

## Important Information

1. Kinderloop Asia Pacific Pty Ltd ACN 165 394 669 ("**KAP**", "us", "we", or "our") operates Kinderloop mobile applications "Kinderloop" and "Kinderloop Plus" (the **App/Apps**) and the website <http://kinderloop.com> (**Our Website**), together the **Products**.
2. The Product enables a registered childcare centre (**Centre**) and its staff, consultants, directors, advisors and representatives (**Educators**) to communicate with a child's parents, guardians and other family members approved by any parent or guardian (**Family Members**), regarding the child's activities.
3. All communication between a Centre and Family Members using the Products is via a private electronic communication loop (a **Kinderloop**).
4. A Kinderloop may be a Primary Kinderloop (involving only a child's Family Members, the Centre and Educators), or it may be a Secondary Kinderloop (involving a child's Family Members, the Family Members of other children at the Centre, the Centre and Educators), subject to these Terms.
5. The Products may only be used for the purposes of communication between a Centre and Family Members of children at that centre and/or to assist the Centre to maintain records for accreditation and other legal purposes (the **Permitted Purpose**).
6. You agree to use the Products solely for the Permitted Purpose.
7. You can access your Kinderloops via the Products.

## Acceptance of Terms

8. Please read these Terms carefully. You signify that you have read, understood and agree to be bound by these Terms by (a) using, browsing and/or reading Our Website; or (b) accepting these Terms by clicking to accept the Terms where this option is made available to you. These Terms continue in force until we terminate them.
9. Your access to and use of any Product is conditional on your acceptance of, and compliance with, these Terms.
10. If there is any conflict between any representation made by us and these Terms, these Terms shall prevail.

## Creating a Kinderloop Account

11. You must create a KAP account (**Account**) to use the Products, and must provide us information that is accurate, complete, and current to the best of your knowledge. You may do this by clicking on the email link we send you.
12. You are responsible for safeguarding the password for your Account and for any and all activities on your Account and/or under your password. You must not disclose your username or password to anyone and notify us immediately upon becoming aware of any breach of security or unauthorised use of your Account.

## Terms for Parents/Guardians

13. Paragraphs 14 to 21 below apply to parents and guardians.
14. You acknowledge and agree (for each of your children attending a Centre), that the Centre will use your personal information and your child's personal information to create a profile about your child (**Child Profile**) which will be accessible by you and others, including:
  - (a) the Centre and its Educators;
  - (b) you, and any other parent or guardian of your child;
  - (c) any Family Members approved by you, or by another parent or guardian; and
  - (d) us, our staff, consultants, directors, advisors, and representatives.
15. As a parent or guardian you permit the Centre and Educators to take digital recordings of your child, including video and sound recording and photographic images of your child and/or their artistic works, alone and together with other children, Educators and/or other persons (**Child Recordings**), and to use those recordings in the Products for the Permitted Purpose, subject to these Terms. You authorise the Centre, its Educators and us to share Child Recordings with you and others pursuant to these Terms.

16. The Centre may upload certain content to a Kinderloop, including the following (Content):
- (a) Child Recordings;
  - (b) reports, documents and comments concerning your child and their activities;
  - (c) information about group activities;
  - (d) Centre information; and
  - (e) other material.
17. Parents/Guardians and Family Members may use the Products to access Content and add to the Content of that Kinderloop by providing commentary.
18. You agree that Content relating to your Child may be uploaded to a Primary Kinderloop and/or a Secondary Kinderloop. You hereby agree and consent for Content to be shared with Family Members, and the Family Members of other children at the Centre in this manner.
19. If you have any child welfare concerns regarding paragraph 14(c), 18 or any other paragraph of these Terms, you must immediately contact your Centre in writing.
20. A parent or guardian must:
- (a) only accept an invitation to open, activate or authorise your Child Profile relating to a Centre known to you and your child;
  - (b) reject and immediately report to us any invitation to open a Child Profile that does not relate to a Centre known to you and your child; and
  - (c) reject and immediately report to us any invitation to any other Child Profile.
21. As a parent or guardian, you warrant:
- (a) you are the parent or legal guardian of each and every child the subject of any Child Profile you activate, authorise or access; and
  - (b) you understand a child is a vulnerable person and you agree to any and all Content uploaded to a Kinderloop involving you.

