



DININGRD TERMS & CONDITIONS

Updated April 2025

This Terms & Conditions (“**Terms**”) apply to Communities (as defined below) who use Health Technologies, Inc. dba DiningRD’s (“**Company**” or “**DiningRD**”) website, products, applications, software (collectively, “**Technology Services**”) and professional services, including [implementation services, seasonal customization services, and Registered Dietitian services] (“**Professional Services**,” the Technology Services together with the Professional Services, collectively, the “**Services**”). These Terms form a part of, and are incorporated into, any Pricing & Solution Proposal, Software Subscription Agreement, Software & Services Agreement, or other ordering document, statement of work, or statement of services entered into between you and the Company (each, an “**Order Form**”). The applicable Order Form and these Terms shall collectively be referred to herein as this “**Agreement**.” When DiningRD uses the term (“**you**” or “**your**” or “**Community**”) in the rest of this document, it will mean the client, community, or other third-party that has entered into the applicable Order Form. DiningRD and Community may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.” Capitalized terms, not otherwise defined herein, shall have the meaning attributed thereto in the applicable Order Form.

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. Additionally, by your use of the Services you acknowledge and agree to DiningRD’s [Privacy Policy](#).

1. **Authorized Use of the Technology Services.** Subject to the terms of this Agreement, DiningRD grants you a non-exclusive, personal, non-transferable (except as set forth below), non-sublicensable (except to the extent explicitly permitted), limited and revocable right to access and use the Technology Services in accordance with this Agreement.
2. **HIPAA Compliance.** Except as otherwise permitted by applicable law, DiningRD agrees that while providing Services under this Agreement, DiningRD will not use or disclose certain confidential, proprietary, and nonpublic financial and other information concerning patients in violation of the requirements of 45 CFR Sections 165.504 and 164.506(e)1, known as the Health Insurance Portability and Accountability Act of 1996 Privacy and Security RDNs (“**HIPAA**”) which are incorporated by reference. In addition, DiningRD expressly agrees to comply with HIPAA in all respects, including actively ensuring the implementation of all necessary Registered Dietitian Nurses (“**RDN**”) to prevent any unauthorized disclosure. The obligations of this Section shall survive the termination of this Agreement.
3. **Disclaimer/Limitation of Liability.** You assume all responsibility and risk for use of the Services the Company provides, and the information and materials available therein, including all use by your officers, directors, employees, agents, residents, or any other party to whom you have granted access to the Services (collectively, “**Users**”).

In using the Services, 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 other User accessing the Services for any harm that may result from improper or inadequate staff training or regarding products ordered through the Services or any other



User activity related to the Services. 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 the Services. The Company has no liability whatsoever for any loss or damage related to use of the Services by you or your Users, 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 website 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 your sole responsibility 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 your sole responsibility 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 with diet restrictions including but not limited to renal, heart healthy, diabetic, etc. It is your sole responsibility to ensure therapeutic diet menus that 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 your ultimate responsibility to ensure nutritional adequacy 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.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL COMPANY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, PARTNERS, OR AGENTS BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR OTHER SIMILAR DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF INCOME, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, BUSINESS 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 SERVICES OR THE INFORMATION CONTAINED HEREIN, INCLUDING WITHOUT LIMITATION YOUR, OR YOUR USERS', USE OF, RELIANCE UPON, ACCESS TO, OR EXPLOITATION OF THE SERVICES THE COMPANY PROVIDES, THE INFORMATION OR MATERIALS AVAILABLE THROUGH THE SERVICES, OR ANY PART THEREOF; ANY CHANGE TO OR INACCESSIBILITY OF THE SERVICES; ANY DELAY FAILURE, UNAUTHORIZED ACCESS TO, OR ALTERATION OF,

