

KAHOOTZ TERMS OF SERVICE

1. Acceptance of Terms

1.1. We provide this Service to You and/or to Users at Your request from time to time, subject to the following Terms. By entering into a contract with Us for the provision of this Service You accept (and You shall ensure that all Users accept) the following Terms together with any limitations and liabilities referred to within.

1.2. These Terms shall govern the provision of the Service, to the exclusion of any other written or oral terms or conditions, save where one of Our directors expressly agrees otherwise in writing.

2. Definitions

2.1. In these Terms, the following words and phrases shall have the following definitions:

Content

Any information or data added into the Service by You or by Users.

Fees

The fees payable by You in respect of Your and/or Users' use of the Service as determined by the Fees Calculator.

Fees Calculator

The online fees calculator provided by Us to allow You and Users to determine total Fees payable in respect of the Service.

Fees Period

The period agreed between You and Us from time to time during which We will provide the Service on payment of the Fees

We/Us/Our

kahootz.com (and see clause 23 below).

Service

The licensing and making available of secure online workspaces via www.kahootz.com where one or more Users can share information as part of a hosted collaboration environment by Us to You, and/or to Users at Your request from time to time, in accordance with these Terms.

Service Credits

Credits against Fees, allocated as set out in the [Service Level Agreement](#).

Service Description

The capabilities of the Service as specified by Us from time to time.

SLA

The [Service Level Agreement](#) in respect of the Service.

Site Owner/You

The individual, whether or not a representative of a company or organisation, at whose request We provide the Service under licence on these Terms.

Terms

The terms and conditions set out herein.

Trial

A period agreed between Us and You entirely offered at Our absolute discretion in certain individual cases for You to test or trial the Service at no fee.

User/Users

Any person who is authorised by You to access the whole or any part of the Service from time to time.

2.2. In these Terms:

- the singular shall include the plural and vice versa;
- any phrase introduced by the words "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative only and shall not limit the generality of any preceding words;
- any reference to a "person" shall include any individual, company, corporation, partnership, joint venture, association or trust (in each case, whether or not having separate legal personality).

3. Provision of Service

3.1. In consideration of the payment of the Fees, We hereby grant You and Your Users a limited, non-transferable, non-sublicensable, non-exclusive, worldwide licence to use the Service subject to these Terms.

3.2. The Service and the licence granted in clause 3.1 will last for the current Fees Period and will automatically renew thereafter for subsequent Fees Periods, subject to any notice from You that you wish thereafter to terminate or vary Our provision of the Service to You in accordance with clause 16.

3.3. We reserve the right to deny You access to the whole or any part of the Service in the event of breach of any of these Terms by You or any of Your Users.

3.4. You may authorise Users from time to time, subject to payment of appropriate applicable Fees. All Users must be 13 years or older. If the number of Users and/or any other aspect of the Service is increased or upgraded at any time during a Fees Period, We may charge additional Fees pro rata to the end of that Fees Period. If the number of Users and/or any other aspect of the Service is decreased or downgraded at any time during a Fees Period, no Fees will be refunded in respect of the remainder of that Fees Period.

3.5. All Users will have their own login credentials. You will ensure that all Users keep all such information strictly confidential and do not disclose them to any unauthorised person, and do not allow any unauthorised person to use them.

3.6. We will be entitled to assume that anyone entering a username and associated password is an authorised User. We may act in reliance upon any instruction, information, username or password which that meets the Service's automated criteria or which We reasonably believe to be genuine.

3.7. We may impose reasonable restrictions from time to time on use of the Service by You and/or Your Users in order to prevent or minimise excessive bandwidth usage, as determined by Us in Our reasonable opinion.

4. Payment

4.1. All Fees are payable to Us in sterling or US dollars and are exclusive of any transaction charges, currency exchange rate fluctuations and applicable taxes, all of which You will pay in addition.

