

## Software Licence Terms of Service

This Software is owned and operated by Koaben Pty Ltd ACN 603 302 450 T/AS Owner Health ("Licensor"). These Terms of Service ("Terms of Service") govern access to and use of the Software by you ("Licensee"). Use of the Software indicates your acceptance of these Terms of Service. We may update these Terms of Service from time to time, and your continued use of the Software constitutes acceptance by you of any updates. Please read these Terms of Service carefully before using the Software.

### 1. General Background

The Licensor licenses certain software ("Software"), the details of which is incorporated herein by reference. As Licensee, you intend to use the Software to support its users, as those terms are defined herein. The Licensor wishes to grant to you the right to use the Software for those purposes.

### 2. Statement of Agreement

Now, therefore, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms, conditions and obligations stipulated in this Terms of Service.

### 3. Definitions

In these Terms of Service the following words and phrases shall have the following meanings, unless the context otherwise requires:

- (a) "Breach" means the unauthorized access and acquisition of data that materially compromises the security or confidentiality of sensitive information which the parties reasonably believe has caused or will cause loss or injury ;
- (b) "End User" means the person or entity that accesses the Software through the Licensee;
- (c) "Fees" means all fees charged by us to grant you the licence to use the Software under these Terms of Service;
- (d) "Intellectual Property" means all intellectual property rights, including without limitation the Software, inventions, patents, copyright, trademarks, know-how, processes, concepts, the Website and any other platform/software developed by Owner Health, and the source code for those systems and any application or right to apply for registration of any of these rights throughout the world whether registered or unregistered and whether developed before or after the date of these Terms and Conditions;
- (e) "Licence" means a licence to use the Software granted by the Licensor to the Licensee;
- (f) "Loss" means any loss, liability, cost (including legal costs on a solicitor and own client basis), charge, expense, tax or damage of any nature whatsoever, including lost profits, loss

of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence);

- (g) "Number of Users" has the meaning provided for that term under clause 3(b);
- (h) "our", "us" and "we" means the Licensor;
- (i) "Software" means the health practitioner/client appointment booking software known as "Owner Health" owned by Licensor;
- (j) "Software" means the Licensor's Software as described on the Website, being a booking platform for health care professionals and customers;
- (k) "Term" has the meaning provided for that word under clause 3(b);
- (l) "Website" means the website located at owner.health;
- (m) "you" and "your" means the Licensee.

#### **4. Your Obligations**

- (a) You must use our Software in accordance with these Terms of Service. You must also ensure that you comply with all clauses of these Terms of Service and all terms and policies included by reference in those documents.
- (b) Your use of our Software, and the information you provide to us, must not:
  - (i) be false, inaccurate or misleading;
  - (ii) infringe any third party's copyright, patent, trademark, trade secret, intellectual property or other proprietary rights or rights of publicity or privacy;
  - (iii) violate any applicable law;
  - (iv) contain any viruses, trojan horses, worms, time bombs, trap doors, back doors, easter eggs, spiders, robots, screen scrapers, data aggregation tools or other devices or other computer programming routines that may or are intended to damage, modify, delete, interfere with, surreptitious intercept, access without authority or expropriate any system, data or personal information or otherwise affect the integrity, operation or security of our Software;
  - (v) create liability for us or cause us to lose (in whole or in part) the services of our internet service provider or other Licensees or suppliers;
  - (vi) damage the credibility or integrity of the Licensor;
  - (vii) breach or violate any of our policies;

(viii) link directly or indirectly to or include anything that:

- i) you do not have a right to link to or include;
- ii) could cause us to violate any applicable law, statute, ordinance or regulation.

