



# Kahootz Consult Terms and Conditiond

*Recognised by industry as best in class G-Cloud provider:*



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## Kahootz Consult – Terms of Service – Frontsheet

Licensee: .....

Software: .....

.....

|                                              |                                                               |
|----------------------------------------------|---------------------------------------------------------------|
| Duly authorised on behalf of Kahootz Limited | Duly authorised on behalf of the Limited Licensee named above |
| Signature: .....                             | Signature: .....                                              |
| Name: .....                                  | Name: .....                                                   |
| Position: .....                              | Position: .....                                               |
| Date: .....                                  | Date: .....                                                   |

# Kahootz Consult – Terms of Service

## 1. Acceptance of Terms

- 1.1. We provide this Service to You, subject to these Terms. By entering into a contract with Us for the provision of this Service You accept these Terms together with any limitations and liabilities referred to within.
- 1.2. These Terms, together with those in the Frontsheet (if any) shall govern the licensing and 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.
- 1.3. In the event that the parties have agreed to vary any of these Terms upon entering into the same, any such variation shall be as set out in the Frontsheet. If there is a dispute between these Terms and those set out in the Frontsheet, then the parties acknowledge that the Frontsheet shall take priority over these Terms.

## 2. Definitions

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

|                                |                                                                                                                                                                                                                           |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Terms</b>                   | The terms and conditions set out herein.                                                                                                                                                                                  |
| <b>Service</b>                 | The software named on the Frontsheet, provided and licensed as a software-as-a-service by Us to You.                                                                                                                      |
| <b>We / Us / Our / Kahootz</b> | Kahootz Ltd, the registered office of which is at Gladstone House, Hithercroft Road, Wallingford, Oxfordshire, OX10 9BT, registered in England & Wales under Company Number 4228932.                                      |
| <b>You / Licensee</b>          | The individual firm, company or organisation to whom We provide the Service under licence on these Terms.                                                                                                                 |
| <b>Subscription Fee</b>        | The fee payable by You to Us to use the Service.                                                                                                                                                                          |
| <b>Service Definition</b>      | The functionality of the Service as described in Our response to Your Invitation to Tender or Request for Quote or similar proposal document, and any clarifications and updates that are subsequently agreed in writing. |
| <b>User / Users</b>            | Any user or users who register on the Service, including Your employees and members of the public.                                                                                                                        |
| <b>Content</b>                 | Any information or data added into the Service by You or by the Users.                                                                                                                                                    |
| <b>Trial/Trial membership</b>  | 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. |
|--|--------------------------------------|

- 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.

### 3. Provision of Services

- 3.1. In consideration of the payment of the Subscription Fee We hereby grant You a limited, nontransferable, non-exclusive licence (the "Licence") to use the Service, subject to these Terms.

### 4. Payment

- 4.1. The Subscription Fee is payable in full in advance to Us and relates to the provision of the Service for a specific period of time. We will notify You in advance when your Subscription Fee becomes due and payable.
- 4.2. We will notify You should Your Subscription Fee become overdue. If the Subscription Fee is not paid in full within thirty (30) calendar days of such notification, We reserve the right, at Our absolute discretion, to suspend or terminate the Service until such time as any outstanding Subscription Fee is paid in full. After a further thirty (30) days, We will notify You again and reserve the right to permanently delete your Content and terminate the Service unless any outstanding Subscription Fee is paid in full.
- 4.3. 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 a Subscription Fee, We reserve the right to remove any Content related to the Trial.
- 4.4. We reserve the right to increase the fees We charge for access to the Service from time to time which for any annual subscription shall not exceed 5% over the percentage increase in the Retail Prices
- 4.5. Index (the "All Items Retail Prices Index (RPI) Table (RP02)" published by the Office of National Statistics and known generally as the "Headline rate of inflation") over the 12 month period immediately preceding the date on which such increase is applied.

### 5. Amendments to the Terms of Service

- 5.1. We reserve the right to reasonably amend these Terms from time to time ("Amended Terms"). We will notify You in writing a minimum of 30 (thirty) calendar days in advance of any such amendment.

- 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, upon giving Us thirty (30) calendar days written notice, to continue using the Service on the existing Terms. 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 any part of the Service, use of the Service, or access to the Service without Our prior written consent.

## 7. Roles & Responsibilities

- 7.1. You will be responsible for the Content created by Users, and their conduct on the System at all times. You will notify Us immediately 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 are responsible for ensuring that Users do not breach or otherwise infringe the terms of Your Licence.
- 7.3. You will ensure or procure that all Fees are paid promptly.
- 7.4. You will not make any use of any automated system to access the Service in a manner that places more demand on the Service than a single human User could reasonably achieve during normal use of the Service.

## 8. Your Content

- 8.1. We do not have any rights to review Your Content without Your permission, with the exception of the following:
- In order to fulfil our obligations under these Terms or perform some other service We have agreed to carry out for You;
  - In order to provide support for the Service;
  - Where We are required or compelled to do so by law, court order or any governmental or regulatory authority;
  - Where, in our reasonable opinion, We believe an emergency exists or a potential illegal activity is taking place.
- 8.2. We do not apply any editorial control to Your Content however We reserve the right, but shall be under no obligation, to remove any Content which is in our reasonable opinion illegal, obscene, offensive, defamatory or unlawful and We reserve the right to terminate Your use of the Service, without any recourse to Us, in the event that Users create any such

Content.

- 8.3. In the event that Users delete Content which You would like to be restored, We will make reasonable efforts to restore Content from backup upon payment of the additional fee for such a service provided that We are notified by You in a timely manner. We shall not be liable for any failure to backup or restore such Content.
- 8.4. We are able to provide You with an export of Your Content on payment of the additional fee for such a service. Such an export may be performed at any time, upon reasonable notice given to Us during the Service, and if notified within thirty (30) calendar days of the termination of the Service. No additional fee will be payable if the Service is terminated by Us according to clause 17.4.
- 8.5. We reserve the right to withhold the services defined in 8.3 and 8.4 if there is any Subscription Fee or other payments outstanding.

