

MASTER TERMS & CONDITIONS

INTERPRETATION

- Definitions: In the Agreement, the following terms have the stated meaning:

Term	Meaning
Agreement	The Proposal and these Master Terms and Conditions, including the Schedule.
Approved Purpose	The Licensee may use the Software for the collection and analysis of student data, to develop wellbeing strategies, make informed decisions around student wellbeing and intercept student wellbeing issues. The Software may only be utilised by those issued with accounts. If the Licensee wishes to provide additional users with access to the Software they can request to do so in discussions with the Licensor.
Confidential Information	the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. The Licensor's Confidential Information includes the Software and the Documentation.
Documentation	the user and technical documentation designed to enable the Licensee to properly use and operate the Software, and includes any update of the documentation.
End Date	the date referred to in the Proposal. If no such date is specified in the Proposal, the date referred to in clause 15.1b.
Fees	the fees set out in the Proposal.
Force Majeure	<p>an event that is beyond the reasonable control of a party, excluding:</p> <ul style="list-style-type: none">• an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or• a lack of funds for any reason.
Intellectual Property Rights	includes copyright, and all rights existing anywhere in the world conferred under statute, common law or equity in relation to inventions, registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Term	Meaning
Key Details	the Agreement specific details set out in the Proposal.
Licensee	The school/entity identified in the Proposal and includes any of its agents, representatives, staff and students that use the Services.
Licensor	Komodo Monitr Limited, 6774853.
Payment Terms	the payment terms set out in the Proposal.
Proposal	the Proposal between the Licensor and Licensee.
Services	Access to the Software, Licensor's website and mobile application, the Support Services and any other services specified in the Proposal.
Software	Komodo wellbeing software, including any Update. Komodo is a software platform that collects and analyses wellbeing data, to provide schools with strategical insight into the health and wellbeing of their student body.
Start Date	the date of the Proposal.
Support Services	the support services described in the Schedule and the Proposal.
Territory	the territory set out in the Proposal.
Update	a new version of the existing Software released to the Licensee by the Licensor and intended to provide bug fixes and resolve other technical issues without providing new features or additional functionality.
Year	a 12 month period commencing on the Start Date or any anniversary of the Start Date.

○ Interpretation: In the Agreement:

- clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- words in the singular include the plural and vice versa;
- a reference to:
 - a party to the Agreement includes that party's permitted assigns;
 - personnel includes officers, employees, contractors and agents, but a reference to the Licensee's personnel does not include the Licensor;

- a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
- including and similar words do not imply any limit; and
- a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and
- if there is any conflict between the Proposal and these Master Terms and Conditions, the Proposal will prevail.

• LICENCE

The Licensor grants to the Licensee, and the Licensee accepts, a non-exclusive and non-transferable licence from the Start Date to the End Date to use the Software and the Documentation solely for the Approved Purpose within the Territory and on the terms and conditions of the Agreement.

• LICENCE CONDITIONS

- Conditions: The Licensee must:
 - use the Software and the Documentation for lawful purposes only and must not copy (except making a single copy for the Licensee's own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-license or otherwise deal in the Software or the Documentation except:
 - as expressly provided for in the Agreement; or
 - to the extent expressly permitted by any law or treaty that is in force in the Territory where that law or treaty cannot be excluded, restricted or modified by the Agreement;
 - ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
 - not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or the Licensee's rights under the Agreement;
 - not challenge the Licensor's ownership, or the validity, of the Software, the Documentation or any other item or material created or developed by or on behalf of the Licensor under or in connection with the Agreement (including the Intellectual Property Rights in those items); and
 - notify the Licensor in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.

• PROVISION OF SERVICES

- The Licensor will supply the Services and Software to the Licensee in accordance with the Agreement.
- The Licensor does not automatically accept customer generated requests for any additional Services or Software. All such requests submitted by the Licensee will be subject to acceptance by the Licensor (in its absolute discretion) by confirming acceptance in writing, and will not become binding on the Licensor until such acceptance. The Licensee acknowledges and agrees that the Licensor is not under any duty to accept additional requests for Services from the Licensee.