ANY TRANSMISSION OR DATA; ANY MATERIAL OR DATA TRANSMITTED OR RECEIVED OR NOT TRANSMITTED OR RECEIVED; ANY DATA OR MATERIAL FROM A THIRD PERSON ACCESSED ON OR THROUGH THE SERVICES; AND ANY RIGHTS GRANTED TO YOU HEREUNDER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES; THUS, THE ABOVE LIMITATION OF LIABILITY MAY NOT APPLY TO YOU. TO THE EXTENT ANY OF THE LIABILITY IDENTIFIED ABOVE CANNOT BE DISCLAIMED BY APPLICABLE LAW, YOUR SOLE AND EXCLUSIVE REMEDY WILL BE LIMITED TO THE TOTAL FEES AND CHARGES PAID BY YOU TO COMPANY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM AND WILL NOT EXCEED THAT AMOUNT. THIS LIMITATION WILL APPLY EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. COMPANY AND YOU ACKNOWLEDGE THAT THE FEES REFLECT THIS ALLOCATION OF RISK. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO DAMAGES ARISING OUT OF COMPANY'S WILLFUL MISCONDUCT OR FRAUDULENT ACTION.

4. Limited Warranty; Disclaimer of Warranties.

4.1 Each Party to this Agreement represents, warrants, and covenants to the other that: (i) it is duly organized and in good standing under the laws of its state or jurisdiction of organization and has the requisite power to enter into and perform this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms; (iii) the entering into and performance of this Agreement will not violate any judgment, order, law, regulation or agreement applicable to such party or any provision of such party's charter or bylaws, or violate the rights of any third party, or result in any breach of, or constitute a default under, any other agreement to which they are a party; (iv) it is free to enter into and perform this Agreement, and is under no disability, restriction or prohibition, whether contractual or otherwise, with respect to its rights to execute this Agreement and perform its obligations under this Agreement; (v) it will post on its website, and at all times, have a publicly available privacy policy that complies with all applicable laws, rules, regulations and administrative rules; and (vi) the individual executing this Agreement, and whose signature appears on the applicable Order Form is empowered to execute this Agreement.

4.2 Company further warrants that (i) it shall perform the Professional Services in accordance with the terms and subject to the conditions set forth in this Agreement; (ii) it shall perform the Professional Services in a timely and professional manner in accordance with generally recognized industry standards for similar services; and (iii) the Technology Services will materially conform to any then-current documentation delivered or made available by Company to Community for use with the Technology Services. COMMUNITY AND COMPANY AGREE THAT COMMUNITY'S SOLE AND EXCLUSIVE REMEDY FOR NON-CONFORMING SERVICES AND DELIVERABLES (AS DEFINED BELOW) SHALL BE REPLACEMENT/RE-PERFORMANCE BY COMPANY, OR, AT COMPANY'S OPTION, REFUND OF THE FEES PAID FOR SUCH NONCONFORMING SERVICES AND DELIVERABLES.

4.3 EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE; (B) THAT THE SERVICES PROVIDED BY COMPANY WILL MEET COMMUNITY’S OR USERS REQUIREMENTS OR EXPECTATIONS; (C) THAT THE TECHNOLOGY SERVICES WILL BE SECURE, UNINTERRUPTED, ACCESSIBLE, OR ERROR-FREE; (D) THAT ANY INFORMATION OR MATERIAL OBTAINED FROM THE SERVICES WILL BE ACCURATE, RELIABLE, COMPLETE, OR FREE FROM VIRUSES OR OTHER FORMS OF MALICIOUS OR DESTRUCTIVE CODE; AND (E) NONINFRINGEMENT. USE OF THE SERVICE IS AT YOUR SOLE RISK. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM COMPANY, WHETHER IN ORAL, WRITTEN, OR ELECTRONIC FORM, RELATING TO YOUR USE OF THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. 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.

5. Indemnification.

5.1 Indemnification by Community. Community, at its own cost and expense, shall indemnify, defend, and hold harmless, Company, its affiliates, and their respective successors, assigns, officers, directors, employees, members, managers, contractors, representatives and agents (collectively “**Company’s Indemnities**”) from and against any and all claims, judgements, damages, actions, losses, fines, penalties, settlements, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees), foreseen or unforeseen, of any kind (“**Claims**”), imposed on, incurred by, or asserted against Company’s Indemnities arising from, relating to, occurring as a result of, or in connection with, (a) any Event of Default (as defined below) under this Agreement; (b) personal harm, illness, bodily injury, or death; (c) any unauthorized or unpermitted use of the Services by Community in violation of this Agreement; (d) Community’s violation of any applicable laws, rules, or regulations; (e) any breach of Community’s obligations under Section 10 (Confidentiality and Non-Disclosure); (f) Community’s gross negligence, willful misconduct or intentional or wrongful misconduct; and (g) Community’s failure to comply with its obligations under any Business Associate Agreement (if entered into); (h) any claim by a User arising out of such User’s use or receipt of the Services; or (i) any claim arising out of Company’s permitted use of Community Materials.

