

# HeartsConnect

## PROVIDER PARTNER PROGRAM AGREEMENT

**PLEASE READ THIS PROVIDER PARTNER PROGRAM AGREEMENT CAREFULLY.**

This is a contract between you (the Partner) and us (HeartsConnect). It describes how we will work together and other aspects of our business relationship. It is a legal document so some of the language is necessarily “legalese” but we have tried to make it as readable as possible. These terms are so important though that we cannot have you participate in our Provider Partner Program unless you agree to them. By participating in our Provider Partner Program, you are agreeing to these terms.

We periodically update these terms and we will let you know when we do via email and a notification in your provider portal on the HeartsConnect website.

### **1. Definitions**

“Provider Partner Program” means our partner program as described in this Agreement.

“Active Partner” means that you have (i) an active Provider Portal account on the HeartsConnect website and (ii) have signed an Provider Partner Agreement.

“Inactive Partner” means that you do not meet the criteria of an Active Partner (defined above).

"Agreement" means this Provider Partner Program Agreement and all materials referred or linked to in here.

“Customer Terms of Service” means those terms and conditions located at <http://heartsconnectapp.com/terms-of-service>, as modified from time to time.

"We", "us", “our”, and “HeartsConnect” means HeartsConnect.

“You” and “Partner” means the party, other than HeartsConnect, entering into this Agreement and participating in the Provider Partner Program.

“Family Triad” and “Family Group” means the closed communication group that is created within the HeartsConnect application allowing for secure, private communication between adoptive parents, birth parents, and adoptees. Other family members may be authorized to access the account by the account holder.

“Account Holder” is the primary account holder for a Family Group. This will typically be one of the adoptive parent accounts.

“End Users” are the members of the family account, including the account holder, that have any level of access to the group.

“Post Adoption Communication Plan” or “PAC Plan” refers to a list of tasks or information updates that each party in the Family Triad has agreed to complete. These tasks are organized by date and the person(s) they are assigned to within the HeartsConnect application.

## **2. Exclusive Services Provider**

During the term of this Agreement, you, as the Provider Partner, agree that HeartsConnect will be the exclusive provider of online, post-adoption communication services for your placements. The Provider Partners agree not to seek or accept similar services from other providers without the express, written knowledge and consent of HeartsConnect.

Note: Given the lifetime-access nature of the HeartsConnect Product, this exclusivity agreement is critical to the sustainability and success of the service. Since every new Family Account only results in a one-time payment to HeartsConnect, the continued success and availability of the service depends completely on our ongoing relationship with Provider Partners and your commitment to create Family Accounts for each new placement.

## **3. Service Fees**

a. Unless otherwise agreed by the both Parties, you agree to pay HeartsConnect a \$500 subscription fee for each Family Group. This fee is for a lifetime subscription for the Family Group.

b. Different fees structures may apply depending on the account type or amendments to this agreement. Some examples include:

- Adoption reunion providers will pay \$50 for a three-month reunification account and, if deemed appropriate, an additional \$450 for the lifetime account after those 3 months have passed.
- Foster Care Organizations will pay a fee structured based on a specific contract.
- Government entities and agencies responsible for maintaining adoption files from agencies no longer providing post placement support will pay a fee structure based on a specific contract.

c. Reduced fees. Under certain circumstances, we will provide a coupon code that will reduce the cost of the service. These could include:

- Multiple adoptions by the same adoptive family.
- If HeartsConnect's fee is bundled with other post placement services with whom we have partnered.
- The fee has been paid through trade or another form of compensation.
- Other special, as-yet unforeseen circumstances.

d. Provider Partners can markup the price at their discretion. HeartsConnect allows Provider Partners the right to charge their clients what they wish for this service as long as they pay HeartsConnect the fees agree to above.

Note: Partners may want to weigh their decision to mark up this fee with the fact that on the HeartsConnect website we also sell accounts directly to family groups at the rate of \$500 for lifetime access. Though families may find it more convenient for it to be part of your overall services.

