

## TERMS OF SERVICE FOR THE KURACLOUD SERVICE

1. These Terms of Service, together with the Privacy Policy and Cookie Policy, form a legal agreement between you (the "**User**" or "**you**") and the corporate entity which your company, institution or body corporate has entered into a Framework Subscription Agreement or other contractual documentation, or the corporate entity which has been notified to you to be the service provider (the "**Service Provider**" or "**we**") governing your licence and use of:
    1. the web-based application service "kuraCloud" provided by the Service Provider via the Apps, via [www.kuracloud.com](http://www.kuracloud.com) or via any other website from time to time (the "**Service**");
    2. images and videos, audio files, data files, animations and text provided by the Service Provider or relevant licensors, but excluding User Content (the "**Content**");
    3. the software applications "kuraCloud Applications" (including all versions and releases for any operating system, platform or device) used to enable communication from hardware devices to the Services (the "**Apps**"); and
    4. any printed or electronic materials and documentation provided by the Service Provider or its licensors in relation to the Apps, Content or the Service (the "**Documentation**").
  2. For the purposes of these Terms of Service "**User Content**" means any content provided by the User or an entity which has entered into a contractual arrangement with the Service Provider.
  3. By:
    - downloading, installing or using the Apps;
    - using the Service; or
    - clicking on the "Accept" button below,the User:
    - acknowledges that the User has read and understands these Terms of Service;
    - represents that the User has the capacity to enter into these Terms of Service; and
    - accepts these Terms of Service and agrees to be bound by its terms.
- If you do not agree to these Terms of Service you may not use the Apps, Service, Content or Documentation and must remove them from any Device (as defined in **clause 7.1.1**).
4. We are particularly concerned to preserve and protect privacy. The terms of the Service Provider's privacy policy for the Service are available at [kuracloud.com/privacy](http://kuracloud.com/privacy) and are incorporated into these Terms of Service by reference and apply to the Service (the "**Privacy Policy**").
  5. We are also particularly concerned to preserve and protect the privacy of children and their personal information. If the User is under the age of majority in the User's country of residence, and consequently deemed to be a minor, but still over 13 years old, the User's parent or legal guardian must agree to these Terms of Service on the User's behalf and the User may only access and use the Site and Services with permission from its parent or legal guardian.
  6. If you are under the age of 13 years you must not use the Apps or Service.

## 7. TERMS AND ACKNOWLEDGMENTS

- 7.1 The Service Provider may change these terms at any time and may notify the User of a change in accordance with **clause** 15 or otherwise when the User next starts the Apps or uses the Service. The new terms may be displayed on-screen and the User may be required to read and accept them to continue its use of the Apps or the Service.
- 7.2 From time to time updates to the Apps or Service may be issued by the Service Provider. Depending on the update, the User may not be able to use the Apps or the Service until the User has downloaded and installed the latest version of the Apps, Service, browser or any other required components and accepted any new terms.
- 7.3 The User represents and warrants that the User either owns or controls any desktop, laptop, mobile telephone or handheld device on which the Apps or the Service is to be used ("**Device**") and that User is authorised to use such Device and to download and use the Apps or Service on such Device. The User will be responsible for any internet access or mobile fees or charges by any internet service provider or carriers with respect to use of the Apps or Service on the Device.
- 7.4 From time to time the Service Provider reserves the right to change which Devices are supported by the Service.
- 7.5 The User acknowledges that the provision of the Apps and the Service by the Service Provider, and/or the use by the User of the Apps or the Service on any Device, may be subject to terms and conditions imposed by third parties including network, Device and operating system providers ("**Third Party Terms**"). The User will comply with any Third Party Terms applicable to its use of the Apps, the Service or any Device.
- 7.6 The terms of the Service Provider's privacy policy for the Service, from time to time, available at [kuracloud.com/privacy](http://kuracloud.com/privacy) are incorporated into these Terms of Service by reference and apply to the Service. Additionally, by using the Apps or any Service, the User acknowledges and agrees that internet transmissions are never completely private or secure. The User understands that any message or information the User sends using the Apps or the Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 7.7 By using the Apps or the Service, the User consents to the Service Provider collecting and using technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve the Service Provider's products and to provide the Service to the User.
- 7.8 Any words following the terms "**including**", "**include**", "**in particular**" or "**for example**" or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## 8. GRANT AND SCOPE OF ACCESS

- 8.1 In consideration of the User agreeing to abide by the terms of these Terms of Service, the Service Provider grants the User for the period specified by the instance or course

administrator or the text that accompanies the access code (the "**Term**"), a non-transferable, non-exclusive licence, which shall not be capable of sub-licence, to:

- 8.1.1 download, install and use the Apps on Devices subject to these Terms of Service;
- 8.1.2 receive and use any free supplementary software code or update of the Apps incorporating "patches" and corrections of errors as may be provided by the Service Provider from time to time;
- 8.1.3 access the Service; and
- 8.1.4 download, view and use the Documentation,

in each case solely for the purposes of education and educational research.

