

Terms and Conditions

Effective as of October 3, 2024

1. About these terms

- 1.1. These terms and conditions (these **Terms**) constitute a legally binding agreement between you and The Healthy Eating Group Pty Limited ACN 606 533 662 trading as Ayla Health (together with its affiliates, are referred to in these terms as **Ayla Health, we, our** or **us**).
- 1.2. These Terms govern your use of, and the provision of any services or content that is downloadable or accessible from the Ayla Health Platform (defined below); our mobile application, including any updates or upgrades to it (collectively, the **App**); and our website <https://aylahealth.com.au/> (the **Site**).
- 1.3. Any personal information that you submit to the Ayla Health Platform or which we collect about you is governed by our privacy policy (**Privacy Policy**) which is available at <https://aylahealth.com.au/privacy-policy/> The Privacy Policy, as amended from time to time, is incorporated into these Terms by reference.
- 1.4. YOU ACKNOWLEDGE AND AGREE THAT BY CLICKING ON THE “I AGREE”, “SIGN UP” OR SIMILAR BUTTON, REGISTERING FOR AN AYLA HEALTH ACCOUNT, DOWNLOADING THE APP OR ANY APP UPGRADES, USING THE APP ON YOUR MOBILE DEVICE, OR ACCESSING OR USING THE AYLA HEALTH PLATFORM OR SITE, YOU ARE CONFIRMING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS TOGETHER WITH OUR PRIVACY POLICY. IF YOU DO NOT AGREE TO THE TERMS OR PRIVACY POLICY, THEN YOU ARE NOT PERMITTED TO USE THE AYLA HEALTH PLATFORM, APP OR SITE AND MUST CEASE USING THEM IMMEDIATELY.

2. You warrant that you have legal capacity

Users of the App must be, and you warrant that you are 16 years of age or older, and if you are under the age of 18 years' old, you warrant that parental or guardian consent has been provided for you to accept these Terms.

3. About the Ayla Health Platform

- 3.1. The “Ayla Health Platform” is a web and mobile application-based nutrition information, meal planning and coaching service designed to help people who struggle with (or who otherwise wish to improve) their eating habits to make micro improvements to their eating habits with a view to supporting sustainable change.
- 3.2. As part of the Ayla Health Platform offerings, you may, subject to payment of the relevant charges, elect to subscribe for our coaching service which involves access to video coaching session/s with a qualified dietitian or nutritionist (**Virtual Coaching Service**).
- 3.3. For the purposes of these Terms, references to the “Ayla Health Platform” are deemed to include the App, Site and Virtual Coaching Service unless the context otherwise requires.

- 3.4. Notwithstanding anything else in these Terms, we may modify, adapt, Update (defined below) or replace the Ayla Health Platform (or relevant part of it) in our discretion, and references in these terms to the Ayla Health Platform' includes such modification, enhancement, adaptation, Update or replacement.

4. **Important disclaimer about nutrition content**

- 4.1. Any and all nutrition information and related content supplied on or accessible through our App and/or Site, including but not limited to recipes, meal plans and habit-building tools (collectively, **Nutrition Content**), is provided for general informational and educational purposes only.
- 4.2. While the Nutrition Content is prepared in good faith by registered nutritionists or accredited practising dietitians (as applicable), you acknowledge and agree that:
 - 4.2.1. the Nutrition Content is not intended to diagnose, treat, cure, or prevent any disease or medical condition;
 - 4.2.2. we do not provide medical advice, diagnosis, or treatment;
 - 4.2.3. nothing contained in our App or Site is intended to be or should be used as a substitute for medical advice, diagnosis or treatment;
 - 4.2.4. you should carefully evaluate the accuracy, completeness and relevance of Nutrition Content for your specific purposes and health circumstances;
 - 4.2.5. we make no promise, representation or guarantee that the Nutrition Content is accurate, up to date or error free;
 - 4.2.6. it is your responsibility to check the labels of any suggested products or foods to ensure they are right for you; and
 - 4.2.7. we make no promise, representation or guarantee that any particular outcome or results will be achieved through your use of the Ayla Health Platform, and any related services.
- 4.3. You should always consult with your doctor and other healthcare professional/s if you have any concerns about your health, and before adopting any treatment for a health problem or before adopting any new dietary regime.
- 4.4. You should never disregard or avoid or delay obtaining medical advice from your doctor or other healthcare professional/s as a result of something you have read on our App or Site.

5. **License to use the App**

- 5.1. Subject to these Terms, you are granted a limited, non-exclusive, non-transferable, and revocable license to access and use the App for your personal non-commercial purposes. This license remains in effect until terminated by you or Ayla Health.
- 5.2. We may suspend or terminate this license at any time for any reason or no reason, including if you are in breach of the 'unacceptable use' provisions of these Terms, or if you otherwise use the Ayla Health Platform in a manner that we reasonably believe will cause us liability or disrupt others' use of the platform.