4.2. We will provide a Fees Calculator to allow You to determine Fees payable in respect of the Service.

4.3. Should any Fees not be paid when due, We reserve the right, at Our absolute discretion, to:

- suspend or terminate all or any part of the Service;
- restrict access to or remove Content;
- charge interest (pro rata at 8% per annum above base rate) before and after any judgment;
- recover all expenses (including legal costs) associated with such unpaid Fees;

until such time as all outstanding Fees are paid in full.

4.4. Where the Service is provided on a trial basis these Terms shall apply, subject to the limitations of the trial which will be specified by Us to You in advance. If such a trial does not result in the payment of Fees, We reserve the right to remove any Content related to the trial membership.

4.5. We reserve the right to increase or decrease the Fees (a "Fees Alteration") from time to time. Details of any Fees Alteration will be published on Our website and reflected in the Fees Calculator and will come into effect after the end of the current Fees Period. This clause does not apply if Kahootz is procured within a contract that specifically prohibits a Fees Alteration, or is agreed in writing by an authorised representative of Kahootz.

4.6. If You do not accept a Fees Alteration, You will be entitled to terminate Your agreement with Us at the end of the current Fees Period in accordance with clause 16.

4.7. Kahootz provides unlimited cloud storage for Customer Content on paid Enterprise subscriptions, subject to fair usage. This policy is available here: [Kahootz.com](https://www.kahootz.com).

5. Amendments to the Terms of Service

5.1. We reserve the right to reasonably amend these Terms from time to time ("Amended Terms"). The Amended Terms will be published on Our website, notified to Site Owners by email, and will come into effect seven (7) calendar days after the date of such publication.

5.2. The Amended Terms shall not be unreasonably disadvantageous to the Service we continue to provide to You.

5.3. If You do not accept the Amended Terms, You will be entitled, within thirty (30) calendar days of the publication of the Amended Terms, to give Us written notice to continue using the Service on the existing Terms until the expiry of your Fees Period or to terminate Your agreement with Us in accordance with clause 16.

5.4. In the event that We do not receive any such notification from You then You will be deemed to have accepted the Amended Terms.

6. No Resale of the Service

6.1. You agree not to reproduce, duplicate, copy, sell or resell the whole or any part of the Service, use of the Service, or access to the Service without Our prior written consent. You will not use the whole or any part of the Service for or on behalf of any third party, nor make the whole or any part of the Service available to any third party, except as expressly permitted by these Terms.

7. Roles & Responsibilities

7.1. You will be responsible for the Content created by Your Users, and for their conduct on the System at all times. You will notify Us without unreasonable delay and within 5 working days if You become aware of any illegal activity or use of the Service in breach of these Terms.

7.2. The licence and these Terms are personal to You. You will ensure that Your Users also agree to be bound by these Terms.

7.3. You will ensure that all Fees are paid promptly.

7.4. You will ensure that You and all Your Users will:

- not attempt to access the Content of third parties and/or their respective Users without their express written consent and prior notice to Us, or otherwise attempt to gain unauthorised access to the Service;
- not make any use of any automated system to access the Service in a manner that places more demand on the Service and/or on Our servers than a single human User could reasonably achieve during normal use of the Service.

8. Your Content

8.1. You will make reasonable endeavours to ensure that Your Users will not include any of the following in Content or otherwise in respect of the Service:

- viruses or other malware, Trojan horses, worms, corrupted files, or any similar software or data which may damage the operation of the Service or of any computer or property;
- text, data or graphics which (in Our reasonable opinion) is illegal, defamatory, abusive, obscene, offensive, racist and/or discriminatory, or might amount to harassment, stalking, threatening or discriminatory behaviour;
- text, data or graphics which infringes the intellectual property or other rights of any person.