- **SUPPORT SERVICES**

The Licensor must provide the Licensee with the Support Services in accordance with the Schedule, provided the Licensee has:

- paid all Fees due;
- maintained a proper operating environment for the use of the Software in accordance with any guidance from the Licensor, including in the Documentation; and
- complied with the Agreement and the Documentation.

- **FEES**

- Fees: The Licensee must pay the Fees to the Licensor for the Software licence under the Agreement and for the provision of the Services.

- Invoicing and payment:

- The Licensor must provide the Licensee with valid invoices on the dates set out in the Payment Terms or in response to the Licensee's request for any additional Services.
- The Licensee must pay the Fees:
 - within 28 days of receiving an invoice from the Licensor; and
 - electronically in cleared funds without any set off or deduction except to the extent required by law. If the Licensee is required by law to make any deduction, the Licensee must pay the Licensor any additional amount that is necessary to ensure receipt by the Licensor of the full amount which the Licensor would have received but for the deduction.
- Except when required by law, paid Fees are non-refundable.

- Overdue Payments

- The Licensor may charge penalty interest on overdue amounts and/or invoices at its discretion. This will be charged at a rate of two per cent (2%) per calendar month calculated daily and capitalised monthly on the unpaid money from the due date until payment in full is made (including after as well as before any Court judgement).
- Any payment that is foreseen to be late by the Licensee is required to provide 7 days written notice to the CEO of the Licensor and by agreement the due date may be extended. Please note this decision will be at the discretion of the CEO and is not automatically agreed but will be considered in good faith.

- **SUBSCRIPTIONS**

- Some parts of the Service are billed on a subscription basis ("Subscription(s)"). The Licensee will be billed in advance on a recurring and periodic basis ("Billing Cycle"). Billing cycles are set either on an annual basis when purchasing a Subscription.

- At the end of each Billing Cycle, The Licensee's Subscription will automatically renew under the exact same conditions unless the Licensee or Licensor cancels it. The Licensee may cancel its Subscription renewal either through its online account management page or by contacting the Licensor's customer support team.

- A valid payment method, including a credit card, is required to process the payment for the Subscription. The Licensee shall provide the Licensor with accurate and complete billing

information including full name, address, state, zip code, telephone number, and valid payment method information. By submitting such payment information, the Licensee automatically authorises the Licenser to charge all Subscription fees incurred through the Licensee's account to any such payment instruments.

- Should automatic billing fail to occur for any reason, the Licenser will issue an electronic invoice indicating that the Licensee must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.
- The Licenser in its sole discretion and at any time, may modify the Subscription fees for the Subscriptions. Any Subscription fee change will become effective at the end of the then-current Billing Cycle.
- The Licenser will provide the Licensee with reasonable prior notice of any change in Subscription fees to give the Licensee an opportunity to terminate its Subscription before such change becomes effective.
- The Licensee's continued use of the Service after the Subscription fee change comes into effect constitutes the Licensee's agreement to pay the modified Subscription fee amount.



- **FREE TRIAL**

- The Licensor may, at its sole discretion, offer a Subscription with a free trial for a limited period of time ("Free Trial"). If the Licensee registers for a free trial of the Services, these terms will also govern that free trial.
- The Licensee may be required to enter its billing information in order to sign up for the Free Trial.
- If the Licensee enters its billing information when signing up for the Free Trial, the Licensee will not be charged by the Licensor until the Free Trial has expired. On the last day of the Free Trial period, unless the Licensee cancel its Subscription, the Licensee will be automatically charged the applicable Subscription fees for the type of Subscription it has selected.
- At any time and without notice, the Licensor reserves the right to
 - modify the terms and conditions of the Free Trial offer; and/or
 - cancel such Free Trial offer.
- If the Licensee does purchase a service before the end of its Free Trial, or if it purchases a service that would be a downgrade from that covered by the Free Trial, the Licensee must request to export its data before the end of the trial period or the data may be permanently lost. During the Free Trial the Services are provided "as-is" without any warranty.