## 5. Licence

- (a) On purchasing a Licence and paying all Fees in accordance with clause 4, we grant to you non-exclusive, non-assignable, non-sub licensable revocable Licence to use the Software for your own internal business purposes during the Term, and you may only allow the Number of Users to use it. You must not use our Software for any commercial purposes (such as resale).
- (b) The Term and Number of Users for the Licence is as agreed between us in writing or as stated on the Website at the time the Software is purchased. Should you require an increase in the Number of Users that can use the Software during the Term, you must contact us and request an increase and pay to us the additional Fee specified by us.
- (c) You acknowledge and agree that we have the right to audit your use of the Software. In the event that an audit reveals that you have exceeded the Number of Users permitted under your Licence, you must pay us the Fee for the additional users.
- (d) You acknowledge that, as between the Licensor and the Licensee, the Licensor controls all right, title and interest in the Software. Except as expressly provided herein, the Licensor does not grant you any other right or licence, either express or implied, in the Software, other than contemplated in this Terms of Service. You shall not reverse engineer, modify, adapt, translate or create derivative works based on the Software, or knowingly permit any End-User to engage in the foregoing, as specifically stipulated in Clause 8 herein.
- (e) During the Term, you shall have access to all updated versions of the Software (if any). Following conclusion of the Term your right (including the right of End Users) to use the Software shall cease unless you purchase a further Licence.
- (f) In relation to the foregoing, the Licensor shall retain ownership of any version or changes to the Software and its related documentation. Any other provision to the contrary shall be null and void.

## 6. Fees

- (a) The Licensee must pay the Licensor the Fee in order to be granted the Licence in accordance with these Terms of Service. The Fee payable is the then current Fee stated on the Website at the time the Licence is purchased, unless a differing amount is agreed between the Licensor and the Licensee in writing. Generally the Fee will be charged for each appointment made by a user of the Software with another user of the Software (such as a customer booking a consultation with a healthcare practitioner).

- (b) As at 1 January 2018, the Fee is \$0.5 (AUD) for each appointment made by a user of the Software with another User of the Software.
- (c) As at 1 January 2018, the Fee is \$0.15 (AUD) for SMS sent through website by user..
- (d) Payment of the Fee is due monthly in arrears and is payable via direct debit. You must provide us with your current credit or debit card details at all times throughout the Term, and you irrevocably authorise us to debit the Fee and all other amounts payable by you to us from time to time from your nominated card without notice.
- (e) We will invoice you at the end of each month on the date nominated by us for the number of appointments made through the Software.
- (f) Unless otherwise stated, Fees payable by you are exclusive of any goods and services tax, value added tax or similar tax and such taxes must be paid by you to us at the same time as payment of our Fees.
- (g) There is a 2% fee for payments made by credit card. You agree to pay such charges us at the same time as paying our Fees.
- (h) Please note that we may impose or deduct foreign currency processing costs on or from any payments or payouts made in currencies other than Australian dollars.
- (i) Unfortunately, given the nature of the Licence, to the extent permitted by law any Fees paid to us are non-refundable under any circumstances.
- (j) The Fee is subject to change at any time upon the Licensor giving the Licensee written notice. Any increase in the Fee will take effect thirty days upon the Licensor giving such notice.

## **7. Software**

- (a) We reserve the right to update the Software at any time we deem appropriate without notice. However, we do not warrant that the Software will be updated by us during the term, and we are not obliged to update the Software during the term.
- (b) Unless otherwise agreed, the Software will at all times be hosted on our servers. We are not obliged to provide you with the source code for the Software or any other information in connection with the Software that is not strictly required to enable your use of the Software for its intended purpose.
- (c) You acknowledge and agree that the Software may occasionally be unavailable during periods of planned or unscheduled critical and urgent maintenance.
- (d) If agreed by us, we can feature your logo and business details on the version of the Software licenced to you.

## 8. System Integrity & User Conduct

(a) You and End Users must not use the Software to:

- (i) input, upload, post, disclose or transmit any material which is subject to the intellectual property rights of any third party or breaches any duty of confidence or contractual obligation owed to any person;
- (ii) input, upload, post, disclose or transmit any material that is unlawful or violates any law;
- (iii) upload any files that contain viruses, Trojan horses, worms, time bombs, corrupted files or any other similar software or programs that may damage the operation of the Software or another's computer or property of another;
- (iv) sub-license, sell, transfer or attempt to assign the rights in the Software to any other person and any dealing in contravention of this sub-clause shall be ineffective;
- (v) represent any other person (including yourself) as the owner or developer of the Software;
- (vi) interfere with or disrupt the Software or servers or networks connected to the Software, or disobey any requirements, procedures, policies, or regulations of networks connected to the Software;
- (vii) attempt to gain unauthorised access to the Software (such as to its source code) or computer systems or networks connected to the Software through any means;
- (viii) breach any privacy legislation.