8.2. We do not have any rights to review or delete Content submitted by You or Your Users without Your permission, except in accordance with 8.5, and except that We reserve the right (but shall be under no obligation) to review and/or delete any Content:

- in order to fulfil Our obligations and to enjoy Our rights under this Agreement, or in order to perform some other service We have agreed to carry out for You;
- in order to carry out and provide support of the Service;
- where We are required or compelled to do so by law;
- where, in Our reasonable opinion, We believe anything is taking place in breach of clause 8.1;

- where, in Our reasonable opinion, We believe an emergency exists or a potential illegal activity is taking place.

8.3. We will make reasonable attempts to secure the Service in accordance with good industry practice. However, We will not be liable for any breaches of confidentiality or any other consequential or inconsequential losses as a result of any security breaches of the System unless caused by Our deliberate act. We will notify You if We become aware of known security breaches that effect you, your Users or your Content.

8.4. We will perform regular backups of Your Content and store it for a limited time.

8.5. We will delete your Content from the Service at any time between 30 days and 40 days of the expiry of your Fees Period, unless otherwise agreed in writing. After this date, no subsequent access to or restoration of Your Content will be possible. Once your Content is deleted from the service it will take a further calendar month for your Content to be removed from Our backups.

8.6. We are able (on request) to provide You with an export of Your Content and may charge additional fees in respect of this. This can be performed at any time, upon reasonable notice during the Service or until the time your Content is deleted from the Service. We reserve the right to withhold this service if there are any Fees outstanding. No fee will be payable if the Service is terminated by Us according to clause 16.4.

9. Data Protection

9.1. We and You will (and You will ensure that Your Users will) comply with all relevant data protection legislation and regulations. Any personal details you submit via Kahootz will be collected and used in accordance with the [Data Processing Schedule](#) and Our [Privacy Policy](#).

9.2. We may use cookies in accordance with Our Cookie Policy as published from time to time

9.3. We may disclose personal data and Content in accordance with Our [Privacy Policy](#) as published from time to time, or in the following circumstances:

- if required or compelled to do so by law;
- where, in Our reasonable opinion, We believe an emergency, potential illegal activity or some other reasonable or legitimate basis exists for doing so.

10. The Service

10.1. We shall use Our reasonable endeavours to make the Service available to You on a 24/7 basis in accordance with the [SLA](#). However no guarantees are given in this respect and Our only liability for any failure to provide the Service shall be to compensate You by way of Service Credits.

10.2. We reserve the right from time to time, and at any time, to modify the Service (or any part thereof) with or without prior notice to You and You agree that We shall not be liable to You or to any third party as a result of Our modification of the Service, provided that such modifications do not result in any impairment of functionality of the Service.

10.3. We expect to provide updates to the Service, and to perform routine maintenance from time to time. These may involve a small period of time where the Service is unavailable. Service announcements will be notified to Site Owners.

10.4. In the event of unscheduled or emergency maintenance to the Service there may be a small period of time where the Service is unavailable and it may not be possible to provide advance warning.

10.5. You acknowledge that we may establish general practices and limits concerning the use of the Service, including the amount of disk space, activity, bandwidth or any other resource available in order to preserve the functionality of the Service and its availability to other Users.

10.6. You acknowledge that We shall be entitled to subcontract the performance of any part or the whole of Our obligations under these Terms.

10.7. The Service may contain links to third party websites that are not owned or controlled by Us. Any such links are provided solely for Your convenience and We have no control over or responsibility for them. Any use or access of such links is at Your sole risk.

10.8. The Service is hosted, managed and supported from the United Kingdom.

11. Support

11.1. We will provide administrative and technical support regarding Your enquiries about the Service. Please contact us if you would like to understand terms under which support is provided and see the Support SLA.

12. Ownership and Intellectual Property

12.1. The Service and all copyright, database rights, trade marks and any other intellectual property rights whatsoever in or relating to the Service (other than the Content) shall remain Our exclusive property. Neither You nor any Users have any licence to use the whole or any part of the Service except as expressly set out in these Terms.

12.2. If the Service is re-branded by You, all web pages must include the words 'Powered by Kahootz collaboration software' or a similar phrase to be agreed with Us, at some appropriate point on each page. These words must be hyperlinked to www.kahootz.com. The appearance of the words is subject to approval by Us, which approval will not unreasonably be withheld.