6. Your Account

- 6.1. We may issue you with an account (**Account**) and associated credentials e.g. a user name and password (**Account Credentials**), or you may be required to set up the Account we create for you using Account Credentials chosen by you, in each case, to enable you to access and use relevant parts of the Ayla Health Platform.
- 6.2. You are solely responsible for keeping your Account Credentials confidential, and for all activities performed under or through the use of your Account Credentials (including all communications uploaded to the Ayla Health Platform, or financial obligations incurred), whether or not authorized by you.
- 6.3. You must promptly notify us if you become aware of any unauthorized access to, or use of, your Account, or if you otherwise suspect that the security of your Account Credentials has been compromised.
- 6.4. You agree to provide correct, accurate, current and complete information as part of the set-up of your Account and its ongoing administration, and to keep that information up to date.
- 6.5. You acknowledge that we will rely on this information in setting up your Account, and in delivering the Ayla Health Platform and associated services.

7. Billing and payment

- 7.1. Our App is available for free download from the Apple App Store and Google Play Store respectively and we also offer in-App purchases.
- 7.2. We offer two levels of membership, each with different rights and benefits, which are more particularly described on our Site from time to time:
 - 7.2.1. Free; and
 - 7.2.2. Premium.
- 7.3. Premium memberships are billed on a subscription basis and you will be billed in accordance with the pricing and payment terms presented to you at the time that you apply to purchase the Premium membership.
- 7.4. Except as specified in these Terms or required by law, fees paid by you are not refundable, including if you cancel your membership.
- 7.5. Premium subscriptions will automatically renew unless auto-renewal is switched off in your Account at least 24 hours before the end of the then current period.
- 7.6. You may cancel a Premium subscription at any time, at least 24 hours before the end of the current billing period, by logging in to your Account and following the cancellation process. The cancellation will take effect the day after the last day of the current subscription period, and you will be downgraded to the Free version of the App.
- 7.7. All payments made through the Apple App Store or Google Play Store are controlled and managed by Apple and Google respectively.
- 7.8. Both Free and Premium members may subscribe for (and we may agree to provide) our Virtual Coaching Service.

- 7.9. Our Virtual Coaching Service will be billed in accordance with the pricing and payment terms presented to you at the time that you apply to purchase that service.
- 7.10. All payments for our Virtual Coaching Service are controlled and managed by us, through our vendor, Cliniko (or any replacement vendor from time to time).
- 7.11. Virtual Coaching Services are subject to the Cancellation Policy – <https://aylahealth.com.au/faq-items/coaching-session-cancellation-policy/> set out on our Site. The Cancellation Policy, as amended from time to time, is incorporated in these Terms by reference.
- 7.12. All fees and charges are stated in Australian dollars and are inclusive of any applicable goods and services tax, unless otherwise stated.

8. User Content

- 8.1. “**User Content**” means the content that you provide, submit, upload, publish, or otherwise make available to the Ayla Health Platform, including, but not limited to text, images, sounds and videos.
- 8.2. You have editorial responsibility (and we are not responsible for monitoring or moderating, and we disclaim any responsibility for) User Content.
- 8.3. You must ensure that User Content does not breach the ‘unacceptable use’ provisions of these Terms.
- 8.4. You grant us, and our related bodies corporate, personnel and subcontractors a worldwide, irrevocable, perpetual, non-exclusive and transferable right to use, copy, modify, store, host, distribute, communicate and otherwise exploit User Content, to the extent reasonably required to provide the Ayla Health Platform and perform the services contemplated by these Terms.
- 8.5. As between the parties, you are the owner of User Content and we will not assert any ownership rights over User Content.

9. Intellectual Property Rights

- 9.1. Except for User Content, you acknowledge and agree that we or our licensors are the exclusive owner of all right, title and interest (including all intellectual property rights) and know-how in the Ayla Health Platform, including without limitation the App and Site (**Ayla Proprietary Material**).
- 9.2. Ayla Proprietary Material includes, but is not limited to, all text, graphics, photographs, recipes, trademarks, logos, and other content comprised in the Ayla Health Platform, including the arrangement of those items, as well as all components used to provide the Ayla Health Platform such as design libraries, APIs, website development tools, technical documentation, support technologies, methodologies and similar materials.
- 9.3. Our ownership of Ayla Proprietary Material extends to enhancements, modifications, updates or upgrades of such material, and any new features and versions, and correction of errors that we may make from time to time (collectively, **Updates**).
- 9.4. Any use of Ayla Proprietary Material other than as expressly permitted by these Terms, is strictly prohibited.

