

Terms of Use - chkin.me

1. APPLICATION OF TERMS

1. These Terms apply to your use of the Services (as that term is defined below). By signing up:
 - a. you agree to these Terms; and
 - b. where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
2. If you do not agree to these Terms, you are not authorised to access and use the Services, and you must immediately stop doing so.

2. CHANGES

1. We may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Services from the date on which the Terms are changed, you agree to be bound by the changed Terms.
2. **These Terms were last updated on 18 May 2020.**

3. INTERPRETATION

In these Terms:

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Services. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the chkin.me Software. Your Confidential Information includes the Data. *Data* means all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, the Services.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

1. an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
2. a lack of funds for any reason.

Free Services means the Services provided to you at no charge, including services provided under a free trial or other non-paying plan, as made available by us to you.

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

a *party* includes that party's permitted assigns.

a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

personal information means information about an identifiable, living person.

personnel includes officers, employees, contractors and agents, but a reference to your personnel does not include us.

Privacy Notice means the privacy notice set out at chkin.me.

Services means the services having the core functionality described on the Website, as the Website is updated from time to time, including Free Services.

Start Date means the date that you set up an account to use the Services or first access or use the Services, whichever is the earlier.

Terms means these terms titled chkin.me terms of use.

chkin.me Software means the software owned by us (and our licensors) that is used to provide the Services.

Underlying Systems means the chkin.me Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks. We, us or our means App La Carte Limited (T/A Putti), company number 3738799.

Website means the internet site at chkin.me, or such other site notified to you by us.

Year means a 12-month period starting on the Start Date or the anniversary of that date.

You or your means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

4. PROVISION OF THE SERVICES

1. We must use reasonable efforts to provide the Services:
 - a. in accordance with these Terms and New Zealand law;
 - b. exercising reasonable care, skill and diligence; and
 - c. using suitably skilled, experienced and qualified personnel.
2. Our provision of the Services to you is non-exclusive. Nothing in these Terms prevents us from providing the Services to any other person.
3. Subject to clause 4.4, we must use reasonable efforts to ensure the Services are available during normal business hours in New Zealand/on a 24/7 basis. However, it is possible that on occasion the Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We must use reasonable efforts to publish on the Website and/or notify you by email advance details of any unavailability.
4. Through the use of web services and APIs, the Services interoperate with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature

available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

5. FREE SERVICES

If you access or use the Services for free:

1. the Services are provided on an as is basis, and, despite any other provision in these Terms, all liability, conditions, warranties and guarantees in relation to the Services are excluded by us to the maximum extent permitted by law;
2. no fees are payable for the right to access and use the Services;
3. the right to access and use the Services will end at the end of the advertised availability or trial period (if applicable);
4. either party may terminate your right to access and use the Free Services at any time by giving notice to the other party;
5. nothing in these Terms requires:
 - a. you, on termination of the Services, to subscribe to the Services under a fees-based plan; or
 - b. us, on termination of the Services, to provide you with access and use of the Services or any other service, unless you have subscribed under a fees-based plan; and
6. except as set out in this clause 5, these Terms applies to your Users' access and use of the Services for free.

6. YOUR OBLIGATIONS

1. You must:
 - a. use the Services in accordance with these Terms solely for:
 - i. your own business purposes; and
 - ii. lawful purposes; and
 - b. not resell or make available the Services to any third party, or otherwise commercially exploit the Services except as permitted by these Terms.
2. When accessing the Services, you must:
 - a. not impersonate another person or misrepresent authorisation to act on behalf of others or us;
 - b. correctly identify the sender of all electronic transmissions;
 - c. not attempt to undermine the security or integrity of the Underlying Systems;
 - d. not use, or misuse, the Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Services;
 - e. not attempt to view, access or copy any material or data other than:
 - i. that which you are authorised to access; and
 - ii. to the extent necessary for you to use the Services in accordance with these Terms; and
3. You are responsible for procuring all licences, authorisations and consents required for you and your Invited Users to use the Services, including to use, store and input Data into, and process and distribute Data through the Services.

7. DATA

1. You acknowledge that:

- a. we may require access to the Data to exercise our rights and perform our obligations under these Terms; and
 - b. to the extent that this is necessary but subject to clause 9, we may authorise a member or members of our personnel to access the Data for this purpose.
2. You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 7.1.
3. You acknowledge and agree that:
 - a. we may:
 - i. use Data and information about your use of the Services to generate anonymised and aggregated statistical and analytical data (Analytical Data); and
 - ii. use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - iii. supply Analytical Data to third parties;
 - b. our rights under clause 7.3a above will survive termination or expiry of these Terms; and
 - c. title to, and all Intellectual Property Rights in, Analytical Data is and remains our property; and
 - d. the service is provided in conjunction with details set out in the Privacy Notice.
4. You acknowledge and agree that to the extent Data contains personal information, in collecting, holding and processing that information through the Services, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law. You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.
5. You agree that we may store Data (including any personal information) in secure servers in Australia and New Zealand and may access that Data (including any personal information) in Australia and New Zealand from time to time.
6. You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

8. INTELLECTUAL PROPERTY

1. Subject to clause 8.2, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains our property (and our licensors' property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
2. Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.