5.2 Indemnification by Company. Company, at its own cost and expense, shall indemnify, defend and hold harmless, Community, its affiliates, and their respective successors, assigns, officers, directors, employee, members, managers, contractors, representatives and agents (collectively “**Community Indemnities**”) from and against any and all Claims, imposed on, incurred by, or asserted against Community’s Indemnities arising from, relating to, occurring as a result of, or in connection with any third-party claim that any Community Indemnity’s authorized use of the Technology Services infringes, violates, or misappropriates the intellectual property rights of such third party (an “**Infringement**”).

Claim”), except to the extent any such Infringement Claim arises from or relates to Community’s gross negligence or willful misconduct, Community’s unauthorized and unpermitted modification of the Technology Services without Company’s knowledge or consent, or Community’s unauthorized and unpermitted use of the Technology Services outside the purpose, scope, or manner authorized under this Agreement with respect thereto.

5.3 Infringement Claim. In the defense or settlement of any Infringement Claim, Company may, at its sole option, discretion and expense: (a) procure for Community Indemnitees a license to continue using the Technology Services; (b) replace or modify the allegedly infringing technology to avoid the infringement; or (c) if the foregoing options are not commercially feasible in Company’s sole judgment, terminate this Agreement and refund any prepaid, unused fees as of the date of termination. The foregoing states Company’s sole and exclusive liability, and Community’s sole and exclusive remedy, for the actual or alleged infringement, violation or misappropriation of any third party intellectual property or proprietary right by the Community’s use of the Technology Services.

5.4 Notification. The indemnified Party shall promptly provide the indemnifying Party with written notice of any Claim for which it seeks indemnification hereunder, and the indemnifying party shall assume the defense thereof; provided, however, that failure or delay by the indemnified Party to provide such notice will not release the indemnifying Party from any of its indemnity obligations hereunder except to the extent the indemnifying Party’s ability to defend such Claim is materially and adversely prejudiced by such failure or delay. The indemnifying Party shall control the defense and settlement of any Claim, provided indemnifying Party shall not agree to any settlement agreement that would be binding on the indemnified Party or involves making an admission of guilt or wrongdoing, without the indemnified party’s written consent, which shall not be unreasonably withheld. The indemnified Party may participate in the defense of settlement at its option and in its sole discretion and expense.

6. Restrictions on Use of the Technology Services.

6.1 Accessing the Services. You agree to, and shall ensure that your Users, access the Technology Services through DiningRD via a web browser. You agree to provide, and shall ensure that your Users provide, accurate information when you and your Users (i) access the Technology Services, whether with or without a username and password, and (ii) provide us with information only via the Technology Services.

6.2 Manipulating the Technology Services. Except as expressly provided herein or elsewhere within the Technology Services, you may not and shall ensure that your Users do not (i) use, download, upload, reproduce, copy, duplicate, print, display, perform, republish, sell, license, post, transmit, disseminate, or redeliver the Technology Services or any portion thereof or use “framing technology,” with the Technology Services; (ii) otherwise distribute, or commercially exploit in any way the Technology Services or any portion thereof or any information or content on the Technology Services; (iii) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Technology Services; (iv) combine the Technology Services or any part thereof with, or incorporate the Technology 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 Technology Services or any part thereof; (vi) rent, lease, lend,



sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Technology Services or any features or functionality of the Services to any third-party for any reason; (vii) use the Technology Services for purposes of competitive analysis of the Technology Services, the development of a competing service or product or any other purpose that is to DiningRD's commercial disadvantage, without the prior written permission of DiningRD.

