

Terms & Conditions

1. Definitions

“Data Protection Laws” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the General Data Protection Regulation 2016/679 “GDPR” and laws implementing or supplementing the GDPR;

“Documentation” means any accompanying documentation, graphics, videos and music to the KOKU Software;

“License” means the license of using KOKU Software;

“KOKU Software” means the KOKU Software Copyright © 2018-2020 Keep-On-Keep-Up Health Ltd (“KOKU Health”);

“Purchaser” means the company purchasing the Services from the Supplier;

“Services” means the access granted by a limited License to use this the KOKU Software to be supplied under any contract arising from the Supplier’s acceptance of the Purchaser’s order;

“Supplier” means Keep-On-Keep-Up Health Ltd (“KOKU Health”) registered in England and Wales (with company number 12074143), whose registered office is C/O UoM Innovation Factory Limited Core Technology Facility, 46 Grafton Street, Manchester, United Kingdom, M13 9NT;

“User” means any user who is using the KOKU Software provided by the Supplier, including patients.

Words in the singular shall include the plural and vice versa.

2. Application

The placing of any order by the Purchaser shall be deemed to constitute acceptance of these conditions which shall apply to any contract created by the acceptance by the Supplier of such order. These conditions shall prevail over any other terms or conditions which the Purchaser may seek to impose unless expressly accepted in writing by the Supplier. The person placing any order by the Purchaser confirms he/she is authorised to accept these Terms and Conditions on the Purchaser’s behalf and to bind the Purchaser to these Terms and Conditions.

3. Licencing

3.1. The Licence offered by the Supplier is to the Purchaser only.

3.2. Upon Licence termination, the Purchaser acknowledges and agrees that the KOKU Software will, or may automatically “time out” (that is to say, cease to operate).

3.3. The Quotation includes updates and general maintenance to the KOKU Software provided as long as the Licence is active.

3.4. The Supplier reserves the right to modify any renewal pricing or refuse the renewal of the Licence.

3.5. If the Purchaser has been offered an evaluation of the KOKU Software for an evaluation period as discussed and agreed between the Purchaser and Supplier, then:

3.5.1. The Purchaser may not use the Licence except for demonstration and evaluation purposes only.

3.5.2. During the evaluation period, the Licence may be terminated immediately by the Supplier giving written notice if the Purchaser is in breach of any of its obligations under this agreement. The Licence may be terminated by the Purchaser during the evaluation upon seven days\’ written notice or upon acceptance by the Purchaser of a full licence for the KOKU Software. Upon termination not followed by a full Licence, the Purchaser shall within two working days return to the Supplier all copies of all or part of the KOKU Software on any tangible medium and any Documentation and shall completely delete all electronic copies of all or any part of the KOKU Software and/or the Documentation resident in the Purchaser’s computer or elsewhere. The Purchaser is not required to provide or delete any user records when complying with this clause.

4. Delivery

The date of delivery of the Services specified by the Supplier is an estimate only and the Supplier shall not be liable for any loss, costs, damages or expenses caused directly or indirectly by any delay.

5. Warranty

5.1. For a period of 12 calendar months from the date of delivery of the Services to the Purchaser the Supplier warrants that the software in the Services shall operate substantially as described in the applicable documentation.

5.2. Written notice of any defect together with full details thereof must be given to the Supplier within 28 days of the discovery of the defect.

5.3. The Supplier warrants that the Services shall be performed with reasonable skill and care and to a reasonable standard in accordance with recognised industry standards and codes of practice.

5.4. The Supplier’s staff engaged in the provision of the Services shall be under the control and direction of the Supplier’s own supervisory staff.

5.5. This warranty shall not be assigned without the written consent of the Supplier.

5.6. The KOKU Software and Documentation are provided “as is.” The Supplier does not warrant that the KOKU Software will meet the requirements or that its operation will be uninterrupted or error-free. To ensure the KOKU Software’s best performance, the Purchaser shall connect the hardware to the internet and apply any applicable updates to the KOKU Software.

6. Supplier’s Liability

6.1. Nothing in this clause 9 shall limit or exclude the Supplier’s liability for death or personal injury caused by its negligence or for any other liability which may not be excluded by law.

6.2. Subject to the provisions below, the Supplier makes no attempt to contract out of any liability which may accrue to it by virtue of the provisions of Section 12, 13, 14(2) and 15 of the Sale of Goods Act 1979 as amended. Save in the case of experimental or prototype equipment, the Supplier also accepts any liability arising under Section 14(3) of the said Act as amended ALWAYS PROVIDED that the purpose for which the Goods are intended is known to it at the date of entering into the contract for their sale.

6.3. The Supplier shall have no liability for any indirect, consequential or special loss or damage whatsoever and howsoever arising irrespective of whether the Supplier was aware of the possibility of such loss or damage to the Purchaser.

6.4. Save as aforesaid all other conditions and warranties express or implied whether arising by statute or common law or otherwise are hereby expressly excluded and the supplier shall not be liable for any loss injury or damage caused or arising by reference to them.

6.5. If notwithstanding the foregoing it is held that liability attaches to the Supplier for breach of any condition or warranty then the damages recoverable by the Purchaser in respect of such breach shall be limited to the reasonable cost of remedying the defect or other matter constituting such breach (provided that the Supplier shall first be afforded the opportunity of itself carrying out the remedial work) and the Supplier shall not in any circumstances be liable for any other loss or injury or damages suffered by reason of such breach.

6.6. The Supplier shall incur no liability in respect of any defect or other matter which is in any way attributable to failure to follow any recommendations or advice given by the Supplier to the Purchaser as to the mode of using the Service.