3. To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of the Services.
4. If you provide us with ideas, comments or suggestions relating to the Services or Underlying Systems (together feedback):
 - a. all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
 - b. we may use or disclose the feedback for any purpose.
5. You acknowledge that the Services may link to third party websites or feeds that are connected or relevant to the Services. Any link from the Services does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

9. CONFIDENTIALITY

1. Each party must, unless it has the prior written consent of the other party:
 - a. keep confidential at all times the Confidential Information of the other party;
 - b. effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - c. disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 9.1a and 9.1b.
2. The obligation of confidentiality in clause 9.1 does not apply to any disclosure or use of Confidential Information:
 - a. for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
 - b. required by law (including under the rules of any stock exchange);
 - c. which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d. which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
 - e. by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

10. WARRANTIES

1. Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.
2. To the maximum extent permitted by law:
 - a. our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and

- Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to NZD \$1,000.00; and
- b. we make no representation concerning the quality of the Services and do not promise that the Services will:
 - i. meet your requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility you may have; or
 - ii. be secure, free of viruses or other harmful code, uninterrupted or error free
3. If you are acquiring the Services, and accepting these Terms, for the purpose of trade, you agree that:
 - a. to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Services or these Terms; and
 - b. it is fair and reasonable that the parties are bound by this clause 10.3.
 4. Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:
 - a. supplying the Services again; and/or
 - b. paying the costs of having the Services supplied again.
 5. Despite anything to the contrary in these Terms, if you are accessing and using the Services as a consumer, then nothing in these Terms has the effect of contracting out of any consumer protection law (including any warranty) in respect of which we cannot contract out.

11. LIABILITY

1. To the maximum extent permitted by law, you acknowledge and agree that:
 - a. you access and use the Services at your own risk; and
 - b. we are not liable or responsible to you or any other person for any claims, damages, liabilities, losses, costs and expenses (including in relation to any claim made by a third person) arising under or in connection with these Terms or relating to the Services. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), breach of statutory duty or otherwise
2. Neither party is liable to the other under or in connection with these Terms or the Services for any:
 - a. loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - b. consequential, indirect, incidental or special damage or loss of any kind.
3. Clauses 11.1 and 11.2 do not apply to limit our liability under or in connection with these Terms for:
 - a. personal injury or death;
 - b. fraud or wilful misconduct; or
 - c. a breach of clause 9.
4. Clause 11.2 does not apply to limit your liability:

- a. to pay the Fees;
 - b. under the indemnity in clause 7.6; or
 - c. for those matters stated in clause 11.3a to 11.3c.
5. Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.
6. Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Services.

12. TERM, TERMINATION AND SUSPENSION

1. Unless terminated under this clause 12, these Terms and your right to access and use the Services starts on the Start Date and continues until a party gives at least 10 days notice that these Terms and your access to and use of the Services will terminate.
2. Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Services if the other party
 - a. breaches any material provision of these Terms and the breach is not:
 - i. remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii. capable of being remedied; or
 - b. becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
3. Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
4. No compensation is payable by us to you as a result of termination of these Terms for whatever reason.
5. Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to clause 12.6, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
6. Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Services and/or delete, edit or remove the relevant Data if we consider that you or any of your personnel have:
 - a. undermined, or attempted to undermine, the security or integrity of the Services or any Underlying Systems;
 - b. used, or attempted to use, the Services:
 - i. for improper purposes; or
 - ii. in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Services;
 - c. transmitted, inputted or stored any Data that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or

d. otherwise materially breached these Terms.

13. GENERAL

1. Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.
2. No person other than you and us has any right to a benefit under, or to enforce, these Terms.
3. For us to waive a right under these Terms, that waiver must be in writing and signed by us.
4. Subject to clause 7.4, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.
5. If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these Terms by emailing tracing@chkin.me.
6. These Terms, and any dispute relating to these Terms or the Services, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Services.
7. Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 7.6, 8, 9, 11, 12.3 to 1.1 and 13.6, continue in force.
8. If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
9. Subject to clauses 2.1, any variation to these Terms must be in writing and signed by both parties.
10. These Terms set out everything agreed by the parties relating to the Services, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Services that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 13.10.
11. You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.