6.3 Passwords/Access. You acknowledge you are fully responsible for all activities that occur through the use of any password you or your Users are granted upon registering to use the Technology Services. You agree not to, and shall ensure that your Users do not, access or attempt to access any password-protected portions of the Technology Services without an authorized password or through any means other than by submitting your or their authorized password on the appropriate web page or web tools. You are responsible for protecting the Technology Services accessed by you and your Users. You agree, and shall cause your Users, to vigilantly safeguard your and their username and password as well as the confidential and proprietary information and Intellectual Property (defined below) contained within the Technology 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 or any of your Users' accounts or any security breach concerning the Technology Services.

7. Intellectual Property. All intellectual property rights and proprietary rights and all associated rights, including copyrights, design rights, works of authorship, moral rights, patents, patent applications, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other proprietary or confidential information, trade dress, trade names, slogans, designs, logos, corporate names, business names, and domain names and registrations, together with all of the goodwill associated therewith, any improvements or modifications, derivative works and all other rights (collectively, "**Intellectual Property**") in and to all documents, work product and other materials that are delivered to Community under this Agreement or prepared by or on behalf of DiningRD in the course of performing the Services (collectively, the "**Deliverables**") shall be owned exclusively by DiningRD. The Parties agree that such Deliverables do not qualify as "work made for hire" as defined in 17 U.S.C. §101 for Community. Community acknowledges that DiningRD is the exclusive owner of the Services and that the Services are DiningRD's Intellectual Property. DiningRD reserves all rights not expressly granted to Community herein. In the event that the Company creates any Deliverable specifically for Community pursuant to any Professional Services set forth in an Order Form, effective upon full payment for such Deliverables, Company hereby grants to Community a limited, perpetual, non-exclusive, non-transferable, non-sublicensable license to use such Deliverables solely for Community's internal business purposes. As between the Parties, all rights to Intellectual Property in and to the Community Materials (as defined below) shall be owned exclusively by the Community. For Company to provide the Services to the Community and its Users, the Community and its Users must provide the Company with specific Community Materials. The Community is responsible for obtaining, if necessary, any third-party rights and licenses for the Company to use the Community Materials in the manner contemplated by this Agreement. During the Term, the Community hereby grants the Company a non-exclusive license to use and process the Community Materials to provide the Services hereunder. For purposes of this Agreement, "**Community Materials**" means all hardware (including, if applicable, any equipment required for TableSide implementation), software, medical records, food service records, menus, or



other information, data, and/or materials provided by or on behalf of the Community and its Users for use in the provision of the Services.

8. **Community Feedback & Data.** All comments, suggestions, ideas or other feedback submitted to DiningRD by you or your Users through or in association with the Services (“**Feedback**”) shall be considered non-confidential and DiningRD’s property. By submitting Feedback to DiningRD, you, on behalf of you and your Users, hereby assign to us, without charge, all worldwide rights, title and interest, including copyrights and other intellectual property rights, in and to the Feedback. DiningRD shall be free to use such Feedback in any manner or media whatsoever, on an unrestricted basis and without any compensation or royalties to you or your Users.

DiningRD may compile statistical and other information related to the performance, operation and use of the Technology 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 any Personal Information (as defined below) or Protected Health Information as defined under HIPAA (“**PHI**”) in a form that could serve to identify you or any individual and the Benchmarking does not constitute PHI under HIPAA.

9. **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.
10. **Confidentiality and Non-Disclosure.** For purposes of this Agreement “**Confidential Information**” means any know-hows, trade secrets, confidential, non-public and proprietary information in any form, which is designated “Confidential,” or “Proprietary,” or bears some similar designation or which a reasonable person knows or should know is confidential under the circumstances. You understand and acknowledge that DiningRD is the owner of valuable Confidential Information and acknowledge that the Services which DiningRD performs involve the furnishing of Confidential Information to you including, but not limited to sales, pricing, business strategy, product plans, products, services, customers, software, processes, and financial information, and that the goodwill of DiningRD depends, in part, upon you keeping such information confidential. You agree to use the same degree of care to protect DiningRD Confidential Information from unauthorized use, access or disclosure and to implement security measures to keep said information confidential as you use to protect your own Confidential Information, but in no circumstances less than reasonable care. Except pursuant to court order, government agency request, law enforcement request or under a procedure for discovery in any court or governmental proceeding, you agree to not disclose, distribute, sell, license, transmit, or disseminate any Confidential Information to any other party or permit or cause any unauthorized party to disclose, examine, and/or reproduce any reports, documents, transmissions, or data containing Confidential Information prepared or owned by DiningRD. If you are requested or required to disclose Confidential Information pursuant to legal or governmental proceedings, you will promptly notify DiningRD so that it may seek a protective order, prepare a response to said proceedings, or seek other legal remedies.