12.3. You may not attempt to modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software used or provided by Us in connection with the Service, except as permitted by law.

13. Indemnity

13.1. You agree to indemnify Us and Our employees, and keep Us harmless against any loss, expense (including legal fees), claim, demand or damage from, or claimed by, any third party due to or arising out of breach by You or any of Your registered Users of the whole or any part of these Terms.

13.2. You shall not enter into any settlement or compromise of any such claim action or demand with any third party without Our written prior consent. We may at Our sole discretion assume and control the defence of such claim or action.

14. Warranties and Obligations

14.1. Our obligations to You:

- the Service will be provided with reasonable skill and care;
- we are authorised to provide the Service on these Terms;
- the provision of the Service will not infringe any third party rights.

14.2. We further warrant that the Service and any upgrades, but not the Content, shall be free of viruses, worms, trojan horse, built-in or use-driven destruction mechanisms, any injurious or damaging formulae, instructions or other material (in each case, to the extent that it is reasonable for Us to be aware of these, and hereinafter referred to singularly or collectively as a "known Virus"), and that We will test each element of any upgrades prior to use by You to ensure that they are free of any known Virus. In the event that You notify Us that You have been informed of or have reason to believe that the Service has been affected by a known Virus, We will promptly work to remedy the situation.

14.3. We do not warrant that the Service is free of minor errors or unknown viruses, will operate without interruption or that it will meet Your requirements or operate in combination with other software not expressly approved by Us.

14.4. We make no express or implied warranty as to the accuracy, adequacy, quality, fitness for any particular purpose, non-infringement, compatibility or security of the Service and all such warranties are expressly excluded to the fullest extent permitted by law.

15. Limitation of Liability

15.1. Except to the extent prohibited by law, Our liability to You for any loss or damage of any nature arising from any breach of any express or implied warranty or these terms or

any negligence breach of statutory or other duty on Our part or in any way arising out of or in connection with Our provision of the Service or failure to provide the Service shall not exceed the Fees paid by You in the previous twelve (12) months.

15.2. We will indemnify You against any claim that Your proper and legal use of the Service in accordance with these Terms infringes the copyright, patents or trade secrets of any third party, provided that You give Us, as soon as reasonably practicable, full control of any such claim, You do not act or omit to take action so as to prejudice Our defence of the claim and You provide reasonable assistance to Us with the conduct of the claim, at Our request and expense. We may replace or modify all or part of the Service in order to avoid any such infringement.

15.3. Nothing in these Terms shall limit Our liability for death or personal injury resulting from Our negligence or any other form of liability which may not be limited by contract.

15.4. In the event that the Service does not perform as warranted You should notify Us. Our obligation will be, within thirty (30) days of receipt, to modify the Service in order to make it perform as warranted.

15.5. We will in no circumstances be liable to You for any third party claims (save as expressly provided above), loss of profits, contracts, anticipated savings, data, business interruption, loss arising from third party claims or any special, indirect or consequential loss, including interest legal and other expenses associated therewith.

16. Term and Termination

16.1. The Service will commence (and these Terms will apply) as soon as You register with Us and/or sign up for the Service (whether or not on a trial basis). The Service will continue as set out in these Terms for the current Fees Period and thereafter in accordance with clause 3.2 unless and until terminated in accordance with this clause 16.

16.2. You may terminate the Service using the Service Site Owner page at any time by giving Us not less than five (5) days' notice to that effect. No Fees will be refunded in respect of any remainder of the current Fee Period.

16.3. You may (at any time not less than one month's notice before the end of the current Fees Period) give Us that You wish to vary the Service in which case these Terms will renew at the end of the current Fees Period subject to such variations as We may agree with You (and in the absence of such agreement, you may elect to continue the Service on the same Terms as previously, or terminate these Terms in accordance with this clause 16.3).