- **ACCOUNTS**

- Upon creating an account with the Licensor, the Licensee must provide information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of these Terms, which may result in immediate termination of the Licensee's account.
- The Licensee warrants that anyone who uses the Services in connection with the Licensee's account is over the age of 18 years old and has agreed to be bound by these Terms. If anyone is under the age of 18 years old, the Licensee warrants that it has obtained the consent from the minor's parent or guardian, who has agreed to be bound by these Terms on the minor's behalf.
- The Licensee is responsible for safeguarding the password that it uses to access the Services and for any activities or actions under the Licensee's password, whether its password is with the Licensor's Service or a third-party service.
- The Licensee agrees not to disclose its password to any third party. The Licensee agrees to be fully responsible for activities that relate to its account or its password. The Licensee must notify the Licensor immediately upon becoming aware of any breach of security or unauthorized use of its account.
- The Licensee may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than the Licensee without appropriate authorization, or a name that is otherwise offensive.

- **LINKS TO OTHER WEBSITES**

- The Licensor's website and mobile application may contain links to third-party websites or services that are not owned or controlled by the Licensor.
- The Licensor has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or services. The Licensee acknowledges and agrees that the Licensor shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

- The Licensor only provides links to external websites as a convenience, and the inclusion of such a link to external websites does not imply the Licensor's endorsement of those websites. The Licensee acknowledges and agrees that when it accesses other websites on the Internet, it does so at its own risk.

- **INTELLECTUAL PROPERTY**

- The Licensee acknowledges that all Intellectual Property Rights, including copyright relating to the Software are the sole property of the Licensor and agrees to keep such Intellectual Property Rights confidential to the extent that they are not public knowledge.
- Subject to clause 2 the Licensee does not obtain, either under this Agreement or by reason of its use of the Software, any right to copy the materials comprising the Software, or any right to use the Software after this Agreement has terminated.
- Any modifications or updates, whether carried out by the Licensor, Licensee or any other person, remain the property of the Licensor.

- **CONFIDENTIALITY**

- Security: Each party must, unless it has the prior written consent of the other party:
 - keep confidential at all times the Confidential Information of the other party;
 - effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clause 12.1a and 12.1b.
- Permitted disclosure: The obligation of confidentiality in clause 12.1 does not apply to any disclosure or use of Confidential Information:
 - for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
 - required by law (including under the rules of any stock exchange);
 - which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
 - by the Licensor if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Licensor enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 12.

- **WARRANTIES**

- Mutual warranties: Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.
- Licensor warranties: The Licensor warrants that:
 - to the best of its knowledge, the use of the Software by the Licensee in accordance with the Agreement will not infringe the Intellectual Property Rights of any other person; and

- the Software will materially perform in conformity with the Documentation although the Licensee acknowledges that the Software is of a technical nature and may not be error-free or bug-free.
- Breach of warranty: Subject to clause 13.4, if the Software does not meet the warranty in clause 13.2b, the Licensor must, at its option and cost, remedy, repair, enhance or replace the defective item so that the Software meets and satisfies that warranty. The remedy, repair, enhancement or replacement of a defective item as described in this clause will be the Licensee's sole remedy against the Licensor for a breach of warranty under clause 13.2b.
- Exclusion of warranty cover: The Licensor is not obliged to remedy, repair, enhance or replace any defective item under clause 13.3 to the extent that the defect arises from or in connection with:
 - modification or alteration of the Software by any person other than the Licensor; or
 - a breach of the Agreement by the Licensee, including use of the Software by the Licensee or its personnel in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised in writing by the Licensor.
- No implied warranties: To the maximum extent permitted by law:
 - the Licensor's warranties are limited to those set out in the Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under part 3 of the Contract and Commercial Law Act 2017) are expressly excluded; and
 - the Licensor makes no representation concerning the quality of the Software or the Support Services, and does not promise that the Software will be error-free, bug-free, or will operate without interruption.
- Consumer Guarantees Act: The Licensee agrees and represents that it is acquiring the Software and the Services, and entering the Agreement, for the purposes of trade. The parties agree that:
 - to the maximum extent permissible by law, the Consumer Guarantees Act 1993 does not apply to the supply of the Software or the Support Services, or the Agreement; and
 - it is fair and reasonable that the parties are bound by this clause 13.6.
- Fair Trading Act: You confirm that you are in trade and acquiring the Software or Services for business purposes and agree that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.
- **LIABILITY**
- Unrecoverable loss: Neither party is liable to the other under or in connection with the Agreement for any:
 - loss of profit, revenue, savings, business, data and/or goodwill; or
 - consequential, indirect, incidental or special damage or loss of any kind.
- No liability for other's failure: Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.
- No liability for End Users:
 - The role of the Software is to process and analyse the data provided by the end users. The Licensor takes no responsibility for what the Licensee chooses to do with