11. Service Levels.

11.1 Definitions.

- i. *“Incident”* means an outage, error, defect, deficiency, failure, or other similar events within the control of Company that materially degrades or prevents the performance of the subscription Technology Services.
- ii. *“Scheduled System Down Time”* means the total time during which the subscription Technology Services is down and not made available to the Community due to planned maintenance or correction.
- iii. *“Service Credit”* means a credit of subscription software fees prepaid by Community to Company.
- iv. *“System Availability”* means the percentage of time during which the subscription Technology Services are available to the Community and working without Incident (as further defined herein).
- v. *“Unscheduled System Down Time”* is when the subscription Technology Services are not available to the Community due to an Incident.

11.2 Support & Maintenance. DiningRD will maintain and provide or cause to be provided support for the subscription Technology Services according to its current support policies. Support and maintenance of the subscription Technology Services shall include, without limitation, the following:

- i. Company shall use commercially reasonable efforts to maintain and operate, on a twenty-four (24) hour per day, seven (7) days per week, 365 days per year basis, the subscription Technology Services with not less than a 99.5% rate of System Availability.
- ii. Company shall use commercially reasonable efforts to perform all Scheduled System Downtime outside Company’s regular business hours of Monday through Friday from 8:00am to 9:00pm Eastern Standard Time (EST). If Unscheduled System Down Time is necessary, Company shall advise the Community as soon as reasonably practicable before commencing.
- iii. Provide software support and maintenance for the subscription Technology Services, including, without limitation, correction of software “bugs,” errors, and defects so that the Services operate as intended.
- iv. Satisfy the Emergency Response Procedure (described in Section 11.3 below) and the System Availability requirements outlined in this Section 11.

11.3 Emergency Response Procedure. Company will use commercially reasonable efforts to correct any Incident that causes Unscheduled System Down Time as quickly as possible and minimize the adverse impact of the Unscheduled System Down Time on the provision of the subscription Technology Services. Company will follow the Emergency Response Procedure outlined in this Section.

- i. *Incident Classification.* When an Incident occurs concerning any subscription Technology Services and is reported to Company by the Community or discovered



by Company, Company will assign a severity level to each Incident based on the Incident Classification Table below.

Classification	Criteria
Severity Level 1 (Critical)	The use or accessibility of the subscription Technology Services is at a halt as a result of an Incident.
Severity Level 2 (Serious)	The subscription Technology Services have experienced a sever disruption of a major function, and implementing a workaround will not resolve.
Severity Level 3 (Degraded)	Means any of the following: A non-critical Incident which does not render the subscription Technology Services inoperable or non-accessible, or for which a workaround is available; or A reported Incident that does not qualify as a Severity Level 1 or Severity Level 2 problem.

- ii. **Error Reporting and Response.** If Community becomes aware of an Incident, Community will report the Incident to Company together with a reasonable description thereof and an assignment of a severity level. Company will take the following steps according to the Response Expectation Table below.

Step 1. Company will use commercially reasonable efforts to respond to Community's reported Incident as indicated in the Response Expectation Table below.

Step 2. Company will use commercially reasonable efforts to actively address the Incident as indicated in the Response Expectation Table below.

Severity	Step 1	Step 2
1 (Critical)	Initial response to Community within 1 hour following initial contact by Community.	Immediate and continuing effort, but in all events within forty-eight (48) hours of initial contact by Community.
2 (Serious)	Initial response to Community within 4 hours following initial contact by Community.	Immediate and continuing effort, but in all events within five (5) business days following initial contact by Community.
3 (Degraded)	Initial response to Community within 1 business day following initial contact by Community.	Within thirty (30) business days following initial contact by Community.