### **3. Family Account Management**

a. Account engagement levels. There are two levels of levels of engagement available to Provider Partners when requesting the creation of new family accounts within the HeartsConnect app: (1) "Active Engagement." and (2) "Non-Engagement." You may choose the engagement level on a per placement basis. Which means, you can decide if you believe your ongoing involvement will be necessary or warranted for some family groups and possibly not necessary for other family groups .

"Active Engagement" means that a representative from your organization has agreed to moderate and manage the communications within a family account as well as any conflicts that arise.

“Non-Engagement” means that HeartsConnect agrees to moderate and manage the communications within a family account as well as any conflicts that may arise.

For family groups with which you have elected to have “Active Engagement,” we will not engage with the members of that group except: (i) to complete the account creation process, (ii) to fulfill or enforce our obligations under terms of service, (iii) to provide technical or product support, (iv) to conduct our standard data collection activities that are used for research and statistical purposes only, or (vi) other interactions otherwise permitted by this Agreement.

If a conflict arises between the parties in a family group, you will facilitate our participation on calls with you and various End User(s). We may request to participate on these calls in an effort to help to ensure the quality of service delivery and for the purposes of managing the Partner Partner Program.

b. Compliance with Terms of Service. No matter the engagement level, if you purchase an account for a Family Group, that account may be used only for the End Users for which it was originally purchased, and it may not be repurposed for or reassigned to an alternate End User without our prior written consent.

If you have opted for “Active Engagement” in a family group, you will take all reasonable steps to ensure that End Users do not use the HeartsConnect application in violation of the Terms of Service. If you discover or have reason to believe that any End User is making use of the HeartsConnect application in violation of the Terms of Service, then you will immediately notify us in writing.

c. Post-Adoption Communication (PAC) Plans. There are two ways for us to create PAC plans for your family groups within the HeartsConnect application: (1) via template upload, and (2) via our additional, fee-based PAC creation service. Both of these options will be available on the PAC Creation Form within your Provider Partner Portal.

Template upload method is offered for free to our Provider Partners through this Agreement. The PAC Creation Service is an additional fee of \$50 per PAC plan.

If you choose to use the template upload method, we will provide you with a csv template and a training video explaining how to put your plan into the spreadsheet so that it will upload properly. If the upload does not work, we will send an email to your representative explaining what we think is the problem so you can solve it, or send us a new file, so we can try again.

If you choose the PAC Creation Service, you'll be able to type out the agreed upon PAC plan or upload a document that explains the plan. This document can use plain language. Example: "Every year, on the child's birthday, photos and a 200+ word update should be sent. Remind the adoptive parents about this at least 2 weeks prior."

If you do not have an in-house process for creating PAC plans, we can provide you with a template that is a great start. You can choose for us to upload that template as is, choose to edit the template adding your own updates to the list, or choose to include no PAC plan at all on any Family Group.

#### **4. Test Group**

If we make a HeartsConnect Test Group available to you, you can use the Test Group for your education, demonstration and evaluation purposes only, and no other purpose. You will not lease, distribute, license, sell or otherwise commercially exploit the Test Group as specified in the Terms of Service. We reserve the right to suspend, modify, or discontinue any or all part of the Test Group at any time without prior notice to you. In the event of a conflict between the terms that apply to the Test Group as specified in this Agreement and the Terms of Service, the terms of this Agreement shall control.

#### **5. Trademarks**

You grant to us a nonexclusive, non transferable, royalty-free right to use and display your logos in connection with the Provider Partner Program and this Agreement.

During the term of this Agreement, you may use our logo as long as you follow the usage requirements in this section. You must: (i) only use the images of our logo that we make available to you, without altering them in any way; (ii) only use our logo in connection with the Provider Partner Program and this Agreement; and (iii) immediately comply if we request that you discontinue use. You must not: (i) use our logo in a misleading or disparaging way; (ii) use our logo in a way that implies we endorse, sponsor or approve of your services; or (iii) use our logo in violation of applicable law or in connection with an obscene, indecent, or unlawful topic or material.