this information. The Licensee acknowledges that the results from the Software are dependent on the responses provided by the end users.

- The Licensee acknowledges that it is responsible for obtaining permission from the students and their parents or guardians around the provision of their personal information to the Software.
- Licensee's Liability: The Licensee shall have the sole responsibility for adequate security protection and backup of data and/or equipment used in connection with its usage of the Services and will not make a claim against lost data, re-run time, inaccurate instruction, work delays or lost profits resulting from the use of the Services.
- Licensor's Liability: The Licensor shall not be held liable for any indirect, punitive, special, incidental or consequential damage (including loss of business, revenue, profits, use, privacy, data, goodwill or other economic advantage) however it arises, whether for breach of contract or in tort, even if it has been previously advised of the possibility of such damage. Without limiting the foregoing, in no event will the Licensor's aggregate liability to the Licensee exceed, in total, the amounts paid by the Licensee to the Licensor.
- Indemnity: As a condition of the Licensee's access to and use of the Services, the Licensee agrees to indemnify the Licensor and its successors and assigns for all damages, costs, expenses and other liabilities, including but not limited to legal fees and expenses, relating to any claim arising out of or related to the Licensee's access to and use of the Services or the Licensee's breach of these Terms and any applicable law or the rights of another person or party.
- Mitigation: Each party must take reasonable steps to mitigate any loss or damage, cost, or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.
- Survival: This clause 14 survives the expiration of the Licensee's registration, and applies to claims arising both before and after the registration ends.

TERM AND TERMINATION

- Duration: Unless terminated under this clause 15, the Agreement:
 - starts on the Start Date and ends on the End Date; but
 - where there is no End Date, continues for successive terms of 12 months from the Start Date unless a party gives at least 30 days' notice that the Agreement will terminate on the expiry of the then-current term.
- Termination rights:
 - The Licensor may terminate or suspend the Licensee's account immediately, without prior notice or liability, for any reason whatsoever.
 - The Licensee may, by notice to the Licensor, immediately terminate the Agreement if the Licensor:
 - breaches any material provision of the Agreement and the breach is not:
 - remedied within 14 days of the other party notifying it of the breach; or
 - capable of being remedied;
 - becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

- For the avoidance of doubt, the Licensor may, by notice to the Licensee, immediately terminate the Agreement if the Licensee fails to install an Update in accordance with section 4 of the Schedule.
- Consequences of termination or expiry:
 - Termination or expiry of the Agreement does not affect either party's rights and obligations accrued before that termination or expiry.
 - On termination or expiry of the Agreement, the Licensee must pay all Fees for the rights and Services provided prior to that termination or expiry.
 - Each party must, at the other party's request following the termination or expiry of the Agreement, return to the other party or destroy all Confidential Information of the other party (including, in the case of the Licensee, the Software and Documentation) in the first party's possession or control.
 - The Licensee's right to use the Services will immediately cease.
 - The Licensor shall have no liability to the Licensee or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by the Licensor in connection with the Agreement.
 - If the applicable law requires the Licensor to provide notice of termination or cancellation, the Licensor may give prior or subsequent notice by posting it on the Licensor's website and/or mobile application or by sending a communication to any address (email or otherwise) that the Licensor holds for the Licensee.
- Obligations continuing: Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 11, 12, 14, 15.3, 15.4 and 16, continue in force.
- **DISPUTES**
 - Good faith negotiations: Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations. If the parties cannot resolve the dispute within 14 days of the notice of the dispute, then the dispute may be referred to mediation.
 - Mediation: The parties may, if they agree, refer the dispute to mediation or some other form of alternative dispute resolution. If a dispute is referred to mediation, the mediation will be conducted:
 - by a single mediator agreed by the parties or if they cannot agree, appointed by the Chair of Resolution Institute.
 - on the terms of the Resolution Institute standard mediation agreement, and
 - at a fee to be agreed by the parties or if they cannot agree, at a fee determined by the Chair of Resolution Institute.
 - Costs: Each party will pay its own costs of mediation or alternative dispute resolution under this clause.
 - Obligations continue: Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
 - Right to seek relief: This clause 16 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.
- **PRIVACY POLICY**
 - You hereby acknowledge and agree that our Privacy Policy (available here: [Link](#)) will apply to the provision of the Services and the Software.

