

# USER TERMS

## Clevertar™ Digital Coaches

### 1 Scope and Definitions

1.1 The following User Terms govern all access to and use of the App by a User. Nothing in the User Terms operates to alter any of the terms and conditions of the Subscription Agreement.

1.2 **IMPORTANT** – You must not access or use our App unless you accept these User Terms and any additional terms and disclaimers which may be brought to your attention in connection with your access and use of the App. If you are the agent or legal representative of a User who lacks legal capacity to accept these User Terms, then you also accept these User Terms on behalf of that User.

1.3 **IMPORTANT** – Use of the App is not a substitute for normal health and care requirements and does not reduce or eliminate existing needs for appropriate types and frequency of diligent medical or other appropriate care, visits, contacts and monitoring. Users should ensure that they follow the advice and recommendations of their medical and other professional advisors and maintain appropriate levels of care, medication and monitoring. The App is not a substitute for appropriate and regular medical or professional assessments and assistance.

1.4 In these terms and conditions:

“**App**” means an implementation of the Clevertar Digital Coaches app which we have agreed to make available pursuant to the Subscription Agreement and which the User proposes to access and use;

“**Applicable Duration**” means a period during which you are validly authorised by the Subscriber to access and use the App;

“**Submitted Data**” means data submitted by a User or collected by us in the course of use of the App;

“**Subscriber**” means the entity which has (a) entered into a Subscription Agreement with us; and (b) has authorised the User to access and use the App;

“**Subscription Agreement**” means the written agreement between the Subscriber and us pursuant to which the Subscriber has been authorised to access and use the App and to permit Users to access and use the App;

“**User**”, “**you**” and “**your**” means any person who accesses and uses the App; and

“**we**”, “**us**” and “**our**” means Clevertar Pty Ltd (ABN 12 129 754 114) and its related corporations and their respective officers, employees, agents and contractors including (without limitation) site hosts, operators, developers and contributors of content.

### 2 General conditions of access and use

2.1 By accessing or attempting to access our App, each User agrees to be bound by and to comply with these User Terms and any instructions and directions issued by us from time to time.

2.2 A User may only access and use the App for the Applicable Duration.

2.3 A User must not cause or permit a third party to access or use the App unless that third party has registered as a User and accepted these User Terms.

2.4 Each User must take reasonable precautions to prevent unauthorised access or use of our App and must maintain the security and secrecy of their user name, password and any other access code(s).

2.5 A User must not (and must not permit anyone else to) contravene any laws of Australia or of any other country, engage in the mass distribution of unsolicited advertising or promotional material, attempt any “denial of service” attack, attempt to obtain unauthorised access to any computer systems or data, store or distribute defamatory material or material which incorporates executable instructions which produce an undesired result (such as software viruses) or material which constitutes sexual harassment, interfere with the use or enjoyment of internet access by other internet users or do or omit to do anything which may detrimentally affect our software, data, computer systems or business. .

2.6 We do not monitor, control or verify the accuracy or completeness of data you submit or receive over the internet and we are in no way responsible for the information or data accessed or transmitted by you.

2.7 Software and/or infrastructure updates relating to the App may be periodically scheduled and provided by us. Your ability to access and use the App may be suspended or limited during these and other maintenance activities.

### 3 Copyright, confidentiality & privacy

3.1 We or third party content providers retain all copyright and other intellectual property rights in our software and the App and any related material and any associated modifications, enhancements and adaptations.

- 3.2 A User will retain ownership of Submitted Data. The User acknowledges that access to and use of Submitted Data will depend on continuation of the Subscription Agreement and the User's rights to access and use the App.
- 3.3 Each User consents to (a) our disclosure of Submitted Data to the Subscriber and the User's medical or professional advisors; (b) access to and use of the Submitted Data by the Subscriber and the User's medical or professional advisors; and (c) our use of a de-identified version of the Submitted Data for any reasonable purposes.
- 3.4 Subject to the provisions of this clause, you and we will comply with the Australian Privacy Principles with respect to any personal information which you or we receive in connection with the provision of the App.

#### **4 Warranties and liability**

- 4.1 We warrant that access to and use of the App by a User in accordance with these terms and any applicable Subscription Agreement will not infringe the intellectual property rights of any third party. If such access or use infringes a third party's intellectual property rights, we will either arrange a non-infringing work-around, obtain a licence at our cost permitting such access or use or suspend the availability of such access or use.
- 4.2 Unauthorised access and faults in software can and do occur. Accordingly, we do not warrant that the App will be available on a continuous or uninterrupted basis or that the App will be error free.
- 4.3 We shall be under no liability to a User or any other party in respect of any loss or damage (including loss of profit or savings, loss of or damage to data or any direct, indirect or consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the App or in respect of a failure or omission on our part to comply with our obligations or otherwise. Without limitation, we will not be liable for any loss, damage or expense arising from your failure to obtain and follow regular and appropriate medical and other professional advice.
- 4.4 To the maximum extent permitted by law, all warranties (apart from the warranty in clause 4.1 above) whether express, implied, statutory or otherwise, relating in any way to these terms or access and use of the App are excluded. Where any term is implied in this agreement by law and cannot be excluded by express agreement, that term is included. Our liability for any breach of such an implied term is limited (at our option) to resupplying the relevant App or paying the reasonable cost of having the App supplied again.
- 4.5 Each User must indemnify us and keep us indemnified against all loss, liability, costs and expenses (including without limitation, legal expenses on a solicitor-client basis) which we may incur as a direct or indirect result of access or use of the App by that User or as a consequence of the observation of the App in operation including (without limitation) any claims against us based on the acts or omissions of an observer.

#### **5 Additional matters**

- 5.1 Each User's access and use of the App is subject to the laws of South Australia and each User irrevocably agrees that all legal proceedings arising in connection with these arrangements must be prosecuted in the Courts of South Australia.
- 5.2 If any provision of these terms is unlawful, void or for any reason unenforceable, then that provision shall be deemed severed from these terms and shall not affect the validity and enforceability of any remaining provisions.
- 5.3 We may revise these terms at any time by written notice to the relevant Subscriber and each User will be bound by such revisions from the date on which the revisions take effect.