## **6. Proprietary Rights**

a. HeartsConnect's Proprietary Rights. No license to any software is granted by this Agreement. The HeartsConnect Products [Products] are protected by intellectual property laws. The Products belong to and are the property of us or our licensors (if any). We retain all ownership rights in the Products. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the HeartsConnect Content, or the Products in whole or in part, by any means, except as expressly authorized in writing by us. HeartsConnect, the HeartsConnect logos, and other marks that we use from time to time, are our trademarks and you may not use them without our prior written permission, except as otherwise set forth in this Agreement.

We encourage all customers and partners to comment on the Products, provide suggestions for improving them, and vote on suggestions they like. You agree that all such comments and suggestions will be non-confidential and that we own all rights to use and incorporate them into the Products, without payment to you.

b. End User's Proprietary Rights. As between you and End User, End User retains the right to access and use the End User portal associated with the HeartsConnect Products regardless of whether you placed the order with us.. End User will own and retain all rights to their End User Data. If we deem it to be necessary, we may communicate directly with the End User and/or Account Owner. At our discretion, though rarely, we may port ownership of the account associated with the Family Group to an appropriate End User.

## **9. Confidentiality**

As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), (i) whether orally or in writing, that is designated as confidential, and (ii) HeartsConnect customer and End User information, whether or not otherwise designated as confidential. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall: (i) protect the confidentiality of the Confidential Information of the Disclosing Party using the same degree of care that it uses with its own confidential information, but in no less than reasonable care, (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information of the Disclosing Party to any third party, and (iv) limit access to Confidential Information of the Disclosing Party to its employees, contractors and agents. The Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

## **10. Term and Termination**

- a. Term. This Agreement will apply for as long as you participate in the Provider Partner Program.
- b. Termination Without Cause. Both you and we may terminate this Agreement on sixty (60) days written notice to the other party.
- c. Termination of Inactive Partners. If you are an Inactive Partner, then we may terminate this Agreement on thirty (30) days written notice to you. If, within twenty-one (21) days from the date of such notice, you present us with a plan that will result in you becoming an Active Partner, we will consider this plan in good faith. We may then choose to notify you in writing that we withdraw our notice of termination, in which case the Agreement will not terminate.
- d. Termination for Cause. We may terminate this Agreement and/or suspend your access to HeartsConnect application or HeartsConnect Provider Partner Portal: (i) upon thirty (30) days'

notice to you of a material breach if such breach remains uncured at the expiration of such period, (ii) upon fifteen (15) days notice to you of non-payment of any amount due to us if such amount remains unpaid at the expiration of such period, (iii) immediately, if you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (v) immediately, if you breach the terms applicable to your agreement with us, or (vi) immediately, if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us or our customers.

e. Effects of Expiration/Termination. Expiration of this Agreement, and termination of this Agreement without cause by us or by you with cause, shall not affect our obligation to maintain all Family Group and End User accounts that you have created through the course of this agreement. Upon termination or expiration, any representative accounts created within the HeartsConnect application for the purpose of Active Engagement will be closed. Those Family Groups will now be considered Non-Engagement groups. Upon termination or expiration, your login to the Provider Partner portal on the HeartsConnect website will also be deleted.

Upon termination or expiration, you will immediately discontinue all use of our trademark, and will remove all HeartsConnect badges and Provider Partner Program tier information and references from your website(s) and other materials. . Termination or expiration of this Agreement shall not cause your End Users' accounts or Family Group accounts to be terminated.

## **11. Partner Representations and Warranties**

You represent and warrant that: (i) you have all sufficient rights and permissions to provide the End User data to us for our use in account and group creation or as otherwise set forth in this Agreement, (ii) your participation in this Provider Partner Program will not conflict with any of your existing agreements or arrangements; and (iii) you own or have sufficient rights to use and to grant to us our right to use your logo marks.