16.4. Either party may terminate the contract if the other:

- ceases to carry on their business or undertaking;

- has a liquidator, receiver or administrative receiver appointed over it or any part of its undertaking or assets;
- passes a resolution for its winding up (otherwise for a bona fide scheme or solvent amalgamation or reconstruction where the resultant entity shall assume all its liabilities);
- is declared bankrupt;
- enters into a voluntary arrangement with its creditors;
- becomes unable to pay its debts as they fall due;

or similar in any other jurisdiction.

16.5. We may terminate the Service at any time by giving You 12 months' notice.

16.6. In the event of termination of Your account (at any time and for any reason) Your entitlement to use the Service ceases forthwith at which point all Fees and other charges incurred by You to the date of termination become payable immediately to Us.

16.7. You may terminate the Service by providing us with written notice where we are in breach of these Terms and we have, where the breach is capable of remedy, failed to remedy the breach within 30 days of the date of your notice.

16.8. If the Service is terminated by us in accordance with 16.5, or because of Our breach of these Terms, You will be refunded a pro-rata amount of any fees paid in advance. In all other cases, no refund of any fees or amounts paid in advance for the Service by You will be made to You upon termination of the Service in accordance with these Terms of Service.

16.9. The Limitation of Liability, Indemnity and Confidentiality provisions of these Terms shall survive the termination of these Terms.

16.10. Without prejudice to Our other rights and remedies, We may terminate or suspend Your use of the Service if:

- you fail to pay any Fees or other sum specified in this Agreement when due, and subsequently fail to make such payment within 14 days of a notification from Us;
- your Trial ends and You do not proceed to take up a licence to subscribe to the Service from Us;
- in Our reasonable opinion, You or any of Your authorised Users have breached these Terms.

17. Severability

17.1. If any provision of these Terms is or shall become void or unenforceable, it shall to that extent be deemed to be omitted from these Terms of Service, but all other provisions of these Terms shall remain in full force and effect.

18. No Waiver

18.1. No delay or neglect by Us in enforcing Our rights under these Terms shall constitute a waiver of such rights by Us unless one of Our directors expressly agrees otherwise in writing.

19. Choice of Law

19.1. These Terms, and any dispute or claim arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19.2. You hereby irrevocably submit to the exclusive jurisdiction of the English Courts. Nothing in this clause shall limit Our right to take proceedings against You in any other court of competent jurisdiction. The commencement of proceedings in one or more jurisdictions will not prevent Us from commencing proceedings in any other jurisdiction or jurisdictions.

20. Force Majeure

20.1. Neither party shall be liable or deemed to be in breach of these Terms due to any delay or failure in performing its obligations which is due to circumstances outside the affected party's reasonable control, including but not limited to any act of God, fire, explosion, flood, malicious damage, non-availability of power, telecommunications, water or fuel supplies, industrial action, civil disturbance, war or any act of government.

21. Confidentiality

21.1. Each party to these Terms shall keep confidential all information designated as "confidential" which it obtains from the other party and shall not disclose the same to any third party or third parties without the prior written consent of the other party

21.2. The above confidentiality obligations shall not apply to information which either party can show:

- has become public knowledge other than through a breach by either party of the above obligations;
- has been received from a third party who was entitled to disclose it; or
- is required to be disclosed by any court or other competent regulatory authority.

21.3. The above confidentiality obligations shall remain in force notwithstanding any termination of the Service or the Licence.

22. Notice

Any notice from either party to the other party may be delivered by email or post to the other party's last notified email address or postal address. Evidence of posting (either electronically or otherwise) shall be taken as satisfactory evidence of delivery of such notice.

23. Trading name

23.1. kahootz and kahootz.com are trading names of Kahootz Limited (registered number 04228932) whose registered office is at Gladstone House, Hithercroft Road, Wallingford, Oxfordshire, England, OX10 9BT, United Kingdom.

23.2. You can contact Us at support@kahootz.com