10. Feedback

If you provide us with feedback about or related to the Ayla Health Platform or any part of it, for example, ideas for improvements, you agree that we may use that feedback without any obligation or compensation to you, provided any feedback we use will not publicly identify you.

11. Unacceptable use

You must not, and must not permit any person to:

- 11.1. misuse the App or Site by interfering with their normal operation, or attempting to access them using a method other than through the interfaces and instructions we provide;
- 11.2. circumvent or attempt to circumvent any licence limitations or usage restrictions that we impose on your Account or your use of the Ayla Health Platform;
- 11.3. probe, scan, or test the vulnerability of any Ayla Health Platform system or network, other than with our prior written authorisation;
- 11.4. decipher, decompile, disassemble, translate, create derivative works, reverse engineer or otherwise attempt to reconstruct, identify or discover any source code, algorithms, underlying ideas or underlying user interface techniques in the App or any of the software used to provide the Ayla Health Platform, or attempt to do so;
- 11.5. transmit any viruses, malware, or other types of malicious software, or links to such software, through the App or Site;
- 11.6. engage in abusive or excessive use of the App or Site, which is usage significantly in excess of average usage patterns that adversely affect the speed, responsiveness, stability, availability, or functionality of the App or Site for other customers;
- 11.7. use the Ayla Health Platform to infringe the intellectual property rights of others, or to commit any unlawful activity;
- 11.8. upload content or otherwise engage in conduct in connection with the Ayla Health Platform that is defamatory, libelous, discriminatory, threatening, harassing or obscene; or
- 11.9. lend, resell, lease or sublicense or otherwise use the Ayla Health Platform or any part of it, for the benefit of a third party.

12. Disclaimer of warranties

12.1. Except as expressly provided in these Terms and to the maximum extent permitted by applicable law:

- 12.1.1. the Ayla Health Platform is provided on an "as is" and "as available" basis;**
- 12.1.2. we disclaim all warranties and conditions with respect to the Ayla Health Platform and any associated services, whether express, implied, or statutory, including, but not limited to, any implied warranties and/or conditions of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment, and of noninfringement of third-party rights;**

12.1.3. we do not warrant that the operation of the Ayla Health Platform will be uninterrupted or error-free; and

12.1.4. we do not assume any responsibility or liability for any personal injury resulting from you use of, access to or reliance on the Ayla Platform.

12.2. Notwithstanding any other provision in these Terms, nothing in these Terms is intended to limit or exclude the operation of (and these Terms are subject to) the consumer guarantees in the Australian Consumer Law, and any other statutory provision, that may not be lawfully limited or excluded under applicable laws.

13. Liability

13.1. To the extent permitted by applicable law, under no circumstances shall we (or any of our affiliates, officers, employees or agents), be liable for any personal injury, lost profits, loss of data, system failure, replacement services or any direct, indirect, consequential, special, incidental, punitive, or exemplary damages arising out of or in connection with your use of or inability to use the Ayla Platform (or any part of it), however caused, and even if we knew or should have known that such damages were possible, and regardless of the theory of liability.

13.2. If, notwithstanding the foregoing, it is determined that Ayla Health (or any of our affiliates, officers, employees or agents) is liable for damages, in no event will such liability, whether arising in contract, under an indemnity, in tort (including for negligence), under statute, in equity or otherwise, for all losses arising under or in connection with the Ayla Platform or these Terms, exceed the lower of: (i) the total fees paid by you to Ayla Health during the 6 months prior to the time that such claim arose; or (ii) fifty Australian dollars (AU\$50), to the extent permitted by applicable law.

14. Indemnity

You will indemnify, defend, and hold harmless Ayla Health and its affiliates, officers, employees and agents from and against all liabilities, damages, and costs (including settlement costs and reasonable lawyers' fees) arising out of a third party claim regarding or in connection with:

- 14.1. User Data (including claims of intellectual property rights infringement);
- 14.2. your breach of the 'unacceptable use' provisions of these Terms; and
- 14.3. your violation of any law or the rights of a third party.

15. Links to third party sites or content

The Ayla Health Platform may contain links to third party websites, services or content (e.g. web articles). Such links do not constitute an endorsement by us of those third party websites, their content, services or operators. You agree that we are not responsible for any act or omission in connection with those third party websites or services, including any use of User Content by the operators of those sites or their data privacy practices. You should contact the relevant third party for any issues arising from your use of third party websites or services.