8.2 Following the expiry of the Term:

- 8.2.1 the Service Provider in its absolute discretion will decide what use rights (if any) are granted to the User; and
- 8.2.2 the Service Provider may store Content and User Content.

## 9. ACCESS RESTRICTIONS

9.1 Except as expressly set out in these Terms of Service or as permitted by any local law, the User agrees not to:

- 9.1.1 copy the Apps, Service or Documentation except for the purposes of downloading the Apps or Documentation onto a Device and then subsequently copying those Apps or Documentation onto other Devices. For the avoidance of doubt this shall not allow the User to copy any of the code within the Apps or Service nor any of the text or concepts in the Documentation;
- 9.1.2 use the Apps, Service or Documentation to provide services to third parties;
- 9.1.3 rent, lease, sub-license, loan, distribute, disclose, or otherwise commercially exploit the Apps, Service or Documentation or otherwise make them available in whole or in part to any third party except for the purposes specified in **clause** 9.1.1;
- 9.1.4 make alterations to, or modifications of, the whole or any part of the Apps or Service or Documentation, or permit the Apps or Service or Documentation or any part of these to be combined with, or become incorporated in, any other programs; or
- 9.1.5 disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Apps or Service or attempt to do any such thing.

9.2 The User acknowledges that:

- 9.2.1 all uses of Content shall be for non-profit, non-commercial, educational or educational research purposes only;
- 9.2.2 commercial use of the Content is not permitted, unless the User has written permission from the owner of the Content;
- 9.2.3 unauthorised copying of the Content is not permitted, unless the User has written permission from the owner of the Content.

- 9.3 The User shall not represent or cause others to believe that the Content is the User's original works, or that the Service Provider endorses or is affiliated with any entity, product or service. The User expressly agrees to display the Service Provider's and relevant licensors' copyright and proprietary notice(s) with all of the Content, or any portion(s) thereof, that the User uses.
- 9.4 The User:
- 9.4.1 acknowledges that third party content has intellectual property rights owned by third parties; and
- 9.4.2 shall obtain licenses to use such content from their respective third party owner(s). The Service Provider disclaims all liability for user's infringement or other violation of third party rights in such content.
- 9.5 The User shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Apps, Service and Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Service Provider.

## **10. ACCEPTABLE USE RESTRICTIONS**

- 10.1 Any User Content may be subject to the Service Provider's review. While the Service Provider reserves the right to review, monitor, remove or delete User Content, the Service Provider is under no obligation to do so.
- 10.2 The Service Provider reserves the right at its sole and absolute discretion to restrict access to the Service, refuse to display User Content on the Service, remove User Content from the Service or refuse to use any User Content if the Service Provider considers it necessary or appropriate, including if the Service Provider receives a complaint alleging copyright infringement or if the User Content is deemed by the Service Provider to be objectionable, to potentially infringe any third party rights or to be contrary to applicable laws or otherwise unsuitable for use in the Service.
- 10.3 If in the Service Provider's sole judgment any User Content is in violation of applicable laws such User Content may be reported by the Service Provider to law enforcement authorities.
- 10.4 Without limiting the above in any way, the User must not:
- 10.4.1 use the Apps or the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms of Service, or act fraudulently or maliciously, for example, by using another User's account, or by hacking into or inserting malicious code, including viruses, or harmful data, into the Apps, any Service or any operating system;
- 10.4.2 infringe the Service Provider's intellectual property rights or those of any relevant licensor or any third party in relation to its use of the Apps or any Service;
- 10.4.3 transmit any material that is defamatory, offensive or otherwise objectionable in relation to its use of the Apps or any Service;
- 10.4.4 use the Apps or any Service in a way that could damage, disable, overburden, impair or compromise the Service Provider's systems or security or interfere with other users;
- 10.4.5 collect or harvest any information or data from any Service or the Service Provider's systems, except for User Content or Content which the User has obtained written permission from the relevant party to use;

- 10.4.6 attempt to decipher any transmissions to or from the servers running any Service; or
- 10.4.7 perform any security testing of the Apps or Service or the Service's hosting platform either manually or utilising any automated system.

