

ChildcareCRM Terms of Use

Last updated: 7 June 2022

Important Information

1. CRM Web Solutions LLC (a Delaware Limited Liability Company) with offices at 433 E Las Colinas Blvd, Ste 650, Irving, TX 75039 ("**ChildcareCRM**", "us", "we", or "our") operates the ChildcareCRM cloud-based technology platform (the **Platform**), ChildcareCRM mobile application (the **App**) and the website <https://www.childcarecrm.com> (**Our Website**), together the **Products**, and provide additional training, migration, support, maintenance and other services (**Services**).
2. We make the Products and Services available in many countries around the world through our related bodies corporate, including but not limited to: in Australia through CRM Web Solutions Pty Limited ACN 619 467 355. In your place of domicile, a reference to "**ChildcareCRM**", "us", "we", or "our" includes a reference to the local ChildcareCRM entity.
3. The Products enable customer's ("**Customer**", "you" "your") childcare centers, schools, units or facilities (**Centers**) and their staff, consultants, directors, advisors and representatives (**Educators**) to communicate with a child's parents and guardians and other family members (**Family Members**) as well as prospective staff (**Applicants**) regarding the Center's activities.
4. All communication between a Center and Family Members, Educators and Applicants using the Products is via a secure, private, cloud based electronic communication means.
5. You can manage and market to your Center's leads and staff vacancies via the Products.
6. The Products may only be used, and the Services will only be provided, for purposes of managing Customer's leads from initial inquiry to Center enrollment, as well as post enrollment, including managing marketing communication between a Center, Educators and Family Members, assisting the Center to maintain records for accreditation and other legal purposes, and managing communications with Applicants for purposes of hiring pre and post-employment (the **Permitted Purposes**).
7. You agree to use the Products solely for the Permitted Purposes.

Acceptance of Terms

8. Please read these Terms carefully. You signify that you have read, understood and agree to be bound by these Terms by (a) using, browsing and/or reading the Products; or (b) accepting these Terms by clicking to accept the Terms where this option is made available to you. These Terms continue in force until we terminate them.
9. Your access to and use of any Product and/or Service is conditional on your acceptance of, and compliance with, these Terms.
10. If there is any conflict between any representation made by us and these Terms, these Terms shall prevail.

Creating a ChildcareCRM Account

11. You must have created for you a ChildcareCRM account (**Account**) to use the Products and access the Services, and must provide us information that is accurate, complete, and current to the best of your knowledge.
12. You are responsible for safeguarding the password for your Account and for any and all activities on your

Account and/or under your password. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your Account.

13. Customer agrees that each Center and its Educators use the Products as agents of Customer. Customer is responsible for and liable for the conduct of each Center and Educator in their use of the Products at all times, including any breach of these Terms. Customer releases and forever indemnifies us for any breach of these Terms by it, its Centers and/or its Educators.
14. You may upload certain content to the Products, including the following (**Content**):
 - (a) documents and comments concerning children and Family Members, including personal information;
 - (b) documents and comments concerning Applicants and Educators, including personal information;
 - (c) Center information or Customer information; and
 - (d) other material.
15. You will use personal information about Family Members and children to create a profile about children (**Child Profile**) which will be accessible by you and others, including:
 - (a) Customer, Centers and their Educators; and/or
 - (b) us, our staff, consultants, directors, advisors, and representatives
16. You will use personal information about Applicants and Educators to create a profile about staff (**Staff Profile**) which will be accessible by you and others, including:
 - (c) Customer, Centers and their Educators; and/or
 - (d) us, our staff, consultants, directors, advisors, and representatives
17. Customer, the Center, and each Educator agrees:
 - (a) you will carefully monitor and supervise Content at all times;
 - (b) (except as required by law) you will not permit or enable any person other than Customer, the Center or Educator to access a Child Profile or Staff Profile; and
 - (c) (except as required by law) you will not permit or enable any person other than Customer, the Center or Educator and to access any marketing communication between the Center and the Family Members or Applicants.
18. As Customer, Center or Educator, you warrant:
 - (a) you have all necessary authorities and express consents to create each Child Profile and/or Staff Profile and use the Products for each child or staff member pursuant to these Terms, including (where necessary) express parent/guardian/applicant/staff member consents relating to the collection, use, and storage (by you and us) of personal information of that child, staff member or applicant; and
 - (b) you will at all times:
 - (i) be conscious of your duties of care to each child when uploading Content to the Child Profile or Staff Profile;
 - (ii) demonstrate the highest standards of professional behavior, exercise professional judgement and act in a courteous and sensitive manner when interacting with us and with Family Members and

