

SERVICE PROVIDER TERMS AND CONDITIONS

The following terms and conditions (“**Terms and Conditions**”) govern use of www.karista.com.au (the “**Website**”) and all other services made available through the Website or by Karista (“**Services**”). References to “**You**” or “**Your**” refer to a disability and/or aged care service provider who uses the Services.

1 Agreement

- 1.1 By accessing or using the Website or the Services, You agree to be bound by (and, in the event of any inconsistency, in the following order):
- any proposal provided to You and accepted by You in relation to the Services (“**Proposal**”);
 - these Service Provider Terms and Conditions;
 - the Karista Privacy Policy;
 - the Karista Moderation Policy; and
 - the Karista Website Terms of Use,
- and these documents together, form the entire legal agreement between Karista Pty Ltd (ACN 614 763 076) (“**Karista**”) and You (together “**the Agreement**”).

2 Introductions

- 2.1 Karista may notify You of customers’ requests for Your services, from time to time (“each an “**Introduction**” or “**Introduced Customer**” or “**Customer**”).
- 2.2 You must contact the Introduced Customer in a timely manner and, in any event, no later than twenty-four (24) business hours after:
- You have received an Introduction from Karista; or
 - You have been requested by Karista to contact the Introduced Customer.
- This contact with the Introduced Customer must be via phone and followed up with an email. If You receive no response from the Introduced Customer, you must follow up the next day via phone and email.
- 2.3 Within forty-eight (48) business hours of Your receipt of an Introduction, if You have contacted the Introduced Customer in the manner set out in clause 2.2 and there is a legitimate reason why the Introduced Customer did not engage with You regarding Your services (for example, they have no NDIS or HCP funding available or the Customer has since deceased), then You:
- must notify Karista immediately via the link provided to You in the original referral email sent to You introducing You to the Customer; and
 - agree that Karista may find an alternative service provider for the Introduction, without any liability to You.
- 2.4 If You fail to notify Karista under clause 2.3(a), You will be liable to Karista for all amounts incurred for the Services until notification has been provided by You.

3 Contracting with Introduced Customers

- 3.1 By submitting a price or fee for Your services (“**Your Quote**”) directly to an Introduced Customer or through Karista (to forward to an Introduction), You agree that Your services will be provided to that Introduced Customer for the fees, price, charges and expenses specified by You in Your Quote.
- 3.2 Any subsequent booking for Your services based on Your Quote by the Introduced Customer is a direct contract created solely between You and the Introduced Customer.
- 3.3 Karista is not responsible for:
- the correctness or completeness of the information provided by the Introduced Customer;
 - any payment obligations of the Introduced Customer to You; and
 - complaints or claims in respect of the services offered, rendered, or provided by You or specific requests made by Introduced Customers are to be dealt with by You, without mediation by or interference of Karista. Karista is not responsible for and disclaims any liability in respect of such claims from Introduced Customers. Karista may at its sole discretion:
 - offer customer support services to the Introduced Customer; or
 - act as intermediary between You and the Introduced Customer.

4 Subscription Fees and Referral Fees

- 4.1 You agree to pay Karista:
- the on-going subscription fee for Your website profile based on the number of aged care planning regions (“**Regions**”) You have elected (as set out in the Proposal or other notification) and as notified by You to Karista, from time to time (“**Subscription Fees**”);
 - the initial referral and annual referral fee set out in the Proposal (“**Referral Fees**”); and
 - any other fees, price, charges, expenses and other amounts, set out in the Proposal.
- 4.2 You must provide Karista with written notice immediately if You require any amendments to the:
- number of Regions in your subscription to allow Karista to invoice the Subscription Fees accordingly; and
 - services or any other amendments to Your Profile to provide customers of the Website with Your updated information.
- 4.3 Unless otherwise specified in a Proposal or as agreed by You and Karista:
- the Subscription Fees will be invoiced either 6 monthly or 12 monthly (depending on the subscription You have elected) in advance;
 - the initial Referral Fees will be invoiced within 1 month of an Introduced Customer becoming a referred Customer, which is defined as a Customer who has been on-boarded to You by Karista either:
 - providing You with the Introduced Customer on-boarding details; or
 - completing Your on-boarding form with the Introduced Customer’s details, (“**Referred Customer**”);
 - the initial Referral Fees are payable by You for all Referred Customers even if they have not used Your services;
 - the Referral Fees will be invoiced on or about the anniversary date of the initial referral and will continue to be invoiced annually until the Referred Customer permanently discontinues Your services. You must promptly notify Karista of any amendments, cancellations or early expiry of any Referred Customer service agreement or contract that You have in which Referral Fees are payable; and
 - You agree to pay all invoiced amounts within fourteen (14) days of the invoice date.
- 4.4 If You fail to pay the Subscription Fees, Referral Fees or any other amounts due under this Agreement by the due date:
- Karista reserves the right to charge You interest on a monthly basis at a rate of the higher of 1.5% or such rate as is allowed by law, commencing from the due date of payment in respect of any overdue payment amount;
 - You will also be liable to pay all Karista’s expenses and legal costs on a solicitor and own client basis, in relation to it obtaining remedy for Your failure to comply with clause 4.3; and
 - Karista reserves the right to suspend or terminate the Services immediately, until such amounts (including any applicable interest) are paid in full.
- 4.5 All amounts payable by You are exclusive of GST (unless otherwise specified), which is payable by You at the rate and in the manner from time to time prescribed by law.

