

Kiosk Agreement

Last updated 11 January 2019



PART A – PARTIES

HotDoc	HotDoc Online Pty Ltd ABN 84 159 662 558 (HotDoc) of Level 9, 525 Flinders Street, Melbourne VIC 3000
Clinic	As specified in your Software User Agreement (SUA)
Date	As specified in your SUA

PART B – BACKGROUND

- A. HotDoc is the owner of the item of personal property (the Goods) described in the Schedule until delivery or deemed delivery of the Goods to the Clinic.
- B. The parties agree that these terms of the Agreement apply to the sale in addition to the terms agreed in the Software User Agreement (SUA) signed by the Clinic.
- C. HotDoc has agreed to sell the Goods to the Clinic in the Schedule for the purchase price (the Price) set out in the SUA.
- D. The Warranty Period for this Agreement is three (3) years.
- E. This Agreement will take precedence over the terms of the SUA to the extent of any inconsistency in relation only to the Goods in this Agreement.

PART C – AGREED TERMS

1. The Sale and the Purchase

- 1.1 HotDoc hereby sells to the Clinic the Goods for the Price and the Clinic hereby purchases the Goods from HotDoc for the Price.
- 1.2 HotDoc sells and the Clinic takes title to the Goods both at law and in equity and free of all encumbrances, mortgages and adverse interests of every kind.
- 1.3 Where in order for the Clinic to take title to the Goods any transfer, assignment or notification thereof must be registered or lodged with any government authority department or instrumentality, HotDoc must sign as transferor or assignor all such documents as the Clinic may reasonably request to permit registration or recognition of the Clinic as owner.

2. Payment of Price and Title

- 2.1 The Clinic must pay the whole of the Price to HotDoc simultaneously with the signing of this Agreement and delivery of an invoice from HotDoc to the Clinic. If for whatever reason the Clinic does not pay the whole of the Price to HotDoc then, notwithstanding anything elsewhere in this Agreement for sale or the SUA, title to the Goods does not pass from HotDoc to the Clinic until full payment of the Price has been made.

- 2.2 The Price must be paid in cash, by bank deposit or in such other way or means as HotDoc directs.
- 2.3 Where for the purposes of any Goods and Services Tax (GST) legislation GST is payable on this sale then the Price is exclusive of GST and the Clinic must pay to HotDoc in addition to the Price any GST payable on this sale as a supply of goods.

3. Location of the Goods

The Clinic warrants that the Goods specified will only be located and used within Australia and New Zealand.

4. Warranties given by HotDoc

- 4.1 HotDoc warrants and represents to be the sole owner of the Goods, to have full power to sell to the Clinic, no other person has any interest, right to use, or buy the Goods so that upon the Clinic paying the Price for the Goods the Clinic will be the absolute owner of the Goods both at law and in equity.
- 4.2 There are no hidden defects in the Goods. The Goods are sold subject to their apparent condition.
- 4.3 The Goods are sold as described in the Schedule. Any components, add-ons or features not expressly described in the Schedule do not form part of this sale.
- 4.4 The Goods are sold as new and unused.
- 4.5 Where the Goods are to be used in accordance with any specifications referred to in the description of the Goods, then HotDoc states that as far as HotDoc is aware the Goods meet those specifications. The Clinic acknowledges that the Clinic is satisfied that the Goods meet those specifications.
- 4.6 HotDoc warrants and represents that the Goods will remain in substantial conformity with its published specifications for the Warranty Period commencing from the date of delivery or deemed delivery.
- 4.7 The Clinic acknowledges that:
 - 4.7.1 HotDoc cannot guarantee that the Goods and their operation will not be uninterrupted or error-free at all times;
 - 4.7.2 The performance of the Goods (including response times) will depend on factors outside the parties' control including the design and performance of the Clinic's systems, the state of the relevant telecommunications networks and their interconnections and network congestion; and
 - 4.7.3 Although HotDoc will implement reasonable security procedures, it does not make any warranties with regard to unauthorised access to information or data.
- 4.8 In addition to above, all statutory warranties apply to this sale except to the extent that they can be expressly excluded. To the extent that any statutory warranties can be expressly excluded the Clinic and HotDoc hereby expressly exclude those warranties.