Applicants;

- (iii) be familiar with and comply with at all times all legislative and industrial requirements and any professional responsibilities, codes of conduct, policies and procedures applicable to you as Customer, Center or Educator;
- (iv) use information gained in the course of your use of the Products only for the Permitted Purposes; and
- (v) except in the discharge of official duties, use no information gained by you or conveyed to you in the course of your use of the Products.

19. Where Customer is not a corporate person, it warrants that it is authorized to accept these terms on behalf of its owner(s) and Centers, and does so with their/its express permission and authority.

20. As an Educator, you also warrant you accept these Terms with the express permission and authority of the Center and Customer.

Fee

21. All pricing terms are confidential, and Customer agrees not to disclose them to any third party for any reason.

22. Subject to your compliance with these Terms, we grant you a limited, fixed term, non-exclusive, non-assignable, non-transferrable, non-sublicensable, license to use the Products.

23. You agree to pay a license fee (**License Fee**) on a subscription basis being a non-refundable payment due at a regular interval that will automatically renew until Your Account is suspended. Information regarding the License Fee is included in the signed quote and/or contract received from you, as updated by notice from time to time.

24. The App is free to download and use after you pay the License Fee.

25. The License Fee may differ from one country to another, and from one organization to another.

26. You must pay License Fees in accordance with the agreed terms for payment, or if not expressed, upon receipt of our invoice for payment.

27. The License Fee includes unlimited Customer support chat functionality, support tickets, email exchanges and phone calls.

28. Unless otherwise agreed, any Center locations subsequently added (**Supplemental Centers**) will be governed by existing terms applicable to that Customer and these Terms, prorated for the first calendar month of service.

29. All additional services including training, data imports, system integrations and other services (**Services**) are available on request. All such services shall be quoted by ChildcareCRM and billed as agreed, but otherwise are covered by these Terms.

30. ChildcareCRM charges and collects in advance for use of the Products and for performance of the Services.

31. ChildcareCRM's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, which Customer is solely responsible for.

32. Customer agrees to provide ChildcareCRM with complete and accurate entity, billing and contact information and name and telephone number of an authorized billing contact and license administrator. Customer agrees to update this information within fifteen (15) days of any changes.

33. We may suspend or terminate Customer's access to the Products and (where relevant) Services if Customer's account becomes delinquent (falls into arrears) for two (2) consecutive months. Delinquent invoices (accounts in arrears) are subject to interest of 2.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection plus costs and fees, including attorney fees, that are related to or associated with ChildcareCRM collection efforts. Customer will continue to be charged for Products and active locations during any period of suspension. If either party terminates these Terms, Customer must pay all balances due in accordance with the documents evidencing the Customer's initial subscription (**Subscription Terms**).
34. We may impose a reconnection fee in the event your access to the Products has been suspended due to non-payment.
35. You agree that we have no obligation to retain Content and that it may be irretrievably deleted if your account is ninety (90) days or more delinquent.
36. All electronic card payments are processed through pages not controlled by us. We use one or more online payment service providers who encrypt your card or bank account details.

Bad Behavior

37. We take child wellbeing, welfare and safety seriously and will not tolerate bad behavior associated with the use of any Product, including behavior which is (in our view in our absolute discretion) rude, vulgar, inappropriate, discriminatory, disrespectful, sexualized, illegal, discriminatory, violent, abusive or bullying, and any other behavior that we dislike (**Bad Behavior**).
38. You must not engage in Bad Behavior.
39. You must immediately report any Bad Behavior to Customer.
40. We do not monitor Content but we will investigate any Bad Behavior reported to us. If we form the view that you have engaged in Bad Behavior, we will immediately delete any offending material from Your Account without notice to you.
41. We may:
 - (a) shut down Your Account without notice to you and without any pro-rata refund of any License Fee received; and/or
 - (b) report Bad Behavior to relevant law enforcement authorities or government agencies, at our absolute discretion.

