance with the API Specifications (if any);
- d) must ensure that the Access Software complies with:
 - a. all applicable laws;
 - b. any relevant Approved Use;
 - c. any of our Services design and security policies (if any);



- d. any of our requirements not to incorporate open source software into the Access Software;
- e. the Documentation (to the extent relevant); and
- e) must provide us with updated Access Software if any amendment to the Access Software is made or required under these terms of use.

6.3. Developer Sandbox

- a) As described in clause 5(b)(ii), we may provide your designated Authorised Users with access to the Developer Sandbox.
- b) You agree that:
 - a. you will not process any real production data, or use the Developer Sandbox for any production purposes;
 - b. we or our service provider may, but are not obliged to, review and monitor the Developer Sandbox for safety, security, abuse prevention, regulatory and compliance purposes,
 - c. we or our service provider may discontinue, suspend or delete the Developer Sandbox at any time for any reason; and
 - d. our service provider may observe, analyse and research the account holder data (being documents, messages, graphics, images, files, data and other information transmitted and processed through the Services) and content processed within the Developer Sandbox during and after your use of it.

7. Licence

7.1. Grant of Licence

We grant you a non-exclusive, non-transferable, limited, sublicensable, revocable, royalty-free and worldwide licence to access and use the Services solely for the Approved Use in accordance with these terms of use.

7.2. Licence to Digital Infrastructure

We grant you a non-exclusive, non-transferable, limited, sublicensable, revocable, royalty-free and worldwide licence to connect to our Digital Infrastructure solely to the extent necessary to receive the benefit of the Services Licences, in accordance with the API Specifications.



8. Use of the API and Developer Sandbox

8.1. API Key

- a) As part of Step 5 described in clause 4, we will provide you an API Key to allow you to access the API.
- b) You must include the API Key when submitting any search query via the API.
- c) You must keep the API Key secure and confidential at all times, and must not share it with any third party, other than those who have a “need to know” to assist you in performing these terms of use, and only if that person is under confidentiality obligations no less rigorous than those set out in these terms of use.

8.2. Services use

- a) You must only use the Services in accordance with any limits on the number and frequency of API requests set out in the API Specifications or as otherwise communicated by us to you in writing from time to time.
- b) You must only use the Services in accordance with the API Specifications and the Documentation.

8.3. Usage restrictions

You must not and must not authorise any third party to, directly or indirectly:

- a) use the Services in a way that:
 - a. is unlawful or fraudulent;
 - b. infringes any third party's Intellectual Property Rights;
 - c. breaches any obligation owed to a third party;
 - d. infringes any person's privacy rights;
 - e. threatens the security, integrity, availability or stability of them or the IT Systems;
- b) unless otherwise agreed in writing by the parties, modify, obscure, circumvent, disable, or change any element of the API or its access control features;
- c) attempt to access any part of our IT Systems, or Materials stored in the IT Systems, beyond the access rights granted under these terms of use;
- d) use the Services to build any competing product or service;
- e) use the Services:
 - a. from any sanctioned, embargoed, prohibited, or unauthorized country where we or our service provider cannot provide or is prohibited from providing access;



- b. for any system or application in which the failure of system could create a risk of personal injury or death, such as medical systems, life sustaining or life-saving systems, transportation systems, or nuclear systems;
- c. in any way that otherwise violates the Documentation;
- f) interfere or attempt to interfere in any way with how the Services are accessed or used by us or any third parties, including through abuse of server capacity;
- g) transmit, or cause to be transmitted, any Disabling Code via the Services;
- h) use the Services to transmit, access or otherwise use any inappropriate applications or content that are, for example, pornographic, bullying, harassing, abusive, threatening, discriminatory, unlawful or unethical;
- i) except as otherwise agreed in writing:
 - a. distribute, sell, rent, lease, pledge, assign, deal in, receive a commercial benefit, or otherwise transfer or encumber the Services;
 - b. copy, alter, modify, add to, create derivative works of or enhance the Services or any software, source code, object code, underlying structure, design, look and feel, expression, ideas or algorithms, or Documentation thereof; or
 - c. decompile, disassemble, reverse engineer, create derivative works, or otherwise attempt to discover the source code, object code or underlying structure of the Services or any software or data related to it;
 - d. bypass any measures to prevent or restrict access to the Services (or IT Systems connected to them);
 - e. scan or test vulnerability of the Services or related products and services without our prior written consent; or
 - f. remove or otherwise alter any proprietary notices or labels from the Services or any portion thereof;
- j) charge any fees for access to the Services; or
- k) use the Services in any way that is not permitted by these terms of use.