16. Termination

- 16.1. Either you or we may terminate these Terms for any reason, or no reason, at any time.
- 16.2. If we terminate these Terms for a reason other than your breach of these Terms (or for your other wrongful act or omission), then we will refund any fees that you have paid to us in advance for services that have not been provided as at the effective date of termination.
- 16.3. You may cancel and delete your Account at any time by using the in-App features.
- 16.4. After cancellation, you will no longer have access to your Account or any other information through the Ayla Health Platform.
- 16.5. The provisions of these Terms which by their nature are intended to survive the termination or these Terms, including, but not limited to, the “disclaimer of warranties”, and the “liability” and “indemnity” provisions, survive the termination of these Terms and any cessation of your use of or subscription to the Ayla Health Platform.
- 16.6. We reserve the right to refuse access to the Ayla Health Platform to anyone for any reason at any time.
- 16.7. We may terminate or limit your right to access and use the Ayla Health Platform if we are investigating a breach of these Terms or if we reasonably believe that you have breached these Terms (we will use all reasonable endeavors to notify you of this).
- 16.8. Following the termination or cancellation of your Account, we reserve the right to delete all of your data, including User Content, that is in our possession or control. Your data cannot be recovered once your Account is terminated or cancelled.

17. Changes to these Terms

- 17.1. We may change these Terms from time to time by notifying you of such changes by any reasonable means including by updating this page and indicating the date that it was last modified. We will use reasonable endeavors to supplement such notice for any material changes to these Terms, by email, in-App pop-up message or other means, but will not be liable for a failure to do so. If you do not agree with a change, you must immediately cease using the Ayla Health Platform.
- 17.2. Your use of the Ayla Platform following any changes to these Terms will constitute your acceptance of those changes. The effective date set forth at the top of this document indicates when these Terms were last changed.

18. Online App Stores

If you are accessing our App from on online app store, e.g. the Apple App Store, you acknowledge and agree that:

- 18.1. these Terms constitute a legally binding agreement between you and us, and not between you and the operator of such online app store (**App Store Operator**);

- 18.2. the App Store Operator has no obligation to provide any maintenance and support services with respect to the App;
- 18.3. the App Store Operator has no responsibility for addressing any claims by you or any third party relating to the App or your use of it; and
- 18.4. to the extent that you have downloaded our App from the Apple App Store or if you are using the App on an iOS device, and there is a failure of the App to conform to any applicable warranty that is not effectively disclaimed under section 12, you may notify Apple and Apple will refund the applicable purchase price for the App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Ayla Platform.

19. Force Majeure

Neither party is liable to the other for the consequences of any failures or other circumstances which are caused by any event beyond the first party's reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike and riots.

20. Governing law

The laws of the Australian Capital Territory, Australia govern these Terms and each party submits to the exclusive jurisdiction of the courts of that Territory, and any courts which may hear appeals from those courts.

21. Dispute resolution

- 21.1. Before commencing any form of litigation, including court proceedings, professional mediation or arbitration, each party agrees to:
 - 21.1.1. give the other party notice of the dispute and its nature;
 - 21.1.2. give the other party the opportunity to remedy any breach of these Terms within 30 days; and
 - 21.1.3. hold good faith negotiations with the other party to settle the disputed matter.
- 21.2. **Important waiver.** You and Ayla Health agree that any proceedings to resolve any dispute, disagreement, or other cause of action relating to or in connection with the Ayla Health Platform or any part of it, will be conducted on an individual basis and not in a class, consolidated, or representative action. This means that you and Ayla Health both agree to waive the right to participate as a plaintiff as a class member in any class action proceeding.

22. Notices

Each party agrees to receive communications from the other in electronic form and agrees that all notices and other communications provided electronically satisfy any legal requirement for such notices or communications to be in writing. In our case, an electronic communication means posting notices on our Site or in the App, or sending you an email to the email address registered in your Account profile.

23. General

- 23.1. **Access.** You are responsible for maintaining and updating your operating systems, Internet browsers, anti-virus software, or other software that you use to access and use the Ayla Health Platform.

- 23.2. Relationship. No employment, partnership or joint venture relationship is created or exists between the parties.
- 23.3. Entire agreement. The agreement comprised by these Terms (including the Privacy Policy and any other documents incorporated by reference) constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- 23.4. Severance. A term or part of a term of the agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of the agreement continue in force.
- 23.5. Assignment. The agreement comprised by these Terms may not be assigned or transferred by you without our prior written approval. We may assign or transfer this agreement without your consent, only to: (1) a parent or subsidiary, (2) to an acquirer of assets, or (3) to any other successor or acquirer.

24. No third party rights

The App Store Operator/s (defined above) are intended beneficiaries of these Terms and have the right to enforce these Terms directly against you. Except to the extent set out in this section (No third party rights), none of these Terms are intended to grant rights to or are enforceable by, any person that is not a party to the agreement comprised by these Terms.

25. Contacting us

If you have any questions about these Terms or about the Ayla Health Platform, please contact us by email at support@aylahealth.com.au.