Your use of the Products

42. You must not under any circumstances:
 - (a) copy, reproduce, publish, or share with any third person through any means, any Content whatsoever (including sharing by email, uploading, reducing to hard copy, or sharing on any social media platform or any other electronic source);
 - (b) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Products, Services or related materials in any way;
 - (c) remove ChildcareCRM logos from the Products, help documentation, reports, training material or other documentation supplied by ChildcareCRM

- (d) use the Products in any way that may or will:
 - (i) compromise the health, welfare or safety of any child or staff member;
 - (ii) infringe any other person's intellectual property rights;
 - (iii) violate our rights under law in any way (including infringing our intellectual property rights); or
 - (iv) be inconsistent with these Terms;
 - (e) use Products or the Content for any purpose other than the Permitted Purposes.
 - (f) adapt, reverse engineer, decompile, disassemble, reproduce, store, distribute, display, perform, publish or create derivative works from, any part of Products; and/or
 - (g) remove any identification, reference number, logo or other information which may be embedded in any file associated with any Product on your device.
 - (h) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws.
 - (i) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs.
 - (j) attempt to gain unauthorized access to the ChildcareCRM Platform or its related systems or networks.
 - (k) violate, HIPAA, COPPA or any other applicable laws or regulations applicable to your place of domicile.
43. We reserve the right to modify, or remove any Content from Your Account at any time for any reason, without notice to you.

Intellectual Property Rights

- 44. We do not claim any intellectual property rights in any Content.
- 45. We maintain all intellectual property rights in the Products.
- 46. You here grant to us a perpetual, royalty free, non-exclusive license to use your intellectual property in the Content for the Permitted Purposes.
- 47. You agree that you will notify us of any suspected infringement of ChildcareCRM intellectual property rights.

Third party websites

- 48. Products may contain links to third-party websites or services that are not owned or controlled by us, including advertisements for services offered by that third party. The inclusion of a link to external websites do not imply our endorsement of those websites. We have no control over, and assume no responsibility for, the content, privacy policies, or practices of any of those third-party web sites or services and you acknowledge and agree that when you access them, you do so at your own risk. You release us from any liability in respect of links to third-party websites or services that are not owned or controlled by us.

Limitation of liability

- 49. All implied conditions, warranties and terms are excluded from these Terms.
- 50. We make no representation or warranty that the Products:
 - (a) will be useful to you; meet your requirements; of satisfactory quality; free from error, defect, virus or any other harmful component; fit for any particular purpose; or available or accessible, without interruption or without error; or

(b) will function uninterrupted or be available at any time or location.

51. You agree that:

(a) we shall not be liable for any damages suffered as a direct or indirect result of your use of the Products and/or Services; and

(b) if in any circumstances we become liable to you, the limit of our liability is the lesser of the pro-rata amount you paid for the License Fee, or the twelve (12) month period prior to the date the claim arose.

52. Paragraphs 49 to 51 and any other paragraph which excludes or restricts our liability applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to us.

53. If you become aware of any breach of any term of these Terms by any person, please tell us by email including a subject title marked **URGENT**. We welcome your input but do not guarantee that we will agree with your judgement.

You indemnify us

54. As a condition of your access to and use of Products and Services, you agree to indemnify us, our directors, officers, agents, employees and contractors and our successors and assigns, against all loss, actions, proceedings, damages, costs, and expenses (including legal fees) and claims arising directly or indirectly from:

(a) your breach of these Terms;

(b) any activity on Your Account or under your password; and

(c) your access to the Products.

55. Paragraph 54 survives termination of these Terms and applies to claims arising both before and after such expiration or termination.