- 4.6 Payment must be made by You directly to Karista by means of direct debit, credit card or as otherwise agreed in writing by You and Karista.

5 Direct Debit

- 5.1 Unless agreed otherwise in writing, all payments are to be made by direct debit. As such, You agree:
- to fill out the Direct Debit Form we will email you separately and to enter into the Direct Debit Service Agreement with GoCardless located in Appendix A to this Agreement (**DD Service Agreement**);
 - that Karista will charge your account in advance in line with this clause 5 and the DD Service Agreement;
 - to ensure that there are sufficient funds available in Your account to allow GoCardless to debit the fees payable; and
 - You must give Karista a notice of at least 48 hours if You are transferring or closing the account specified in Your Direct Debit For.

6 Your Content

- 6.1 In this clause 6, “**Content**” means any and all information and content that You provide, upload or use on or in relation to the Website.
- 6.2 You are always solely responsible for correct and updated Content including information on Your services and the price for Your services.
- 6.3 You assume all risks associated with the use of Your Content, including any reliance on its accuracy or completeness. You represent and warrant that Your Content:
- does not violate any third-party intellectual property rights;
 - is not fraudulent, negligent, unlawful, criminal, blasphemous, pornographic, or otherwise offensive in any way; and
 - is true, accurate and not misleading.

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- 6.4 By posting Your Content, You expressly grant to Karista and its successors an irrevocable, non-exclusive, transferrable, sublicensable, perpetual, royalty free, worldwide license to broadcast, republish, up-load to a third party, transmit, post, distribute, publicly display, and otherwise use and exploit Your Content.
- 6.5 Karista reserves the right, at its sole discretion, to review, remove or amend any of Your Content.
- 7 Rating and Review**
- 7.1 The Website provides Introduced Customers with the opportunity to rate and review You and Your services, to assist other Introduced Customers to assess the suitability of Your services.
- 7.2 Introduced Customers may rate You and Your services. The rating for You or Your services will then be calculated as an aggregate of all ratings provided by the Introduced Customers from time to time (the “Customer Ratings”).
- 7.3 Karista only facilitates the Customer Ratings and is not responsible for any rating and/or review relating to You or Your services.
- 8 Insurance**
- 8.1 You agree to:
- maintain all necessary insurances in respect of Your business, equipment and the services provided by You, of the types and amounts that are adequate for Your business (including agents and subcontractors), and consistent with standard industry practice and the minimum coverage required by applicable laws; and
 - promptly provide copies of any insurances required under clause 8.1(a) to Karista when requested.
- 8.2 You acknowledge that failure to secure or maintain satisfactory insurance coverage will be deemed a material breach of this Agreement and will result in the immediate suspension of Your rights under this Agreement and the loss of Your right to receive Introductions from Karista.
- 9 Third Party Websites**
- 9.1 Karista works with a number of partners and affiliates whose websites are linked with Karista and are controlled by parties other than Karista (each a “Third Party Website”).
- 9.2 Karista is not responsible for and does not endorse or accept any responsibility for the availability, contents, products, services or use of any Third-Party Website, any website accessed from a Third-Party Website or any changes or updates to such sites. Karista makes no representations or guarantees about the content or quality of the products or services provided by such sites.
- 9.3 Certain services made available on the Website are delivered by third parties. By using any product, service, or functionality originating from the Website, You are allowing Karista to share information with any third party with whom Karista has a contractual relationship, and any information necessary to facilitate its provision of products, services, or functionality to You.
- 10 Website**
- 10.1 Karista will make the Website available to You twenty-four (24) hours a day, seven (7) days a week excluding scheduled maintenance; emergency maintenance; scheduled downtime or events beyond Karista’s control. Helpdesk service will be available to You between 9 am to 5pm on business days in Melbourne, Victoria. Karista will use commercially reasonable efforts to acknowledge each received support request within two (2) business days.
- 10.2 You acknowledge that Karista will be entitled to modify the features and functionality of the Website as part of its ongoing development.
- 10.3 Karista does not warrant or represent that the Website will be free from errors and interruptions.
- 10.4 Karista will not be liable or be required to remedy any problem arising from or caused by Your use of the Website in a manner other than as directed or permitted by Karista.
- 11 Copyright and Intellectual Property**
- 11.1 Karista retains all rights, title and interest (including copyrights, patents and trademarks) in and to the Website. Unless otherwise indicated, this Agreement does not transfer to You any of Karista’s or any third party’s right, title, and interest in copyrights, patents, trademarks or any other rights.
- 11.2 You acknowledge and agree that Karista may use Your logo, branding or other trademarks (the “Trademarks”) for Karista’s marketing efforts and You grant Karista a non-exclusive, non-transferable, royalty-free right to use the Trademarks. If You do not wish that Your Trademarks be used, You may request for a removal of Your Trademarks from Karista’s marketing materials by contacting Karista. Upon receipt of the request, Karista will use reasonable endeavours to remove Your Trademarks from any future marketing material which is published thirty (30) days from the date of the request.
- 12 Confidentiality**
- 12.1 “Confidential Information” means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other’s business, finance or technology, know-how, intellectual property rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party.
- 12.2 Each party agrees that it may use the other party’s Confidential Information only in the exercise of its rights and performance of its obligations under this Agreement and that it will not disclose the other party’s Confidential Information except in accordance with this clause 12.
- 12.3 Each party may disclose the other party’s Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party’s Confidential Information in order to exercise its rights and perform its obligations under this Agreement, provided that it will ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 12 as if they were a party to this Agreement.
- 12.4 Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 13 Indemnity**
- 13.1 You agree to indemnify Karista and its officers, directors, employees, sub-licensees, agents, affiliates, successors and assigns from and against any and all claims, damages, liabilities, losses, settlements, costs and expenses (including, without limitation lawyers’ fees and court costs) (“Loss”) which arise out of or relate to Your use of the Website, including but not limited to:
- any misuse of the Website by You, including (and without limitation), any dishonest, inaccurate, incomplete, fraudulent, negligent, wrongful, unlawful, or criminal act or omission by You;
 - Your breach of this Agreement; and/or
 - any claims, damages, liabilities, losses, settlements, costs and expenses (including, without limitation lawyers’ fees and court costs) against, incurred, or suffered by Karista by or on behalf of any Introduced Customers in relation to any acts or omissions by You, Your officers, directors, employees, sub-licensees, agents, affiliates, successors or assigns.
- 13.2 Your liability to indemnify Karista and its officers, directors, employees, sub-licensees, agents, affiliates, successors and assigns will be reduced proportionally to the extent that an act or omission of Karista contributed to the Loss.
- 14 General Disclaimer**
- 14.1 If You constitute a consumer under the Australian Consumer Law while using the Services nothing in this Agreement is intended to remove your rights under the Australian Consumer Law, including the statutory guarantees that may apply to the Services. If Karista is entitled to limit the remedies available to You for breach of such guarantees, Karista expressly limits its liability to either supplying the affected Services again or paying the cost of supplying the Services again.