#### **Terms for Centre & Educators**

22. The Centre agrees that its Educators use the Products as agents of the Centre. The Centre is responsible for and liable for the conduct of each Educator in their use of the Products at all times, including any breach of these Terms. The Centre releases and forever indemnifies us for any breach of these Terms by it and/or its Educators.
23. The Centre, and each Educator agrees:
- (a) they will carefully monitor and supervise Content at all times;
  - (b) (except as required by law) they will not permit or enable any person other than the Centre, Educator and a child's Family Members to access a Child Profile; and
  - (c) (except as required by law) they will not permit or enable any person other than the Centre, Educator and authorised Family Members to access any Kinderloop..
24. As a Centre or Educator, you warrant:
- (a) you have all necessary authorities and express consents to create each Child Profile and use the Products for each child pursuant to these Terms, including express parent/guardian consents relating to the collection, use, and storage (by you and us) of personal information of that child; and
  - (b) you will at all times:
    - (i) be conscious of your duties of care to each child when uploading Content to the Child Profile;
    - (ii) demonstrate the highest standards of professional behaviour, exercise professional judgement and act in a courteous and sensitive manner when interacting with us and with Family Members;
    - (iii) be familiar with and comply with at all times all legislative and industrial requirements and any professional responsibilities, codes of conduct, policies and procedures applicable to you as an Educator;
    - (iv) use information gained in the course of your use of the Products only for the Permitted Purposes; and
    - (v) except in the discharge of official duties, use no information gained by you or conveyed to you in the course of your use of the Products.

25. Where the Centre is not a corporate person, the Centre warrants that it is authorised to accept these terms on behalf of its owner(s), and does so with their/its express permission and authority.

26. As an Educator, you also warrant you accept these Terms with the express permission and authority of the Centre.

### **Fee**

27. The App is free to download on your device.

28. Subject to your compliance with these Terms, we grant you a limited, fixed term, non-exclusive, non-assignable, non-transferrable licence to use the Products.

29. You agree to pay a Licence Fee on a subscription basis being a non-refundable payment due monthly, six monthly or annually that will automatically renew until Your Account is suspended. If you wish to suspend Your Account, you will notify us in writing one month before your archive date. Information regarding the Licence Fee is available on Our Website. We will notify you if the Licence Fee changes.

30. The License Fee may differ from one country to another, and from one user to another.

31. Electronic card payments are not processed through pages controlled by us. We use one or more online payment service providers who encrypt your card or bank account details.

### **Bad Behaviour**

32. We take child wellbeing, welfare and safety seriously and will not tolerate bad behaviour associated with the use of any Product, including behaviour which is (in our view in our absolute discretion) rude, vulgar, inappropriate, discriminatory, disrespectful, sexualised, illegal, discriminatory, violent, abusive or bullying, and any other behaviour that we dislike (Bad Behaviour).

33. You must not engage in Bad Behaviour or use Your Account to request any personal information from any other person, which will also be deemed as Bad Behaviour.

34. You must immediately report any Bad Behaviour to the Centre your child attends.

35. We do not monitor Content but we will investigate any Bad Behaviour reported to us. If we form the view that you have engaged in Bad Behaviour, we will immediately delete any offending material from Your Account without notice to you.

36. We may:

- (a) shut down Your Account without notice to you and without any pro-rata refund of any Licence Fee received; and/or
- (b) report Bad Behaviour to relevant law enforcement authorities or government agencies, at our absolute discretion.

### **Your use of the Products**

37. You must not under any circumstances:

- (a) copy, reproduce, publish, or share with any third person through any means, any Content whatsoever (including sharing by email, uploading, reducing to hard copy, or sharing on any social media platform or any other electronic source);
- (b) use the Products in any way that may or will:
  - (i) compromise the health, welfare or safety of any child;
  - (ii) infringe any other person's intellectual property rights;
  - (iii) violate our rights under law in any way (including infringing our intellectual property rights); or
  - (iv) be inconsistent with these Terms;
- (c) use Products or the Content for any purpose other than purposes relating to the subject child's education and development.
- (d) adapt, reverse engineer, decompile, disassemble, reproduce, store, distribute, display, perform, publish or create derivative works from, any part of Products; and/or
- (e) remove any identification, reference number, logo or other KAP information which may be embedded in any file associated with any Product on your device.

38. We reserve the right to modify, or remove any Content from Your Account and/or your contribution to any Kinderloop at any time for any reason, without notice to you.

## Intellectual Property Rights

- 39. KAP does not claim any intellectual property rights in any Content.
- 40. KAP maintains all intellectual property rights in the Products.
- 41. You hereby grant to us a perpetual, royalty free, non-exclusive licence to use your intellectual property in the Content for the Permitted Purposes.
- 42. You agree that you will notify us of any suspected infringement of KAP intellectual property rights.