8.4. Use as a service bureau

- a) You acknowledge and agree that your use is limited to the Approved Use and no right is granted hereunder to use the Services for the benefit of third parties, including as service bureau, time-sharing or managed arrangement. You and your Authorized Users must not permit any third party other than your Authorized Users to access the Services. The Services must not be accessed for any benchmarking, comparative or competitive purposes unless authorised in writing by us.



8.5. Application restrictions

You agree that you must not, without our prior written consent, use the Services with any application or Access Software that:

- a) is subject to open source licence terms that may apply to the Services if used in connection with that application or Access Software; or
- b) has the effect of breaching the requirement in clause 8.2 or any other usage limits in these terms of use.

8.6. Scraping

- a) You must not provide any accessing interface that incorporates any robot, spider or other process or device to access, retrieve, scrape, index or copy information accessed by that interface.

8.7. Usage Data

- a) We or our service provider may compile statistical and technical data and information related to or generated through the performance, operation and use of the Services and related features and functionality ("**Usage Data**"). For clarity, Usage Data shall exclude all account holder data (being documents, messages, graphics, images, files, data and other information transmitted and processed through the Developer Sandbox or API), but may include limited account information (information provided by users for the creation or administration of their account, including names, usernames and email addresses associated with the account) subject to Workato's Privacy Policy.
- b) We and our service provider may use Usage Data during and after the term for the purposes of implementing, operating, maintaining, auditing compliance, and improving (including training and machine learning of) the Services (including the Workato Platform) and supporting the Services, provided that we and they will not disclose Usage Data (except to our and their providers provided they are subject to confidentiality obligations) or use the Usage Data for any training and machine learning purposes, unless it is aggregated and anonymized.

9. Confidential Information

- a) You agree not to disclose the Confidential Information except:
 - a. to a person solely in connection with exercising your rights or dealing with your rights or obligations under these terms of use;



- b. to your officers, employees, agents, contractors, advisors and auditors;
 - c. to your Related Body Corporate;
 - d. with our prior written consent; and
 - e. to a government authority, securities exchange or rating agency as is required by such entities, but only if such parties to whom the Confidential Information is disclosed:
 - f. require the Confidential Information on a “need to know” basis, in order for you to fulfil your obligations under these terms of use, to receive its benefits, or to comply with laws or regulations;
 - g. are made aware that it is our Confidential Information; and
 - h. are under an obligation not to further disclose that Confidential Information.
- b) You acknowledge and agree that you are responsible for ensuring that the disclosees described in clauses 9(a)(ii) and 9(a)(iii) comply with these confidentiality obligations as if they were you.
- c) You must maintain the confidentiality of the Confidential Information using at least the same degree of care that you use to protect your own Confidential Information of a similar nature, which shall be no less than reasonable care.
- d) You must promptly return or destroy all Confidential Information at our discretion and upon our written request (including any written notice of termination of this agreement). Notwithstanding anything to the contrary, you may retain Confidential Information if necessary to comply with legal or regulatory requirements, external accounting standards, or otherwise as contained in an archived computer system made in accordance with reasonable disaster recovery procedures, provided that such copy will remain subject to these obligations.
- e) You acknowledge that any breach of this clause 9 may cause irreparable damage to us or our service provider, for which monetary damages may be inadequate. In addition to any other remedy available at law or in equity, we, or our service provider (as relevant), are entitled to seek specific performance and injunctive or other equitable relief against a breach or threatened breach of this clause 9.

10. Intellectual Property Rights

10.1. No assignment

Unless otherwise expressly set out in this Agreement, nothing in this Agreement transfers ownership in, or otherwise grants any rights in or to, any Intellectual Property Rights of a party.