System Availability	Service Credit
99.5% - 100%	No Service Credit
99.0% - 99.49%	0% of subscription software fee paid attributable to the given month
98.0% - 98.99%	20% of subscription software fee paid attributable to the given month
97.0% - 97.99%	30% of subscription software fee paid attributable to the given month
95.0% - 96.99%	40% of subscription software fee paid attributable to the given month
Less than 95%	50% of subscription software fee paid attributable to the given month

11.4 System Availability and Service Credits.

- i. *Required Monthly System Availability.* As part of the subscription Technology Services, Company will use commercially reasonable efforts to ensure that during each month of the Term, the subscription Technology Services will be available, accessible, and usable by the Community at a rate not less than a System Availability of 99.5%.
- ii. *Calculation of Monthly System Availability.* System Availability shall be calculated on a monthly basis by Community and will be expressed as a percentage and determined as follows:

$$\begin{array}{rcl}
 \text{Total time in a month} - \text{Scheduled System Down Time} & & \\
 \text{in a month} - \text{Monthly} & \text{Unscheduled System Down Time in a} & \\
 \text{month} & & \\
 \text{System} & = & \\
 \hline
 \text{Availability} & \frac{\text{Total time in a month} - \text{Scheduled System Down Time in a month}}{\text{Total time in a month} - \text{Scheduled System Down Time in a month}} & \times 100
 \end{array}$$

- iii. *Service Credit.* If Company fails to meet a System Availability of 99.5% during any month of the Term, Community may request Service Credits as specified in the table below.

12. **Termination.** The Agreement may be terminated by either Party in the event of any material default in or material breach of the terms and conditions of this Agreement by the other Party, after the other Party has received written notice of default and thirty (30) business days (or fifteen (15) business days, in the case of a monetary default) to cure such default (each such occurrence, after the expiration of such cure period, shall be an “**Event of Default**”); or the filing of any voluntary or involuntary petition against the other Party under the bankruptcy or



insolvency laws of any applicable jurisdiction, which petition is not dismissed within sixty (60) days of filing, or upon any appointment of a receiver for all or any portion of the other Party's business, or any assignment of all or substantially all of the assets of such other Party for the benefit of creditors. 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 DiningRD all copies of DiningRD's documentation and/or Confidential Information in your possession.

13. **Personal Information.** Any information that identifies or could reasonably be used to identify a natural person, including any personnel or resident of the Community that is acquired or accessed by Company from or on behalf of any Community ("**Personal Information**") shall be treated as Confidential Information. Without limiting the foregoing, Community agrees to allow Company to store and use business contact information that it provides, including business names, business phone numbers, and business e-mail addresses. Company shall use such business contact information only in connection with this Agreement. In addition, Company will, upon the written request from whom the Personal Information relates, use commercially reasonable efforts to remove (or cause the removal of) such information from Company's systems (including from the systems of Company's permitted vendors, assignees and agents) and to cease (or cause to cease) sending information to or otherwise contacting of that person.
14. **Insurance & Credentials.** DiningRD will provide Community verification of professional liability insurance and current credentials of the RDN including CDR and state license if applicable. DiningRD will maintain general and cyber liability insurance.
15. **Assignment.** You may not assign, transfer any rights, duties or obligations, in whole or in part, under this Agreement without our prior written consent. Any attempt to assign or transfer any of the rights, duties or obligations of this Agreement in violation of the foregoing shall be void.
16. **Independent Contractors.** DiningRD and Community are and will be independent contractors, and not employer/employee, joint venturers, or partners. Neither Party by virtue of this Agreement will have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other. DiningRD shall not exercise any control or direction over the operation of Community's dining department, or manner or method by which Community provides services to its residents.
17. **No Solicitation.** During the term of this Agreement and for a period of one (1) year after termination, Community will not, without the prior written consent of DiningRD, in any manner, directly or indirectly, solicit, recruit, employ, or endeavor to employ any person delivering Services pursuant to this Agreement. DiningRD will not, without the prior written consent of Community, in any manner, directly or indirectly, solicit, recruit, employ, or endeavor to employ an employee of Community.
18. **Dispute Resolution.** The Parties will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith in a spirit of mutual cooperation. You agree to first contact us and attempt to resolve the dispute with us informally. If those attempts fail, then the dispute may be mediated by a mutually accepted mediator to be chosen by the Parties within forty-five (45) days after written notice by either Party to the other demanding mediation. No Party may unreasonably withhold consent to the selection of