## Third party websites

- 43. Products may contain links to third-party websites or services that are not owned or controlled by us, including advertisements for services offered by that third party. The inclusion of a link to external websites does not imply our endorsement of those websites. We have no control over, and assume no responsibility for, the content, privacy policies, or practices of any of those third party websites or services and you acknowledge and agree that when you access them, you do so at your own risk. You release us from any liability in respect of links to third-party websites or services that are not owned or controlled by us.

## Limitation of liability

- 44. All implied conditions, warranties and terms are excluded from these Terms.
- 45. We make no representation or warranty that the Products:
  - (a) will be useful to you; meet your requirements; of satisfactory quality; free from error, defect, virus or any other harmful component; fit for any particular purpose; or available or accessible, without interruption or without error; or
  - (b) will function uninterrupted, or be available at any particular time or location.
- 46. You agree that:
  - (a) we shall not be liable for any damages suffered as a direct or indirect result of your use of the Products; and
  - (b) subject to (a), if in any circumstances we become liable to you, the limit of our liability is the pro-rata amount you paid for the Licence Fee.
- 47. Paragraphs 44 to 46 and any other paragraph which excludes or restricts our liability applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to us.
- 48. If you become aware of any breach of any term of these Terms by any person, please tell us by email including a subject title marked URGENT. We welcome your input but do not guarantee that we will agree with your judgement.

## You indemnify us

- 49. As a condition of your access to and use of Products, you agree to indemnify us, our directors, officers, agents, employees and contractors and our successors and assigns, against all loss, actions, proceedings, damages, costs, and expenses (including legal fees) and claims arising directly or indirectly from:
  - (a) your breach of these Terms;
  - (b) any activity on Your Account or under your password; and
  - o your access to the Products.
- 50. Paragraph 49 survives termination of these Terms, and applies to claims arising both before and after such expiration or termination.

## Privacy

- 51. We recognise the importance of protecting your privacy. Our Privacy Policy detailing our policies regarding the collection, use and disclosure of your personal information is available on Our Website, and you agree to be bound by it.

## Termination

- 52. We may terminate or suspend Your Account and terminate any license described in the Terms immediately, without notice or liability, for any reason whatsoever at our absolute discretion. We will do so if you breach these Terms.
- 53. Upon termination or suspension, your rights to use any Product will immediately cease and we or the Centre will archive and store all Content for at least the period required by law.

54. If you wish to suspend Your Account, you may:

- (a) discontinue using the Products; or
- (b) inform the Centre that you wish to suspend your Child Profile.

55. Any Term which by its nature should survive termination shall survive termination, including, without limitation provisions relating to ownership, intellectual property, warranties, disclaimers, indemnities and limitations of liability.

56. We shall not be liable to you or any third party for any claim or damages arising out of any termination or suspension or any other actions taken by us.

57. If applicable law requires us to provide notice of termination or cancellation, we may give prior or subsequent notice by posting it on Products or by sending a communication to any address (email or otherwise) that we have for you in our records.

58. We do not, under any circumstances, offer refunds in the event of suspension or termination.

59. If closing account with us, access can be granted to the admin level user on the following terms, 12 hrs free, 1 week \$10(+GST), ongoing: \$30pm or;  
option 1) do nothing, data remains as is for next 7 years, then deleted;  
option 2) do nothing, but if access required then see above costs  
option 3) download posts, accidents and daily activity (i.e. not custom planning or medication). Free if less than 1GB which is roughly 500 posts, otherwise \$5 per extra GB. That data is then deleted from the system.

#### **Miscellaneous matters**

60. You will give any required notice under these Terms to us by sending an email to [legal@kinderloop.com](mailto:legal@kinderloop.com).

61. If any part of these Terms is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent necessary to bring it within the laws of that jurisdiction and to prevent it from being void, and shall be binding in that changed or reduced form.

62. Our rights and obligations set out in these Terms shall pass to any permitted successor in title.

63. Any obligation in these Terms intended to continue to have effect after termination shall so continue.

64. We will communicate with you by e-mail or by posting notices on Our Website. You agree that all such electronic communications satisfy any legal requirement that such communications be in writing.

65. Any communication emailed to you will be deemed as having been received within 24 hours if no notice of non-receipt has been received by the sender.

66. These Terms do not give any right to any third party.

67. These Terms shall be governed by laws of the State of New South Wales and the Commonwealth of Australia and the parties hereby submit to the non-exclusive jurisdiction of the Courts of New South Wales.