10.2. Intellectual Property Rights in the API and Access Software

- a) We reserve all right, title and interest, including all Intellectual Property Rights, in and to the Services and API Specifications.
- b) Without limiting your obligations under clause 8.3(i), you acknowledge and agree that any component of the Access Software (including any Intellectual Property Rights in such component) which is based upon or incorporates the Services are owned by us, and you must assign or procure the assignment to us of any such component and Intellectual Property Rights.
- c) Subject to clause 10.2(b), as between us and you, you retain all right, title and interest in the Access Software and Developer Materials.
- d) You grant to us a perpetual, worldwide, irrevocable, royalty-free, non-exclusive licence (including the right of sub-licence) to use, reproduce, distribute, and communicate any Developer Material for our and Commonwealth purposes.
- e) Each party must promptly execute all necessary documents, or procure the execution of such documents, and undertake all necessary activities to fulfil its obligations under this clause 10.

11. Privacy

11.1. Privacy, consents and authorisations

- a) You must comply with the Privacy Act, including the Australian Privacy Principles, in relation to any Personal Information that you disclose or collect in connection with your performance of these terms of use or the activities contemplated by them.
- b) We collect Personal Information:
 - a. for the purposes of registration of aged care providers and the administration of our other functions;
 - b. in administering the Services.
- c) Our service provider, Workato, supports the Developer Sandbox and the API. They handle Personal Information in accordance with the Workato Privacy Policy. To the extent that any Personal Data (as defined in the DPA) is processed through the Portal and the API by Workato on your or our behalf, the Data Processing Addendum located at <https://www.workato.com/legal/dpa> (the “**DPA**”) will apply to that processing.



- d) You are referred to, and agree you have procured that each of your Authorised Users have read and understand:
 - a. our notice of collection at <https://www.agedcarequality.gov.au/notice-collection-personal-information>;
 - b. our privacy policy at <https://www.agedcarequality.gov.au/privacy-policy>. Our privacy policy contains important information about your privacy, and explains how we handle personal information, including how you can request access to or correction of your personal information, or make a complaint; and
- e) the Workato Privacy Policy and DPA referred to in clause 11.1(c).

11.2. Notification of Data Breaches

- a) You must immediately notify us if you:
 - a. become aware of a suspected or actual Data Breach; or
 - b. are or may be required by law to disclose our Data.
- b) If you become aware of a Data Breach, or any security vulnerability that may affect any Data, then you must notify us within 2 hours and as soon as reasonably practicable, to the extent within your control:
 - a. identify the cause of that Data Breach;
 - b. take all reasonable steps to remedy the Data Breach and its consequences, and comply our reasonable instructions in such activities;
 - c. take all reasonable steps to prevent a Data Breach from becoming an actual Data Breach, and comply with our reasonable instructions in such activities;
 - d. deliver to us a written report detailing the causes of, procedure to remedy, and consequences of the Data Breach; and
 - e. promptly take all reasonable steps to prevent such Data Breach from recurring.
- c) If you propose to issue a notice (including to the Information Commissioner) or make any public statement regarding the Data Breach, then you must (unless prevented by any law or stock exchange rule):
 - a. provide us with a copy of the notice or statement you intend to issue or make with as much notice as reasonably possible prior to issuing or making that notice or statement; and
 - b. make any changes reasonably requested by us, unless such changes would cause you to breach the Privacy Act.



- d) You must use all reasonable efforts necessary to prevent the risk of serious harm occurring to any individuals affected by the Data Breach, and must promptly notify us of any remedial action you take or intend to take.

12. Warranties

12.1. General warranties

You represent and warrant to us that:

- a) you have the power to enter into and perform your obligations under these terms of use;
- b) you are lawfully able to grant the licences and assignments provided by you under these terms of use;
- c) you are not currently involved in any claim that would reasonably be expected to have an adverse effect on your performance of these terms of use;
- d) nothing in these terms of use contravenes any obligations owed to any third party, nor any relevant laws;
- e) you will comply with all relevant laws in performing your obligations and exercising your rights under these terms of use; and
- f) you are not Insolvent.

12.2. Warranties regarding the Services

You represent and warrant to us that:

- a) you will not create or use any Disabling Code or other application or interface intended to interfere with the security or functioning of our Service, API or IT Systems, and will not allow any other person to do so;
- b) where you discover that a person is using the Service, API or Access Software in a manner that breaches these terms of use, you will promptly revoke that person's access to the Service, API and Access Software (as relevant) and notify us of that prohibited use and the consequences taken to safeguard the Services ,and Access Software;
- c) the Access Software, Developer Materials or any other documents or materials created by you in connection with these terms of use or the activities contemplated under it do not and will not infringe any third party Intellectual Property Rights; and
- d) the use by us of any of your Developer Materials will not infringe any third party Intellectual Property Rights.