## 9. Data Protection and Freedom of Information

- 9.1. We and You will comply with all relevant data protection legislation and regulations. Any personal details you submit via the Service will be collected and used in accordance with the Privacy Policy
- 9.2. We may disclose personal details and Content in accordance with our Privacy Policy, or in the following circumstances:
- If required or compelled to do so by law;
  - Where, in Our reasonable opinion, We believe that an emergency, potential illegal activity or some other reasonable or legitimate basis exists for doing so.
- 9.3. To assist You in responding to lawful requests under the UK Freedom of Information Act, We will provide information to You about Users and Content, in the event that you require more information from the Service than the standard interface allows You to access.

## 10. The Service

- 10.1. We will operate and secure the Service in accordance with good industry practice.
- 10.2. We shall use Our reasonable endeavours to ensure that the Service availability exceeds 99.95% per month.
- 10.3. The Service availability excludes up to 6 hours per quarter of scheduled downtime ("Downtime"), between the hours of 10pm and 6am on weekdays or between 7pm and 6am on weekends (UK time) in order that we may carry out upgrades and routine maintenance.
- 10.4. Whenever possible, We will inform You beforehand, by email, of the date, time and expected duration of the Downtime. 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 notify You in advance.

- 10.5. We reserve the right from time to time, and at any time, to modify the Service (or any part thereof) with
- 10.6. 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 to the Service.
- 10.7. You acknowledge that if You use the Service in a manner which is not in accordance with these Terms 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 and we shall be entitled to terminate the Services forthwith.
- 10.8. 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 or the content contained therein. Any use or access of such links is at Your sole risk.

## 11. Support

- 11.1. We will provide support for the Service to You in accordance with the KAHOOTZ Support & Maintenance Guide.

## 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 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. You are not permitted to use trademarks and logos appearing on the Service without Our prior written permission of or that of the applicable third party owner.
- 12.3. If the Service is re-branded by or for You, all web pages must include the words 'Powered by KAHOOTZ InclusionwareTM', at some appropriate point on each page. These words must be hyperlinked to [www.Kahootz.com](http://www.Kahootz.com) and the appearance of the words is subject to Our approval.
- 12.4. You have no right to use or inspect the source code of the Service. 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 claim, demand, or damage, including legal fees from or claimed by any third party due to or arising

out of breach of these Terms by You or the Users 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.

13.3. Clauses 13.1 and 13.2 shall apply in the same terms from Us to You.

## 14. Warranties and Obligations

14.1. Our obligations to You:

- The Service will be provided with reasonable skill and care according to good industry practice;
- 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 warrant that the Service will operate according to the Service definition.

14.3. We warrant that the Service and any upgrades, but not the Content, shall be free of known viruses, worms, trojan horse, built-in, or use-driven destruction mechanisms, and will not contain any injurious or damaging formulae, instructions or other material (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 reason to believe that the Service has been affected by a Known Virus, We will promptly work to remedy the situation.

14.4. We do not warrant that the Service is free of minor errors or unknown viruses, or will operate without interruption.

14.5. We do not warrant that the Service will operate in combination with other software not expressly approved by Us.

14.6. In the event that the Service does not perform as warranted You should notify Us. Our obligation will be, within ninety (90) days of receipt, to modify the Service in order to make it perform as warranted.

## 15. Limitation of Liability

15.1. 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.

15.2. Nothing in these Terms shall limit or exclude Our liability for:

- Death or personal injury resulting from Our negligence or the negligence of Our employees, agents or subcontractors;
- Fraud or fraudulent misrepresentation; or
- Breach of terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

15.3. Subject to clause 15.2 above:

- We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms; and
- Our total liability to You in respect of all other losses arising under or in connection with these Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstance exceed the sum of the Subscription fee paid by You in the previous 12 (twelve) months);

15.4. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms.

## 16. Term and Termination

16.1. The Service will commence on the Subscription Date agreed with Us. Without prejudice to Our other rights and remedies, We may terminate or suspend Your use of the Service if:

- You fail to make payment as specified in clause 4;
- Your Trial membership ends and You do not proceed to take up the Licence from Us;
- You have breached these Terms.

Either party may terminate these Terms immediately by giving written notice to the other party 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 subject to a bankruptcy petition or order;
- Enters into a voluntary arrangement with its creditors;
- Becomes unable to pay its debts as they fall due or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or similar in any other jurisdiction.

16.2. You may terminate these Terms at any time by giving thirty (30) calendar days prior

notice to Us to that effect.

16.3. In the event of termination of these Terms pursuant to clause 16.2 above, Your entitlement to use the Service shall cease forthwith at which point any Subscription Fee and other additional fees incurred by You to the date of termination become payable immediately to Us.

16.4. We may terminate these Terms or discontinue the Service as provided to You at any time by giving You twelve (12) months' notice.

16.5. If the Service is terminated by Us in accordance with clause 16.4, 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.

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

## 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, nonavailability 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"
- 21.2. ("Confidential Information") 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
- 21.3. The above confidentiality obligations shall not apply to Confidential 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;
  - Is required to be disclosed by law, any governmental or regulatory authority or by a court or other competent regulatory authority.

## 22. Notices

- 22.1. Any notice from Us to You may be delivered by email (to the person identified on the Frontsheet) or by post (to Your last known address). Evidence of posting (either electronically or otherwise) shall be taken as satisfactory evidence of delivery of such Notice. You are deemed to have received the notice five (5) calendar days after it was sent.