- 4.9 For the purposes of the Competition and Consumer Act 2010 (Cth), where the Goods are of a kind not ordinarily acquired for personal domestic or household use or consumption then any breach by HotDoc of any condition or warranty (other than warranties contained in the Competition and Consumer Act 2010 (Cth)) is limited at HotDoc's discretion to replacing the Goods, repairing the Goods or payment by HotDoc of the cost of replacing or repairing the Goods.
- 4.10 All warranties as to fitness for purpose, as to quality and merchantable quality that would otherwise be implied into this Agreement by the Competition and Consumer Act 2010 (Cth) or by any other Act (excluding any warranties contained in this Agreement) which can be expressly excluded by agreement between the parties are hereby expressly excluded.
- 4.11 The procedure for making a claim under the warranties specified in this Agreement is:
- 4.11.1 The Clinic must, within the Warranty Period, return the defective hardware specified in the Schedule to HotDoc at the Clinic's expense (including any insurance), together with a copy of the original invoice and/or SUA, for evaluation by HotDoc;
 - 4.11.2 Only after HotDoc has made its evaluation will appropriate action be taken at HotDoc's discretion;
 - 4.11.3 Where HotDoc determines that there is a material defect in the Goods, HotDoc will:
 - 4.11.3.1 Take reasonable steps to rectify the defect (which may involve the rectification or replacement of the Goods); and/or
 - 4.11.3.2 Provide an alternative product with equivalent functionality if the original Goods are no longer reasonably available.
- 4.12 HotDoc may charge the Clinic an additional fee for any additional work or resources required to identify or rectify a problem, to the extent that the problem is caused or contributed to by any external cause including:
- 4.12.1 Operation of the Goods other than in accordance with operating requirements or instructions provided by HotDoc or in any manufacturer's documentation;
 - 4.12.2 Installation of the Goods into the Clinic's premises;
 - 4.12.3 Any actual or attempted modification or repair made by the Clinic or a third party or not approved or authorised by HotDoc;
 - 4.12.4 External causes including accident, neglect, misuse, vandalism, ingress of water, power surge or spike;
 - 4.12.5 Use with or connection of a Good to items not approved by HotDoc or the relevant manufacturer, or otherwise not specified in the SUA; or
 - 4.12.6 Failure to maintain the Deliverable in accordance with requirements or instructions provided by HotDoc or in any manufacturer's documentation.
 - 4.12.7 HotDoc may also charge the Clinic an additional fee if, on inspection, no material fault is found in the Deliverable.

5. Limitations of Liability

- 5.1 In no circumstances will HotDoc be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of

anticipated savings or any other similar or analogous loss resulting from the Clinic's access to, or use of, or inability to use the Goods, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.

- 5.2 The Clinic warrants that it holds relevant public liability insurance, and thus fully indemnifies HotDoc to the extent permitted by law for any injury or death resulting from the Goods.
- 5.3 To the extent permitted by law, HotDoc's liability for breach of any implied or specified warranty or condition that cannot be excluded is restricted, at the Company's option to:
 - 5.3.1 The re-supply of services or payment of the cost of re-supply of services; or
 - 5.3.2 The replacement or repair of goods or payment of the cost of replacement or repair.

6. Intellectual Property, Modifications and Third Party Terms

- 6.1 The Clinic acknowledges that the Intellectual Property of the Goods is owned by HotDoc and its (as applicable) licensors only.
- 6.2 The Clinic agrees it will not attempt to knowingly alter, remove, deface or obscure any copyright notices, compliance notices or other proprietary notices or legends from any materials provided by HotDoc under this Agreement.
- 6.3 The Clinic agrees it will not modify, decompile, reverse engineer, disassemble, produce derivative works or otherwise reduce the Software from the Goods to a human-perceivable form.
- 6.4 The Clinic agrees to comply with the Third Party Terms provided by HotDoc's licensor AOPEN and Google as available at: <https://d11t9zedf5prum.cloudfront.net/wp-content/uploads/2017/04/18121901/AOPEN-End-User-Terms.pdf>

7. Acknowledgements by the Clinic

- 7.1 The Clinic is satisfied as to the quality, condition, state of repair and fitness for purpose of the Goods.
- 7.2 To the extent any reasonable inspection or tests on the Goods would disclose any defect or need for repair the Clinic accepts the Goods in that condition with those defects and such need for repair.
- 7.3 Where the Goods are not new, HotDoc expressly gives no warranty as to the quality, condition or state of repair of the Goods.
- 7.4 The Clinic acknowledges that except where HotDoc must give by any Act or statute a warranty as to the fitness, merchantability and/or suitability for use of the Goods no warranty is given and the Clinic relies solely on his/her/its own assessment as to the suitability, condition and state of repair of the Goods.

8. Possession, Delivery and Risk

- 8.1 Unless otherwise agreed, HotDoc must give possession to the Clinic of the Goods at the time the Price is paid to HotDoc or when the Agreement is signed whichever last occurs.
- 8.2 Possession will be given to the Clinic at the address as set out in the SUA. Any delivery costs involved in transporting the Goods from the address in the SUA are the sole responsibility of the Clinic.
- 8.3 Risk of any loss, damage or destruction to the Goods passes from HotDoc to the Clinic at the same time as possession passes. The Clinic is solely responsible for insuring the Goods as from the time the Clinic takes possession.

9. Termination

The rights and obligations of this Agreement survive termination of the SUA where relevant.

10. Whole Agreement

- 10.1 This Agreement (in conjunction with the SUA and any other relevant Terms provided) represent the whole of the terms of the Agreement between HotDoc and the Clinic.
- 10.2 The Clinic expressly acknowledges that in entering into the Agreement (in conjunction with the SUA and any other relevant Terms provided), he or she or it has not relied upon any prior representation made by HotDoc concerning the Goods, their uses, fitness, quality or specifications.

11. Jurisdiction and Execution

- 11.1 This document is governed by the law in force in Victoria, Australia. Each party submits to the non-exclusive jurisdiction of Victoria, Australia
- 11.2 Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria.
- 11.3 By execution of this document, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

PART D – SCHEDULE

The Goods

The specific Goods and quantity to be provided to the Clinic will be specified in the SUA under which the Goods are to be provided (in addition to and as referenced by this Agreement).

Relevant Agreement Goods
HotDoc Kiosk: AOPEN Chromebase Commercial 22"
HotDoc Kiosk: AOPEN Chromebase Mini 10"
Desktop stand(s) for iPad or AOPEN devices
Floor stand(s) for iPad or AOPEN devices