12.3. Warranties regarding development process and users

You represent and warrant to us that:

- a) all information submitted in respect of the process described in clause 5 is true and accurate to the best of your knowledge, and you will inform us of any material change to that information as soon as practicable after becoming aware of the change; and
- b) each of your Authorised Users are duly authorised to act on your behalf and meet the requirements in clause 4(a).

12.4. Changes

You must inform us as soon as practicable of any of the representations and warranties in this clause 12 becoming incomplete or inaccurate.

13. Indemnities

You indemnify the Commonwealth against all losses, damages, liabilities, fines, claims and expenses (including legal costs) incurred by the Commonwealth arising out of or in connection with:

- a) any fraudulent, unlawful or wrongful act or omission by you or your Authorised Users;
- b) a breach by you or your Authorised Users of these terms of use;
- c) any infringement by you or your Authorised Users of any third party Intellectual Property Rights or other proprietary rights;
- d) your (or your Authorised Users') use of the Services other than in accordance with these terms of use; and
- e) any death or injury to persons, and any loss or damage to the real or personal property of us or our personnel, caused by any act or omission of you or your Authorised Users.

14. Disclaimer

- a) While we will use reasonable endeavours to ensure the Services are available and operative, the Services are provided on an "as is, as available" basis. You use them at your own risk, based on your own assessment of the risks of their use.
- b) We do not warrant, guarantee or make any representation that the Services:
 - a. are error free or free of Disabling Code, or that errors will be corrected;
 - b. will be available, or you will have continuous access to them; or
 - c. will meet your requirements.



- c) Access to the Services depends on telecommunications, internet service providers, and other external factors. We may have to make changes to the Services – which may require you to modify Access Software in order to ensure effective use of the Services - including due to changes in law.
- d) To the extent permitted by law, the Commonwealth excludes all liability or responsibility to you, your Authorised Users or any other person for any loss (including loss of data, opportunity, profits and savings), claim (including in negligence), expense (including the costs of modifying or replacing the Access Software) or damage resulting, directly or indirectly, in connection with use of or reliance on, the Services, Documentation including API Specifications.

15. Termination

15.1. Termination or suspension for cause

Without limiting any of our other rights, we may immediately terminate or suspend (for any period of time) your access to the Services if:

- a) you become Insolvent;
- b) you breach these terms of use;
- c) a change in Control takes effect; or
- d) you engage in misleading, deceptive, fraudulent, immoral or illegal conduct.

15.2. Cessation of services

- a) We may at any time cease to support the Services. Where this occurs, your right to use them will terminate.
- b) We will endeavour to provide you with advance notice of us doing so.

16. Change in Control

- a) You must notify us of any change in Control in writing within 28 days prior to the change in Control taking effect.
- b) The Commonwealth reserves the right to conduct any check it considers appropriate in relation to the change in Control.



17. Security

- a) While the Services have been designed to incorporate safeguards consistent with the *Privacy Act 1988* and Australian Government standards for data security:
 - a. no system or transmission of data over the internet or any other public network, or any storage of data, is entirely secure; and
 - b. we do not represent or warrant the Services underlying IT System is secure or meets any particular security standard.
- b) If you believe someone has tried to access the Services without authorisation, or that an Authorised User's account security has otherwise been compromised, you must immediately notify us.
- c) You must take any steps we deem reasonably necessary to maintain or enhance the security of the Services.
- d) You acknowledge that access to, and use of, the Services is subject to applicable Commonwealth legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and the Privacy Act. Penalties for breaches include fines and imprisonment.

18. Export compliance

- a) The Services and derivatives thereof are subject to export controls and sanctions laws and regulations of the United States and other jurisdictions (the "**Export Controls**").
- b) You must:
 - a. comply with applicable Export Controls;
 - b. not access or use the Developer Sandbox or API in any manner that would cause us or our service provider to violate any Export Controls, including access or use of the Developer Sandbox or API in a U.S.-embargoed country or region, or process any data or use the Developer Sandbox or API for any prohibited end use (e.g., nuclear, chemical, or biological weapons proliferation, or missile-development purposes).