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15 Limitation of Liability

- 15.1 Subject to clause 14, to the maximum extent permitted by law, Karista's total aggregate liability arising out of or in connection with the Website, the Services or this Agreement, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the lesser of:
- (a) the amounts paid by You to Karista; or
 - (b) AUD 10,000.
- 15.2 You acknowledge and agree that Karista, its officers, directors, employees, sub-licensees, agents, affiliates, successors and assigns, contributors, third party content providers and licensors will not be liable for any loss of profit, loss of goodwill, loss of business reputation, or any indirect, incidental, special, consequential or exemplary damages which may be incurred, however caused and under any theory of liability.

16 Term and termination

- 16.1 This Agreement will commence on the date that You first access the Website or Services and, unless terminated earlier in accordance with this Agreement, continue for the agreed term, if any.
- 16.2 Karista may terminate this Agreement immediately at any time for convenience by giving written notice to You.
- 16.3 You may terminate this Agreement for convenience by giving Karista no less than thirty (30) days written notice prior to the end of a subscription period.
- 16.4 On termination or expiry of this Agreement, You agree that:
- (a) any unused portion remaining in Your subscription period is non-refundable;
 - (b) any amounts paid for Services rendered by Karista are non-refundable; and
 - (c) You agree to pay Karista all amounts due and payable to Karista under this Agreement (including for all Services provided by Karista) up to the date of termination, as a debt immediately due and payable.

17 Non-disparagement

- 17.1 You may not at any time make any statement or publication, whether oral or in writing, which may otherwise adversely affect the reputation of Karista or its Services or is likely to bring Karista, its Services or any of its directors, officers or employees into disrepute or ridicule.

18 Miscellaneous

- 18.1 Any part of this Agreement is severable and if a court determines that a part of this Agreement is unenforceable, illegal or void then the court may sever that part without affecting the validity of the other parts of this Agreement.
- 18.2 No failure or partial failure to exercise or delay in exercising any right, power or remedy by a party will operate as a waiver.
- 18.3 You may not assign Your rights and obligations under this Agreement without the prior written consent of Karista, which consent may be withheld at its absolute discretion.
- 18.4 Nothing in this Agreement is intended to create a partnership, joint venture, agency or employment relationship between You and Karista.
- 18.5 This Agreement is governed by the laws of Victoria. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of courts of Victoria.
- 18.6 Clauses 4, 5, 11, 12, 13, 14, 15, 16.4, 17, and 18, and any other clauses capable or necessary to survive, will survive the termination or expiry of this Agreement.

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Appendix "A"