

# HTI/DININGRD/DINING MANAGER TERMS OF USE & LIMITS OF LIABILITY

Effective Date: August 2022

This DiningRD website and DiningRD's products, applications and services ("**Services**" or "**Site**", **Company** or **DiningRD**") are owned by Health Technologies, Inc and are provided subject to the terms set forth herein for anyone using the Services ("**you**" or "**your**" or "**Community**"). When DiningRD use the term ("**you**" or "**your**" or "**Community**") in the rest of this document, it will mean you and/or your directors, employees, agents, or any other third-party you have granted access to the Services. You agree you have read, understand, and agree to all terms applicable to the Services used by you, which are contained herein. If you use the Services, you agree to be bound by these Terms of Use. Additionally, by your use of the Services you acknowledge and agree to DiningRD's Privacy Policy (see DiningRD website).

**1. Authorized Use of the Services.** Subject to the terms of the individual order and the terms of the Agreement, DiningRD grants you a non-exclusive, personal, non-transferable (except as set forth below), non-sublicensable (except to the extent listed on the Agreement), limited and revocable right to access, use the Services in accordance with the Agreement.

**2. Disclaimer/Limitation of Liability.** You assume all responsibility and risk for use of this site, the services and products the Company provides on the site, and the information and materials available on this site ("disclaimer").

In using this Site, you acknowledge and agree that staff training is critical for proper adherence to the menus, recipes and modified diet spreadsheets and understand that staff need to be adequately trained to follow information on the resident meal card and diet spreadsheets when serving residents. The Company has no liability to the Community, any resident, or any user accessing this Site for any harm that may result from improper or inadequate staff training or regarding products ordered from this Site or any other user activity related to this Site. It is your responsibility to review and ensure adequacy to the Allergies, Texture Modified Diets, Ingredient Information, Diet Spreadsheets and other related nutrition and foodservice components as well as your staff training requirements when using this Site.

**DiningRD** has no liability whatsoever for any loss or damage related to your use, including, without limitation, to any of the following:

- (A) **Ingredient Information:** manufacturers and distributors periodically change ingredients used in or on an item, or for the accuracy of the ingredient label on manufacturer's products, or for any deficiency in manufacturer's products.
- (B) **Allergies:** Nutritional information is provided on the Site based on USDA and manufacturers product information. The Company has no duty to, and fully disclaims responsibility for, checking the specific ingredient label for the food items used. It is the sole responsibility of the user to ensure all products ordered, prepared, and served comply with the resident's needs regarding any potentially harmful allergens. Maintaining Allergy records associated Automations and Integrations with third party sites such as electronic medical records are the responsibility of the user.
- (C) **Texture Modified Diets and Thickened Liquids:** A resident's ability to handle various texture diets and liquid viscosity varies based on cognitive status, dental condition, swallowing ability and the overall health and condition of the resident. It is the sole responsibility of the user to ensure all products ordered, prepared, and served comply with the resident's needs in order to avoid any potential harm that may result due to food that is unsafe for specific populations or health conditions.
- (D) **Therapeutic diets:** compliance for diet restrictions including but not limited to renal, heart healthy, diabetic, etc. It is the sole responsibility of the user to ensure therapeutic diet menus are ordered, prepared, and served comply with the resident's needs. Further modification of recipes or menus to meet resident needs should be referred to the community Registered Dietitian or appropriate medical practitioner.
- (E) **Menu substitutions/changes:** It is the sole responsibility of the user to ensure nutritional adequacy as after making menu changes. Further modification of recipes or menus to meet resident needs should be referred to the community Registered Dietitian or appropriate medical practitioner.

In no event shall the Company or any of its directors, officers, employees, shareholders, partners, or agents be liable for any direct, incidental, indirect, punitive, exemplary, consequential or other similar damages whatsoever (including damages for loss of profits, interruption, loss of business information, or any other pecuniary loss) in connection with

any claim, loss, damage, action, suit or other proceeding arising under or out of this Site or the information contained herein, including without limitation your use of, reliance upon, access to, or exploitation of this Site, the services and products the company provides on this Site, the information or materials available on this Site, or any part thereof, or any rights granted to you hereunder, even if we have been advised of the possibility of such damages, whether the action is based on contract, tort (including negligence), infringement of intellectual property rights or otherwise. Some states and jurisdictions do not allow for the limitation or exclusion of liability, so the above limitation or exclusion may not apply to you.

**3. No Warranties.** This site as DiningRD as the services and products the Company provides on this Site, and the information and other materials available on this site are provided "as is", without representation, warranty or condition of any kind, either express or implied, including, but not limited to the implied representations, warranties or conditions of merchantability, fitness for a particular purpose, and non-infringement. The Company does not represent or warrant that this site, the services and products the company provides on this site, or the information or other materials available on this site will meet your requirements or that their use will be secure, uninterrupted or error free. Some states and jurisdictions do not allow limitations on implied warranties, so the above limitations may not apply to you. When the implied warranties are not allowed to be excluded in their entirety, they will be limited to the shortest duration permitted by law. You may also have other rights that vary from state-to-state.