- **GENERAL**

- Force majeure: The Licensor is not liable to the Licensee for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the Licensor:
 - immediately notifies the Licensee and provides full information about the Force Majeure;
 - uses best efforts to overcome the Force Majeure; and
 - continues to perform its obligations to the extent practicable.
- Waiver: To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party. The Licensor's failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect.
- Independent contractor: The Licensor is an independent contractor of the Licensee. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- Notices: A notice given by a party under the Agreement must be delivered to the other party via email to an email address notified by the other party for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.
- Severability:
 - If any provision of the Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.
 - If modification under clause 18.5a is not possible, the provision must be treated for all purposes as severed from the Agreement without affecting the legality, enforceability or validity of the remaining provisions of the Agreement.
- Variation: Any variation to the Agreement must be in writing and signed by both parties.
- Entire agreement: The Agreement sets out everything agreed by the parties relating to the Services and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Services that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 18.7.
- No assignment: The Licensee may not assign or otherwise dispose of the Software or the benefit of this Agreement without the prior written consent of the Licensor on such conditions as the Licensor reasonably chooses to impose. The Licensor may assign this Agreement.
- Law: The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.
- Amendments: The Licensor reserves its right to, in its sole discretion, modify or replace these terms at any time. If the Licensor reasonably considers a revision to be material, it will provide at least 30 days' notice prior to any new terms taking effect. It is the Licensee's sole responsibility to periodically check these Terms for any changes. If the Licensee does not agree with any of the changes to these Terms, it is the Licensee's sole responsibility to stop using the Services. The Licensee's continued use of the Services will be deemed as acceptance thereof.

SCHEDULE

Support Services

- 1 Upon receiving payment of the Fees, and subject to the conditions in sections 3 and 4 of the Schedule, the Licensor agrees to perform the Support Services.
- 2 Where the Licensee considers on reasonable grounds that the Software is not materially performing in conformity with the Documentation, the Licensor will:
 - a provide video call, telephone and email support in the form of consultation, assistance and advice; and
 - b use reasonable efforts to assist in the resolution of the issue.
- 3 The provision of support by the Licensor under section 2 of the Schedule is conditional on the Licensee:
 - a first using reasonable efforts to resolve the issue by referring to the Documentation; and
 - b contacting the Licensor during its business hours (Monday to Friday from 8.00am to 8.00pm, excluding public holidays in New Zealand via one of the following methods:

Email: support@komodowellbeing.com, OR, contact@komodowellbeing.com
- 4 The Licensor may, at its discretion, from time to time provide the Licensee with Updates, in which case the terms set out below will apply.
 - a Where the Licensor provides an Update, the Licensee must promptly install the Update.
 - b Without limiting clause 15.2b, if the Licensee fails to install the Update, the Licensor may, at its option:
 - i cease providing the Support Services; or
 - ii increase the Fees with immediate effect by an amount the Licensor considers reasonable to cover any additional cost of the Licensor continuing to provide the Support Services.
- 5 Nothing in the Agreement requires the Licensor to provide Support Services where the support is required as a result of a circumstance described in clause 13.4a or 13.4b.

Last Updated: January 2025