a mediator. The Parties will share the cost of the mediation equally. By mutual agreement, the Parties may postpone mediation until some specified but limited discovery about the dispute has been completed. The Parties may also agree to replace mediation with some other form of alternative dispute resolution. Any dispute which cannot be resolved by the Parties through negotiation, mediation or other form of agreed alternative dispute resolution within one hundred and twenty (120) days following the date of the initial demand for it by one of the Parties may then be submitted to the courts for resolution. Nothing in this section will prevent a Party from resorting to judicial proceedings if: (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful; (b) interim, injunctive or other equitable relief from a court is necessary to prevent serious and irreparable injury to one Party or to other; or (c) litigation is required to be filed prior to the running of the applicable statute of limitations. The use of any alternative dispute resolution procedure will not be construed under the doctrine of laches, waiver or estoppel to affect adversely the rights of either party. All of the above alternative dispute resolution procedures shall be confidential.

19. **Governing Law and Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Missouri, without regard to the principles of conflicts of laws of that or any other jurisdiction. Each Party hereby consents and voluntarily submits to exclusive personal jurisdiction and venue by and in the state courts of the State of Missouri.
20. **Attorney's Fees.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret any of the terms of this Agreement, the prevailing party will be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.
21. **Notices.**

Notices should be sent to the address set forth below (or any updated address provided via appropriate notice as set forth herein):

COMMUNITY

The Community Contact information set forth in the applicable Order Form

DININGRD

1650 Des Peres Avenue
Suite 210
St. Louis, MO 63131
sales@diningrd.com

Except as provided herein, all notices relating to the Services, Community's use thereof and/or this Agreement sent by either Party will be deemed delivered five (5) days after mailing or when sent via email.

22. **Remedies.** In order to avoid irreparable injury to DiningRD, in the event of any breach or threatened breach by you of the provisions of this Agreement, DiningRD will be entitled to an injunction and/or other equitable relief restraining such breach. Nothing in this Agreement will be construed as prohibiting DiningRD from pursuing any other remedies available to them for such breach or threatened breach, including the recovery of monetary damages from you.
23. **Force Majeure.** If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any earthquake, flood, fire, or other natural disaster, riot, pandemic, terrorism, war, judicial or governmental action, labor



disputes, act of God or any other causes beyond the control of either Party, that Party will be excused to the extent that it is prevented, hindered, or delayed by such causes.

24. **Severability.** If any one or more of the provisions contained in this Agreement will for any reason be found to be invalid, illegal, or unenforceable in any respect, said finding will not affect the remaining provisions of this Agreement, which will be enforceable to the fullest extent permitted by law.
25. **Headings and Order.** The headings and sequential order of the sections contained in this Agreement are for convenience only and will have no substantive or procedural effects in construing the provisions of this Agreement.
26. **Modification and Amendment of Terms.** DiningRD has the right, at any time, to add to or modify or amend these Terms by publishing them on DiningRD's website. For any material amendments or modifications, as determined by DiningRD in its good faith discretion, such amendments or modifications shall be valid immediately upon DiningRD delivering such amended Terms to you by email at the address provided to DiningRD by you.
27. **Conflict.** In the event of any conflict or inconsistency between provisions or components of this Agreement, as may be amended from time to time, the order of precedence shall be: (a) these Terms, and (b) the Order Form.
28. **Survival.** Upon expiration or termination of this Agreement for any reason, the provisions of this Agreement that by their nature extend beyond termination of this Agreement, including Sections 3, 4, 5, 7, 8, and 10, shall survive and remain in effect.
29. **Contact Us.** If you have any questions, concerns, comments or complaints relating to this Agreement, the Services or us, please contact: sales@diningrd.com.