## **11. USE OF THE SERVICE**

- 11.1 The User shall keep a secure password for the User's use of the Service and Documentation and shall keep such password confidential. The User confirms that it will not disclose or allow any third party to access, and will keep strictly confidential:
  - 11.1.1 the User's password, profile and login details; and
  - 11.1.2 the details, including profile details, of any digital certificate or digital passes issued to the User by the Service Provider or any other person,in connection with the User's use of the Apps or Service.
- 11.2 The User shall:
  - 11.2.1 provide the Service Provider with:
    - (a) all necessary co-operation in relation to these Terms of Service; and
    - (b) all necessary access to such information as may be required by the Service Provider, in order to provide the Service, including customer data, security access information and configuration services;
  - 11.2.2 comply with all applicable laws and regulations with respect to its activities under these Terms of Service;
  - 11.2.3 if it knows or discovers the identity of a person or patient described or depicted in the Content or User Content, shall not disclose this information to a third party;
  - 11.2.4 treat Content and User Content in accordance with the relevant laws for the ethical management of patients and health information;
  - 11.2.5 ensure that its Device, network and systems comply with the relevant specifications provided by the Service Provider from time to time; and
  - 11.2.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems or Device to the Service Provider's data centres, and for all problems, clauses, delays, delivery failures and all other loss or damage arising from or relating to the User's network connections or telecommunications links or caused by the internet.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The User retains ownership of any intellectual property rights that it holds in its User Content. When the User uploads, submits, stores, sends, or receives User Content to or through the Apps or Services, the User grants to the Service Provider and those it works with a license to use, host, store, reproduce, modify, create derivative works (such as translations, adaptations, or other changes the Service Provider makes so that User Content works better with the Apps and Services) and distribute the User Content so that the User continues to receive the

intended customer experience. This license is for the limited purpose of operating, promoting, and improving the Apps and Services, and to develop new Services. The license to the User Content is non-exclusive, meaning the User may use the User Content for its own purposes or let others use the User Content for their purposes. This license is fully-paid and royalty-free, meaning the Service Provider does not owe the User anything else in connection with its use of the User Content. The Service Provider may exercise its rights under this license anywhere in the world. Lastly, this license is perpetual, meaning that the Service Provider's rights under this license continue even after the User stops using the Apps and Services.

- 12.2 The User undertakes that:
  - 12.2.1 it owns all rights to its User Content or, alternatively, that it has the right to give the Service Provider the rights described above; and
  - 12.2.2 the User Content does not infringe the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party. The Service Provider disclaims all liability for the User's infringement or other violation of third party rights in third party content.
- 12.3 The Service Provider has not and does not agree to treat as confidential any suggestion, feedback, or idea provided by the User (any "**Feedback**"), and nothing in these Terms of Service or in the parties' dealings arising out of or related to these Terms of Service will restrict Service Provider's right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensation to the User.
- 12.4 The User acknowledge that all intellectual property rights in the Apps, the Service, the Content and the Documentation anywhere in the world belong to the Service Provider or the Service Provider's licensors, that rights in the Apps, the Service, the Content and the Documentation are licensed (not sold) to the User, and that the User has no rights in, or to, the Apps, the Service, the Content or the Documentation other than the right to use each of them in accordance with the terms of these Terms of Service. Except as expressly stated, these Terms of Service does not grant the User any rights to, or in, any intellectual property rights or any other rights or licences in respect of the Apps, Service, the Content or Documentation.
- 12.5 The User acknowledges that the User has no right to have access to the Apps or Service in source-code form.
- 12.6 The integrity of the Apps, Service and Content may be protected by digital rights management ("**DRM**") so that the intellectual property rights, including copyright, in the Apps, Service or Content are not misappropriated. The User must not attempt in any way to remove or circumvent any such DRM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in its possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such DRM.

### **13. LIMITATION OF LIABILITY AND INDEMNITY**

- 13.1 The User acknowledges that the Apps, Service and Documentation are all provided "as is". The Service Provider does not warrant that the User's use of the Apps or Service will be uninterrupted or error-free, nor that the Apps, Service, Documentation and/or information obtained by the User through the Apps or Service will meet the User's requirements.