#### **4. Restrictions on Use of the Services.**

**4.1 Accessing the Services.** You agree to access the Services through DiningRD via a web browser. You agree to provide accurate information when you (i) access the Services, whether with or without a username and password, (ii) provide us with information only via the Services.

**4.2 Manipulating the Services.** Except as expressly provided herein or elsewhere within the Services, you may not (i) use, download, upload, reproduce, copy, duplicate, print, display, perform, republish, sell, license, post, transmit, disseminate, or redeliver the Services or any portion thereof or use "framing technology," with the Services; (ii) otherwise distribute, or commercially exploit in any way the Services or any portion thereof or any information or content on the Services; (iii) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Services; (iv) combine the Services or any part thereof with, or incorporate the Services in any other programs; (v) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Services or any part thereof; (vi) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Services or any features or functionality of the Services to any third-party for any reason; (vii) use the Services for purposes of competitive analysis of the Services, the development of a competing service or product or any other purpose that is to our commercial disadvantage, without the prior written permission of us.

**4.3 Passwords/Access.** You acknowledge you are fully responsible for all activities that occur through the use of any password you are granted upon registering to use the Services. You agree not to access or attempt to access any password-protected portions of the Services without an authorized password or through any means other than by submitting your authorized password on the appropriate web page or web tools. You are responsible for protecting the Services you access. You agree to vigilantly safeguard your username and password as well as the confidential and proprietary information and Intellectual Property contained within the Services against unauthorized access, misuse, improper disclosure, and/or any other use prohibited by the Agreement. You agree to notify us immediately if you are aware of any unauthorized use of your account or any security breach concerning the Services.

**5. Our Content.** All our content within the Services, including photos, design, text, graphics, logos, button icons, images, software, audio clips, digital products, product samples and data compilations; any improvements or modifications to such content; any derivative works thereof; and the collection, arrangement and assembly of all our content on the Services; are our property or the property of our licensors and are protected by United States and international copyright and other intellectual property laws. DiningRD shall have and retain all right, title, and interest in and to the Services, any additions, modifications or enhancements to it and all intellectual property rights associated with any of the foregoing, including, without limitation, rights to patents, copyrights, trademarks, trade secrets, or know-how ("**Intellectual Property**"). You acknowledge that DiningRD is the exclusive owner of the Services and that the Services are our Intellectual Property.

**6. Your Content.** All comments or feedback submitted to us by you through or in association with the Services shall be considered non-confidential and our property. By submitting feedback to us you agree that you assign to us, without charge, all worldwide rights, title and interest, including copyrights and other intellectual property rights, in and to the User Feedback. DiningRD shall be free to use such User Feedback in any manner or media whatsoever, on an unrestricted basis and without any compensation or royalties to you.

DiningRD may compile statistical and other information related to the performance, operation and use of the Services, in aggregated, anonymized, de-identified form for research and development services (“**Benchmarking**”). DiningRD retains all Intellectual Property and ownership in the Benchmarking, and as a result may exploit the Benchmarking commercially. DiningRD may make the Benchmarking publicly available; however, Benchmarking will not incorporate your Protected Health Information in a form that could serve to identify you or any individual and the Benchmarking does not constitute Protected Health Information under the Healthcare Laws.

**7. No Financial Advice Provided.** No aspect of the Services is intended to provide, or should be construed as providing, any financial related advice of any kind. You should not consider any content on the Services to be a substitute for professional financial advice.

**8. Privacy.** The terms of the Privacy Policy, which can be found on the DiningRD website are hereby incorporated as part of these Terms of Use.

### **9. Term, Billing for Software and Termination**

**9.1 Term.** The Terms of Use shall automatically commence on the date of the subscription welcome letter or initiation/onboarding start date and will renew annually unless terminated 60 days prior to the subscription renewal. The agreement may be terminated by providing written notice to DiningRD 60 days prior to the renewal date.

**9.2 Billing.** DiningRD will bill community on the commencement date and will automatically bill when the subscription renews, unless written notice is received of termination 60 days prior to the renewal date.

**9.3 Effect of Termination.** Upon termination of the Agreement for any reason, you will cease all use of the Services, and will, upon request, within a reasonable amount of time, destroy or return to us all copies of our documentation and/or our confidential information in your possession.

**10. Insurance.** DiningRD will maintain insurance coverage (including cyber liability coverage) with limits commercially reasonable for the provision of Services.

**11. Assignment.** You may not assign or otherwise transfer the Agreement or any rights or obligations hereunder without our consent

**12. Dispute Resolution.** For any dispute you have with us, including those related to the Agreement, you agree to first contact us and attempt to resolve the dispute with us informally. Unless resolved by mutual efforts of the parties hereto, disputes or claims that may arise out of or in connection with the Agreement, the laws of the State of Missouri will govern these Terms of Use, without giving effect to any principles of conflicts of laws.

**13. Contact.** If you have any questions relating to the Agreement, the Services or us, please contact:

[RD@diningrd.com](mailto:RD@diningrd.com)