6.7. In no circumstances shall the Supplier incur any higher liability to the Purchaser hereunder than the total of the sums paid hereunder by the Purchaser to the Supplier.

7. Special Clauses

7.1. The Purchaser shall assure that it is using the Services in strict adherence with these Terms & Conditions, Privacy Policy and the User Manual of the KOKU Software.

7.2. The Purchaser must use the Services in strict adherence to with these Terms & Conditions and in the User Manual of the KOKU Software.

7.3. The Purchaser shall be liable for the misuse of the Services and the KOKU Software. Nothing in the KOKU Software, Documentation or promotional materials should be seen as solicitation or promotion of the KOKU Software which is not authorised by the regulations of the country where the Purchaser resides.

8. Data Protection

8.1. The Purchaser and the Supplier will comply with all applicable requirements of the Data Protection Laws.

8.2. The Purchaser and the Supplier acknowledge that for the purposes of the Data Protection Laws, the Purchaser is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Laws).

8.3. Without prejudice to the generality of clause 8.1 the Purchaser will ensure that it has all necessary consent and notices in place to enable lawful transfer of Personal Data (as defined in the Data Protection Laws) to the Supplier for the purposes and duration of these Terms and Conditions. In particular, the Purchaser shall be responsible for obtaining any applicable consent from the Users of the KOKU Software to respect these Terms & Conditions.

8.4. Without prejudice to the generality of clause 8.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under these Terms and Conditions:

8.4.1. Process that Personal Data only on the written instructions of the Purchaser;

8.4.2. Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss, or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data

to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring

that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;

8.4.3. Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

8.4.4. Not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled:

a. The Purchaser or the Supplier has provided appropriate safeguards in relation to the transfer;

- b. The data subject has enforceable rights and effective legal remedies;
- c. The Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- d. The Supplier complies with reasonable instructions notified to it in advance by the Purchaser with respect to the processing of the Personal Data;

8.4.5. Assist the Purchaser, at the Purchaser's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

8.4.6. Notify the Purchaser without undue delay on becoming aware of a Personal Data breach;

8.4.7. At the written direction of the Purchaser, delete or return Personal Data and copies thereof to the Purchaser on termination of this agreement unless required by law to store the Personal Data; and

8.4.8. Maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for audits by the Purchaser or the Purchaser's designated auditor.

8.5. The Purchaser consents to the Supplier appointing Microsoft Azure and other approved third parties, or similar providers as a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 12. As between the Purchaser and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 12.

8.6. The Purchaser consents to the Supplier using information derived from the Personal Data of members/users/employees/collaborators/patients, in an anonymous and/or aggregated form, solely for the purposes of analytics and marketing the Suppliers services.

8.7. By adding a user's Personal Data into the KOKU Software and controlling these data with the help of the Goods and the Services provided by the Supplier means that the User agrees that her/his data to be stored, processed and controlled by the Purchaser, the Supplier and the KOKU Software.

8.8. The Purchaser shall assure the safety of the User's credentials (usernames and passwords) for the use of the Goods and the Services, and save as necessary for providing the Goods and Services, (including access by the Supplier for administrative purposes), will not share them with any third-party that could access any Personal Data without any consent.

8.9. The Purchaser shall be aware that when using the "Remember me" feature in the KOKU Software, stated in the User Manual of the KOKU Software, the security of the system is only granted by the security of the operation system of the computer system it is installed on.

8.10. The Purchaser shall be liable for any data leaks and security breach if the access to the KOKU Software is provided by the misuse of the Goods and the Services without respecting these Terms & Conditions and User Manual of the KOKU Software.

8.11. If any User of the system requires his/her data be removed, he/she agrees that their identifiable Personal Data will be completely removed from the Supplier's data storage within 30 days, with the exception of the unidentifiable data generated and stored by the KOKU Software while using the Service, which is continuously stored, processed and controlled by the Supplier and KOKU Software without the ability to reverse-engineer and identify any User.

8.12. The Supplier reserves the right to modify these Terms and Conditions from time to time. Any such updates to the Terms and Conditions shall be notified through KOKU Software updates.

9. Proprietary Rights

9.1. This software may not, in whole or in any part, be reproduced, copied, transmitted, translated (into any language, natural or computer), stored in a retrieval system, reduced to any electronic medium or machine-readable format, or by any other form or means without prior consent, in writing, from the Supplier.

9.2. The Purchaser acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Purchaser any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.3. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

9.4. Subject at all times to compliance with the provisions of Clause 8, any data and/or content created, generated and/or stored by the Purchaser while using the KOKU Software, is the sole property of the Supplier and can be controlled and processed by the Supplier for marketing and research purposes in an aggregated form without being able to identify the Purchasers or Users.

10. Force Majeure

Neither party shall be responsible for any failure or delay in performing its obligations under the contract or any part thereof due to or principally due to act of God, embargo or government act, fire, accident, war, riot, inclement weather, strikes, lockouts, trade disputes or labour troubles, breakdown of plant machinery, inability to obtain adequate labour, materials or manufacturing facilities or any other cause whether of a similar nature or not beyond the control of the party in question.

11. Assignment

The Supplier, and any assignee of the Supplier, shall be entitled to assign any order in whole or in part to any company which is a subsidiary of the same company of which the Supplier is a subsidiary.

12. Third Party Rights

A person who is not a party to the contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

13. Law

The contract shall be governed by and construed in all respects in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Civil Courts in so far as any disputes arising under or in connection with the contract are concerned. These conditions are additional to any rights attaching to the Supplier under statute or common law and are not in substitution therefore.