19. Anti-corruption

- a) You agree to comply with Division 70, Part 7.6 and Division 490 of the *Commonwealth Criminal Code*, *U.S. Foreign Corrupt Practices Act*, the *UK Bribery Act 2010* and other applicable anti-corruption, anti-bribery or anti-money laundering law (together, "**Anti-Corruption Laws**"), and agree not to violate, cause us or our service provider to violate, or knowingly let anyone violate the applicable Anti-Corruption Laws.



20. General

20.1. Costs and expenses

- a) Each party will bear its own costs and expenses of negotiating and performing their obligations under these terms of use.

20.2. Relationship between parties

- a) Nothing in these terms of use:
 - a. constitutes a partnership between the parties; or
 - b. makes a party an agent of another party for any purpose.

20.3. Further assurances

- a) Except as expressly provided in these terms of use, each party must, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to these terms of use and the matters contemplated by it.

20.4. No assignment or transfer

- a) You cannot assign or otherwise transfer your rights under these terms of use without our prior consent.
- b) We may assign our rights or novate its rights and obligations under these terms of use to another Agency without obtaining your consent if relevant functions are transferred to another Agency as part of a Machinery of Government change.

20.5. Entire agreement

- a) The contents of these terms of use constitute the entire agreement between the parties in relation to its subject matter and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of these terms of use, whether orally or in writing.

20.6. Invalidity

- a) A word or provision must be read down if:
 - a. these terms of use are void, voidable, or unenforceable if it is not read down;
 - b. these terms of use will not be void, voidable or unenforceable if it is read down; and
 - c. the provision is capable of being read down.
- b) A word or provision must be severed if:



- a. despite the operation of clause 20.6(a), the provision is void, voidable or unenforceable if it is not severed; and
- b. these terms of use will be void, voidable or unenforceable if it is not severed.
- c) The remainder of these terms of use has full effect even if clause 20.6(b)(i) or 20.6(b)(ii) applies.

20.7. Notices

- a) Any notice or consent given under or in connection with these terms of use must be in writing and delivered to the intended recipient by hand, by post, or by email:
 - a. where you are the recipient, using the details we hold on our files for you that you provided during your registration; and
 - b. where we are the recipient, to apisupport@agedcarequality.gov.au or such other address as we notify to you from time to time.
- b) A notice is taken to be given and received:
 - a. in the case of hand delivery, when delivered;
 - b. in the case of delivery by post:
 - i. if the notice is posted in the capital city of a State to an address in that city, three Business Days after the date of posting; or
 - ii. if the notice is posted in the capital city of a State to an address in the capital city of another State, five Business Days after the date of posting; or
 - c. in the case of delivery by email, at the time denoted in an automated receipt notification received by the sender (in the absence of manifest error or tampering) or, if that function is not enabled, upon acknowledgment of receipt by the other party (by return email or otherwise), but where that time is after 5:00pm in the place of receipt or on a day that is not a Business Day, the notice will be deemed to have been given at 9:00am on the next Business Day.
- c) You may change your address for service and must promptly notify each other party of any such change, provided you must not change you postal address for service to a postal address that is not in the capital city of a State.

20.8. Waiver

- a) A right or remedy created by these terms of use cannot be waived except in writing signed by the party entitled to that right or remedy. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in



part) by a party of a right or remedy operate as a subsequent waiver of the same right or remedy or of any other right or remedy of that party.

20.9. Interpretation

In these terms of use, unless the context indicates a contrary intention:

- a) **(documents)** a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;
- b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is to a party, clause, paragraph, schedule or annexure to or of these terms of use;
- c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of these terms of use;
- d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- e) **(including)** including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- f) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- g) **(singular and plural)** the singular includes the plural and the plural includes the singular;
- h) **(legislation)** a reference to legislation or any legislative provision includes:
 - a. any modification or substitution of that legislative provision; and
 - b. any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted; and
- i) **(replacement bodies)** a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions.

20.10. Construction

- a) Neither these terms of use or any part of them are to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

20.11. Governing law and jurisdiction

- a) The laws applicable in the Australian Capital Territory, Australia, govern these terms of use.



- b) The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, Australia and any courts competent to hear appeals from those courts.



Phone
1800 951 822



Web
agedcarequality.gov.au



Write
Aged Care Quality and Safety Commission
GPO Box 9819, in your capital city