Privacy

56. We recognize the importance of protecting your privacy. Our Privacy Policy detailing our policies regarding the collection, use and disclosure of your personal information is available on Our Website, and you agree to be bound by it.

57. Specifically, for the Code Ninjas Customers located in the United Kingdom, we recognise the importance of protecting your, your franchisees' and customers' privacy. Our Privacy Policy detailing our policies regarding the collection, use and disclosure of your personal information is available on Our Website, and, subject to subsequent provisions you agree to be bound by it.

We acknowledge that we have been provided with your DP Addendum which applies to your United Kingdom based franchisees with which you and your UK franchisees must comply. We further acknowledge that you may amend the said DP Addendum at any time and provided that details of such amendments are provided to us, we will comply with such amended DP Addendum in its current format and as amended relating to individuals in the United Kingdom so as to enable you to comply with your obligation to ensure that all third party data processors, such as ourselves, are bound by equivalent data protection obligations as are contained in the DP Addendum at any time.

Termination

58. We may terminate or suspend Your Account and terminate any license described in the Terms immediately, without notice or liability, for any reason whatsoever at our absolute discretion. We will do so if you breach

these Terms.

59. Upon termination or suspension, your rights to use any Product will immediately cease and we or the Center will archive and store all Content for at least the period required by law.
60. If you wish to terminate or suspend Your Account, you may do so in the following ways:
 - (a) With written notice per the terms outlined in your contractual obligation outlined on your executed quote and/or contract, or with 90 days written notice if not explicitly outlined on your executed quote and/or contract;
 - (b) With 30 days written notice in the event of a material breach by us that is incapable of remedy or is not remedied;
 - (c) If we become the subject of any proceedings regarding insolvency, receivership, liquidation or assignment for the benefit of creditors.
61. Any Term which by its nature should survive termination shall survive termination, including, without limitation provisions relating to ownership, intellectual property, warranties, disclaimers, indemnities and limitations of liability.
62. This Agreement may not be assigned by Customer without our prior written consent except to (i) Customer's parent or subsidiary, (ii) an acquirer of equity or assets, or (iii) a successor by merger. Any purported assignment in violation of this paragraph shall be void.
63. We shall not be liable to you or any third party for any claim or damages arising out of any termination or suspension or any other actions taken by us.
64. If applicable law requires us to provide notice of termination or cancellation, we may give prior or subsequent notice by posting it on Products or by sending a communication to any address (email or otherwise) that we have for you in our records.

Local Laws and Export Control

65. The Products may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies, and the export control regulations of Switzerland and the European Union. You acknowledge and agree that Products shall not be used in relation to, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries for which the United States, Switzerland and/or the European Union maintains an embargo ("**Embargoed Countries**").
66. By using the Products, you represent and warrant that you are not located in or under the control of, a national or resident of an Embargoed Country. If Customer should begin doing business in Europe, Customer furthermore agrees to comply strictly with all U.S., Swiss and European Union export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required.

Miscellaneous matters

67. You acknowledge and agree that the Products may use encryption technology.
68. You will give any required notice under these Terms to us by sending an email to support@crmwebsolutions.com.
69. If any part of these Terms is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall

be treated as changed or reduced, only to the extent necessary to bring it within the laws of that jurisdiction and to prevent it from being void, and shall be binding in that changed or reduced form.

70. Our rights and obligations set out in these Terms shall pass to any permitted successor in title.
71. Any obligation in these Terms intended to continue to have effect after termination shall so continue.
72. We will communicate with you by e-mail or by posting notices on Our Website. You agree that all such electronic communications satisfy any legal requirement that such communications be in writing.
73. Any communication emailed to you will be deemed as having been received within 24 hours if no notice of non-receipt has been received by the sender.
74. These Terms do not give any right to any third party.
75. These Terms shall be governed by the laws of the State of Delaware (without regard to its rules of conflict of laws) and the parties irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States of America located in such state.
76. For those users accessing the system within the country of Australia, then these Terms shall be governed by the laws of the Queensland and the Commonwealth of Australia (without regard to its rules of conflict of laws) and the parties irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the Courts of Queensland.