## **12. Indemnification**



You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) your participation in the Provider Partner Program, (b) our use of the end user data you provided us, (c) your noncompliance with or breach of this Agreement, (d) your use of the Test Group, or (f) our use of your Logo Marks. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

### **13. Disclaimers; Limitations of Liability**

a. Disclaimer of Warranties. WE AND OUR AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE HEARTSCONNECT PRODUCTS, HEARTSCONNECT CONTENT, THE PROVIDER PARTNER PROGRAM, OR THE TEST GROUP FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) AND THE TEST GROUP MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE HEARTSCONNECT PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH REGARD TO THE HEARTSCONNECT PRODUCTS, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

b. No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES.

c. Limitation of Liability. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, WE ARE DETERMINED TO HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY, THE PARTIES AGREE THAT OUR AGGREGATE LIABILITY WILL BE LIMITED TO THE TOTAL OF ALL TRANSACTIONS COMPLETED BETWEEN HEARTSCONNECT AND YOU.

#### **14. Non-Solicitation**

You agree not to intentionally solicit for employment any of our employees or contractors during the term of this Agreement and for a period of twelve (12) months following the termination or expiration of this Agreement. Both you and we acknowledge that (i) any newspaper or other public solicitation not directed specifically to such person shall not be deemed to be a solicitation for purposes of this provision, and (ii) this provision is not intended to limit the mobility of either our employees or contractors.

#### **15. General**

a. Amendment; No Waiver. We may update and change any part or all of this Agreement. If we update or change this Agreement, the updated Agreement will be posted at within the Provider Partner Portal and we will let you know via email. The updated Agreement will become effective and binding on the next business day after it is posted. When we change this Agreement, the "Last Modified" date above will be updated to reflect the date of the most recent version. We encourage you to review this Agreement periodically.

If you do not agree with a modification to this Agreement, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, this Agreement will terminate sixty (60) days after we receive this notice and our relationship will continue to be governed by the terms and conditions of the version of this Agreement applicable immediately prior to modification for the remainder of the Agreement term. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

b. **Applicable Law.** This Agreement shall be governed by the laws of the State of Utah, without regard to the conflict of laws provisions thereof. In the event either of us initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in Salt Lake City, Utah.

c. **Force Majeure.** Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

d. **Actions Permitted.** Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

e. **Relationship of the Parties.** Both you and we agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this Agreement.

f. **Compliance with Applicable Laws.** You shall comply, and shall ensure that any third parties performing sales or referral activities on your behalf comply, with all applicable foreign and domestic laws (including without limitation export laws and laws applicable to sending of unsolicited email), governmental regulations, ordinances, and judicial administrative orders. You shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to us, our customers, or to the public. Export laws and regulations of the United States and any other relevant local export laws and regulations may apply to the HeartsConnect Products. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury.

h. **Severability.** If any part of this Agreement is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of this Agreement will continue in effect.

i. Notices. Notice will be sent to the contact address set forth herein (as such may be changed by notice given to the other party), and will be deemed delivered as of the date of actual receipt.

To HeartsConnect: 9669 700 E, Sandy, UT 84070, USA.

Attention: General Counsel

To you: your address as provided in our partner account information for you.

We may give electronic notices by general notice via the partner portal and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center in the partner portal. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you.

j. Entire Agreement. This Agreement is the entire agreement between us for Provider Partner Program and supersedes all other proposals and agreements (including all prior versions of the HeartsConnect Provider Partner Program Agreement, if any), whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the HeartsConnect Products or dependent on any oral or written public comments made by us regarding future functionality or features of the HeartsConnect Products. It is the express wish of both you and us that this Agreement and all related documents be drawn up in English. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship and the translated version is provided for convenience only and will not be interpreted to modify the English version of this Agreement.

k. Assignment. You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of its assets, change of control or operation of law, without our prior written consent. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

l. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

n. No Licenses. We grant to you only the rights and licenses expressly stated in this Agreement, and you receive no other rights or licenses with respect to us, the HeartsConnect Products, our logos, or any other property or right of ours.

p. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.