(b) You acknowledge and agree that you and End Users must not:

- (i) use the Software for any purpose other than the purpose for which it was designed and intended;
- (ii) use the Software for any purpose other than for the purposes of your business;
- (iii) commit or permit any act which may interfere with the use of the Software by any other user;
- (iv) tamper with, hinder the operation of or make unauthorised modifications to the Software or any part thereof;
- (v) reverse engineer, decompile or disassemble the Software or any part thereof;

- (vi) conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.
- (c) You acknowledge and agree that you are responsible and liable for all activities and actions of your End Users and such actions are attributable to you.
- (d) You must have an end user licence agreement in place for all End Users of the Software containing terms and conditions that:
  - (i) comply with these Terms of Service; and
  - (ii) are at least as protective of the Licensor's interests as the terms contained in these Terms of Service.

## **9. Intellectual Property Rights**

- (a) The Licensor claims no ownership over the data or other material you input into the Software, and such data will be used in accordance with the Licensor's Privacy Policy in place from time to time.
- (b) You acknowledge and agree that the Licensor owns the Intellectual Property and no right, title or interest in any of the Intellectual Property is transferred or granted to you, except so far as expressly stated in these Terms of Service.
- (c) For the avoidance of doubt, you acknowledge that the payment of the Fee entitles you to be provided with the Licence to use the Software on the terms set out herein. It does not entitle you to ownership of the Intellectual Property;
- (d) You agree that:
  - (i) you will not copy, reproduce, alter, modify or create derivative works from, the Licensor's Intellectual Property;
  - (ii) if you add any data to the Software of any nature whatsoever that information is personally attributable to you and you warrant that you have the right to distribute that information;
  - (iii) you acknowledge that when you input information into the Software, we may receive additional related data, such as the time, date and place you provided the Information;
- (e) The Licensor logo and name is owned by us, and may not be used as part of your business or on the publication of the Software by you without the prior written consent of Licensor.

## **10. Warranties**

- (a) The Licensor does not warrant that:

- (i) the Software will provide any function for which it is not specifically designed;
  - (ii) the Software will provide any minimum level of performance;
  - (iii) the Software will be bug and virus free or free of performance anomalies or be operational without interruption.
- (b) You warrant to us that at the time of purchase of the Licence, you were not relying on any representation made by us.
- (c) As provided in Clause 12 below, the Software provided hereunder is provided "as is." Notwithstanding any other provision in this Terms of Service, the Licensor does not warrant that the use of the Software shall be uninterrupted or error free, or that no deficiencies shall be encountered during the usage thereof. The foregoing warranties are exclusive of all other warranties, whether written, oral, express or implied, including but not limited to any warranty of non-infringement of third party rights and the implied warranties of merchantability or fitness for a particular purpose.
- (d) Except as expressly stated by us in writing, and to the extent permitted by law, we make no representations or warranties of any kind, express or implied as to the Software, including its speed, reliability and functionality or that any particular results will be achieved by you if you purchase a Licence.

## **11. Downtime**

- (a) Due to the nature of the services, downtime and lost transmissions may occur. The duration of downtime will depend on various circumstances, which may range from short stints to extended durations. While the Licensor shall exert due diligent efforts to minimize the downtime, you undertake to regularly export your data, which is a function available in the Software.
- (b) By reason of the foregoing, you hereby assume full responsibility for this data retention obligation. The Licensor will not under any circumstances, and as a result of such downtime, be liable for consequential, incidental, special, or exemplary damages including, but not limited to, loss of profits or revenues, loss of use or damage to any associated equipment, cost of capital, cost of substitute products, facilities or services.

## **12. Disclaimer and Limitation of Liability**

- (a) To the extent permitted by law, the Software is provided by Licensor on an "as is" basis without any express or implied warranty of any kind. We specifically disclaim any implied warranties including in relation to title, merchantability, fitness for a particular purpose and non-infringement. Furthermore, we do not guarantee continuous, uninterrupted or secure access to our Software or your information, as the Software may be interfered with by numerous factors outside our control.