- 13.2 The User acknowledge that the Apps and the Service have not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Apps and Service as described in the Documentation meet its requirements.
- 13.3 The User acknowledges that the Apps and Service may not be free of bugs and agrees that the existence of minor errors will not constitute a breach of these Terms of Service.
- 13.4 The Service Provider shall not under any circumstances whatever be liable to the User, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Terms of Service for:
- 13.4.1 loss of profits, sales, business, or revenue;
  - 13.4.2 business interruption;
  - 13.4.3 loss of anticipated savings;
  - 13.4.4 loss or corruption of data or information;
  - 13.4.5 loss of business opportunity, goodwill or reputation; or
  - 13.4.6 any indirect or consequential loss or damage.
- 13.5 Other than the losses set out in **clause** 13.4 (for which the Service Provider is not liable), the Service Provider's maximum aggregate liability under or in connection with these Terms of Service whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to fifty New Zealand dollars (\$50). This maximum cap does not apply to **clause** 13.6.
- 13.6 Nothing in these Terms of Service shall limit or exclude the Service Provider's liability for any liability that cannot be excluded or limited by law.
- 13.7 These Terms of Service set out the full extent of the Service Provider's obligations and liabilities in respect of the supply of the Apps, Service and Documentation. Except as expressly stated in these Terms of Service, there are no clauses, conditions, warranties, representations or other terms, express or implied, that are binding on the Service Provider. Any clause, condition, warranty, representation or other term concerning the supply of the Apps, Service or Documentation which might otherwise be implied into, or incorporated in, these Terms of Service whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- 13.8 The User shall defend, indemnify and hold harmless the Service Provider against all losses, liabilities, damages, costs, claims and expenses howsoever arising (including reasonable legal fees on a solicitor and own client basis and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) arising out of or in connection with the User's use of the Apps, Service Documentation and/or Content.

## 14. TERMINATION

- 14.1 The Service Provider may terminate these Terms of Service immediately by written notice to the User:

- 14.1.1 if the User commits a material or persistent breach of these Terms of Service which the User fails to remedy (if remediable) within 14 days after the service of written notice requiring the User to do so;
- 14.1.2 if the Service Provider determines (in its absolute discretion) that the continuance of these Terms of Service or any action or omission of the User has given rise to or is likely to give rise to any contravention of any Third Party Terms; or
- 14.1.3 if the institution the User is affiliated with has its subscription with the Service Provider terminated.
- 14.2 Upon termination for any reason:
  - 14.2.1 all rights granted to the User under these Terms of Service shall cease;
  - 14.2.2 the User must cease all activities authorised by these Terms of Service;
  - 14.2.3 the User must immediately delete or remove the Apps from all Devices in its possession and immediately destroy or return to the Service Provider (at the Service Provider's option) all copies of the Apps, Service and Documentation then in its possession, custody or control and, in the case of destruction, certify to the Service Provider that the User has done so; and
  - 14.2.4 termination will not limit any of the Service Provider's rights or remedies at law or in equity.

## 15. NOTICE

- 15.1 If any clause in these Terms of Service requires the User to give the Service Provider notice in writing, the User can send this to the Service Provider by e-mail at [legal@kuracloud.com](mailto:legal@kuracloud.com). The Service Provider will confirm receipt of this by contacting the User in writing, normally by e-mail.
- 15.2 If the Service Provider has to contact the User or give the User notice in writing, the Service Provider will do so by e-mail or by pre-paid post to such address as the User provides to the Service Provider from time to time.
- 15.3 Any notice given by the User to the Service Provider, or by the Service Provider to the User, will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## 16. GENERAL

- 16.1 The Service Provider may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms of Service. The User may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms of Service.
- 16.2 The parties do not intend to create any third party beneficiary rights for any person or entity other than the Service Provider and its affiliates, each of which shall be a third party beneficiary under these Terms of Service for all purposes.



- 16.3 No delay by either party in enforcing its rights will limit or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 16.4 If any provision of these Terms of Service (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.
- 16.5 These Terms of Service contains the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them, and the parties confirm that they have not entered into these Terms of Service on the basis of any representations that are not expressly incorporated in this agreement. Nothing in these Terms of Service will operate to limit or exclude any liability for fraud.
- 16.6 Nothing in these Terms of Service is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 16.7 Each of the clauses of these Terms of Service operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining clauses will remain in full force and effect.
- 16.8 These Terms of Service, its subject matter and its formation (and any non-contractual disputes or claims relating to these Terms of Service), will be governed by and interpreted in accordance with the laws of New Zealand.
- 16.9 Each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand over any claim or matter arising under or in connection with these Terms of Service.

The User should print a copy of these Terms of Service for future reference.

Last updated: 26 July 2017