- (b) For the avoidance of doubt, and without limitation to clause 12(a), we do not warrant or represent that our Software will result in increased sales, revenues, profits or customers.
- (c) The World Wide Web exists across open public networks that are neither secure nor private. Accordingly, you acknowledge and accept the risk that any communication through Software may be intercepted, used or modified by third parties.
- (d) You accept all risks and responsibility for all Loss resulting from your Licence of the Software.
- (e) Where the laws of any country or state in which these Terms of Service are effective implies into these Terms of Service any term, condition or warranty, and those laws avoid or prohibit provisions in a contract excluding or modifying them, then the term, condition or warranty shall be deemed to be included in these Terms of Service provided that the liability of Licensor, its officers, directors, employees, agents and related bodies corporate for a breach of any such term, condition or warranty, including any economic or consequential loss which you may sustain shall be limited to the Fees paid by the Licensee to the Licensor in the month prior to the liability arising.
- (f) Without limiting the above you release us from any Loss arising from the use of, or reliance on, the Software, whether or not caused by any negligent act or omission including but not limited to:
  - (i) Loss connected with the inability to use the Software;
  - (ii) your reliance on the Software;
  - (iii) the statements or actions of any employee or agent of the Licensor;
  - (iv) any unauthorised access to or alteration of your transmissions or data;
  - (v) any information that is sent or received or not sent or received;
  - (vi) any failure to store or loss of data or files or other content;
  - (vii) your fraudulent, negligent or otherwise unlawful behaviour;
  - (viii) any delay or interruption of the Software;
  - (ix) any loss incurred as a result of a third party obtaining your access details, either with or without your knowledge.

### **13. Third Party Services**

- (a) By engaging the services of the Licensor, you agree that the Licensor may use third party providers such as, but not limited to, Amazon Web Services (AWS). In the event that AWS or any of the Licensor's third party providers are experiencing downtime, you accept that this



circumstance is out of the control of the Licensor. You further accept that said incident may occur without any individual or entity deliberately causing the same.

- (b) As a result, you agree to free the Licensor from any liability for any interruption, disruption, or unavailability of the services of the third party provider. These events shall not be considered to be a breach by the Licensor, and that the Licensor shall have no liability or responsibility arising out of or relating to any such event, it being acknowledged and agreed by you or your authorized representative.

#### **14. Indemnity**

You indemnify and hold harmless the Licensor, and its officers, directors, shareholders, employees, consultants, agents, and related bodies corporate from and against all Losses (including all third-party claims) in relation to or in connection with your or your End User's use of the Software or your or your End User's failure to comply with these Terms of Service, or from your or your End User's violation of any applicable law.

#### **15. Security Breach**

- (a) The parties mutually agree that the Licensor has developed the Software with the reasonable degree of skill, care, and judgment customarily accepted as sound, quality, and professional practices to prevent security breaches. The parties further aver that the Licensor has implemented and maintained safeguards necessary to ensure compliance with applicable laws and regulations.
- (b) As part of its safeguard procedure, the Licensor hereby requires, and you consequently agree, that you accept responsibility to ensure that all your users have enabled 2FA within the Software. You have the ability to view who has it enabled within settings.
- (c) As a result, the Licensor accepts no liability if breach occurs without this feature being enabled. You agree that the Licensor shall not be subjected to any liability, whether in contract, warranty, tort or otherwise, on any claim for loss or damage for your failure to enable the 2FA.
- (d) In no event shall the Licensor be liable for anticipated profits indirect, special, incidental or consequential damages by reason of security breaches arising from the foregoing failure.

#### **16. Breach and Termination**

- (a) The Licensor reserves the right to deny you (and your End Users) access to all or part of the Software, without prior notice, if you engage in any conduct that Licensor believes in its sole discretion:
  - (i) violates any term or provision of these Terms of Service or any other terms or policies of Licensor in place from time to time; or
  - (ii) (violates the rights of the Licensor or any third party; or

- (iii) is otherwise inappropriate for continued access and use of the Software.
- (b) The Licensor may terminate your Licence immediately on written notice to you if you:
  - (i) commit a material breach of these Terms of Service, which is capable of remedy, and you fail to remedy the breach within seven days of being given a written notice to do so;
  - (ii) commit a material breach of these Terms of Service which cannot be remedied;
  - (iii) (are in breach of these Terms of Service on two or more occasions; or
  - (iv) (iv) are the subject of a bankruptcy order, or become insolvent, or make any arrangement or composition with or assignment for the benefit of your creditors, or if you go into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over your assets.
- (c) (On termination of your Licence/the expiry of the Term, the Licence is immediately revoked and you and your End Users must cease using the Software and uninstall and return any copies of the Software promptly in accordance with our directions. We are not liable for any Loss you suffer as a result of the expiry or termination of the Licence, such as a loss of data. We therefore recommend you regularly back up all of your data that is inputted into the Software.
- (d) Termination and expiry of your access to the Software shall be without prejudice to the rights of the parties accrued before termination. All restrictions imposed on you, disclaimers and limitations of liability set out in these Terms of Service will survive termination and expiry.

## **17. Employee Malicious Behaviour**

- (a) The Licensor hereby undertakes to exert due diligence in the screening and hiring of employees. The Licensor further undertakes to use reasonable efforts not to engage the services of an individual who is known to have the inclination for malicious acts, fraudulent transactions, illegal activities or other conduct inconsistent with its shared values and ethics.
- (b) You agree that any employee misbehaviour, fraudulent transaction or malicious actuation is deemed not to be performed within the scope of his official functions. You therefore acquiesce that the Licensor cannot be held responsible for these misbehaviour and malicious actuations. Instead, you aver that you shall make a direct claim against the employee concerned in his personal capacity rather than against the Licensor.
- (c) You finally agree that the Licensor shall not be vicariously liable for criminal, fraudulent or malicious acts committed by an employee that may occur at the workplace, or which otherwise have a connection with employment.

## **18. Assumption of Risk**

- (a) By entering into this Terms of Service, you agree to waive any and all rights of any kind and description in relation to Clauses 11, 13, 15 and 17 that you may have in any law, regulation or statute as of the date of this Terms of Service, including, but not limited to, any asserted and unasserted defences of every kind and nature, in law or equity, arising from or in any way related to the Software.
- (b) You take full responsibility, together with any claims of damage associated therewith, as well as other related activities, on the Software. By signing this Agreement, you surrender your right to sue the Licensor, and alternatively conform to non-litigation modes of dispute resolution.
- (c) Any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration, whenever possible, administered under the laws of Australia. In furtherance thereof, arbitration shall be the sole and exclusive forum for the resolution of such dispute, controversy or claim, and the award rendered shall be final and binding. Judgment on the award rendered may be entered in any court having jurisdiction thereof.
- (d) Clause 18 covers both claims that you know about and those that you may not know about which have accrued by the time you execute this Agreement. In order to make this Terms of Service effective against unknown or concealed claims, you expressly waive all rights that you might have under any law.
- (e) You further acquiesce that Clause 18 is intended to be as broad and as inclusive as are permitted by the law of Australia. You fully understand that, if any fact with respect to any matter covered by this Terms of Service is found hereafter to be other than or different from the facts now believed to be true, you expressly accept and assume that this Terms of Service shall remain effective, notwithstanding such difference in the facts.

## **19. General**

- (a) Use of the Software is done so at your own risk.
- (b) The Licensor may from time to time amend these Terms of Service upon giving you written notice.
- (c) These Terms of Service constitute the entire agreement between you and Licensor with respect to the Licence, and the Terms of Service replace all prior or contemporaneous understandings or agreements, written or oral, regarding the Licence.
- (d) No oral explanation or information provided by a party to another affects the meaning or interpretation of these Terms of Service or constitutes any collateral agreement, warranty or understanding.
- (e) If any provision of these Terms of Service is found to be invalid or unenforceable, that provision shall be enforced to the maximum extent possible and will be deemed deleted to

the extent that it is not enforceable, and the remaining provisions of the Terms of Service shall remain in full force and effect.

- (f) The failure by Licensor to insist upon or enforce strict performance of any of these Terms of Service will not be construed as a waiver of any right or remedy of Licensor in respect of any existing or subsequent breach of these Terms of Service.
- (g) No waiver by a party of a provision of these Terms of Service is binding unless made in writing.
- (h) The laws of Queensland govern these Terms of Service. You hereby consent and submit to the non-exclusive jurisdiction and venue of the Courts of Queensland for any cause of action relating to or arising under these Terms of Service.
- (i) Where possible, the obligations of the parties under these Terms of Service will indefinitely survive the finalisation or discontinuance of these Terms of Service.
- (j) This Agreement shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- (k) Prior to execution of this Terms of Service, the Licensor has informed you to consult an attorney, if you wish. The Licensor has also given you a reasonable time to consider each and every provision included herein. As such, you manifest that you have apprised yourself of sufficient relevant information in order that you might intelligently exercise your own judgment.
- (l) The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under these Terms of Service.
- (m) The rights and remedies of a party to these Terms of Service are in addition to the rights or remedies conferred on the party at law or in equity.
- (n) Rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.