

## **KUKU.IO Terms of Use**

Updated June 1st, 2017

Welcome to KUKU.IO, a service offered by XB Software, Inc., a Belarusian company (XB Software, we, or us). The following terms and conditions (the Terms) govern all use of the website and all content (including User Content, defined below), services and products available at or through the website, including, but not limited to, automated publishing of content to social networks and messengers, social data processing and analytics, online uploads, display, delivery, and limited storage services for the content (collectively, the Services) (the website, content and Services collectively are defined as the Website).

The Website is offered subject to your acceptance without modification of all of the terms and conditions contained herein and all other operating rules, policies (including, without limitation, KUKU.IO Privacy Policy and procedures that may be published from time to time on this website by XB Software (collectively, the Agreement). IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT USE OUR SERVICES. If these terms and conditions are considered an offer by XB Software, acceptance is expressly limited to these terms.

We may make changes to these Terms from time to time. When we do, we will revise the last updated date given above. It is your responsibility to review these Terms frequently and to remain informed of any changes to them. The then-current version of these Terms will supersede all earlier versions. You agree that your continued use of the Website after such changes have been published to our Services will constitute your acceptance of such revised Terms.

### **1. License to Use our Services**

1.1. Subject to these Terms, we and our licensors grant to you a limited, personal, non-exclusive, non-transferable license to use our Services for your use and not for resale or further distribution. Your right to use our Services is limited by all terms and conditions set forth in these Terms. Except for your pre-existing rights and this license granted to you, we and our licensors retain all right, title and interest in and to our Services, including all related intellectual property rights.

1.2. Our Services and those of our licensors are protected by applicable intellectual property laws, including United States copyright law and international treaties. Except as otherwise explicitly provided in these Terms or as may be expressly permitted by applicable law, you will not, and will not permit or authorize any third party to: (i) reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer or create derivative works of any of our Services; (ii) rent, lease or sublicense access to any of our Services; (iii) circumvent or disable any security or technological features or measures of our Services, or (iv) use the Services in a manner that overburdens, or threatens the integrity, performance or availability of our Services. Any rights not expressly granted herein are reserved by us.

### **2. Your KUKU.IO Account**

You are responsible for maintaining the security of your account, and you are fully responsible for all activities that occur under the account and any other actions taken in connection with your account. You must immediately notify XB Software of any unauthorized uses of your account or any other breaches of security. XB Software will not be liable for any acts or omissions by you, including any damages of any kind incurred as a result of such acts or omissions.

### **3. Payment**

You can purchase a monthly or annual plan and your credit card on file will be charged on a recurring basis. We have four paid plans available (Individual, Smart, Professionals and Business). When you sign up for a paid plan, you are agreeing to pay and take responsibility for all charges made in accordance with the chosen plan and the following policies.

3.1. Cancellation policy: Once a user submits a request for cancellation, no additional charges will be made. However, no refunds (prorated or otherwise) are provided upon cancellation, except cases defined by [refund policy](#).

3.2. Free 14-day trial: XB Software offers a free 14-day trial for all of our plans. You are not required to enter payment information, but your plan will expire at the end of the 14th day.

3.3. Monthly plan billing: XB Softwares monthly plans provide month-to-month access, with monthly charges being made each renewal day (the same day of the month that you originally signed up for the plan). Monthly plans automatically renew every month. If you cancel before an upcoming renewal day, you will not receive a refund, but you will not be charged on the following renewal day and henceforth.

3.4. Annual plan billing: XB Softwares annual plans provide year-to-year access and a substantial savings over the month-to-month plan. Annual charges will be made each renewal date (the same date of the year that you originally

signed up for the plan). Annual plans automatically renew every year. If you cancel before an upcoming renewal date, you will not be charged on the following renewal date and henceforth.

**YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW AT THE END OF THE SUBSCRIPTION TERM UNLESS YOU CANCEL IT AS PROVIDED IN THE POLICY.**

3.5. Failed charges: If XB Software is unable to bill your credit card, your account will enter the dunning process and you will then have 2 days from the failed charge date to update your card information before we limit your access to your account. Accounts that have been terminated may be reactivated if valid payment information is entered and the card can be successfully processed for all charges accrued on the account since the failed credit card charge.

#### **4. User Content**

4.1. You represent and warrant that: (1) any information you provide in connection with your use of the Website is true, accurate and complete and you will maintain and update such information regularly; and (2) you will respect the intellectual property and other informational and all rights of XB Software and others.

4.2. In these Terms, the content you or other users upload to the Website, includes, but is not limited to, texts, pictures, video and other images, information relating to natural and other persons, messages, e-mail and other communications, files, opinions, feedback, suggestions, ideas, personalization settings and other information or content, which is or may be provided to XB Software or placed on the users KUKU.io profile page or inputted or uploaded by you via the Website or related means (User Content).

XB Software **DISCLAIMS ANY AND ALL LIABILITY FOR YOUR DISCLOSURE OF PERSONALLY IDENTIFIABLE OR CONFIDENTIAL INFORMATION YOU SUBMIT VIA THE WEBSITE TO OTHER USERS.** It is your responsibility to ensure that Website users to whom you submit personally identifiable or confidential information will take appropriate security and non-disclosure measures.

#### **5. Prohibited User Content**

XB Software has the right to remove User Content at our discretion and may terminate accounts of Users who violate the Terms. You agree that you will not under any circumstances transmit any User Content (including software, text, images, or other information) that:

- 5.1. is unlawful or promotes unlawful activities;
- 5.2. defames, harasses, abuses, threatens, or incites violence towards any individual or group;
- 5.3. is pornographic, discriminatory, or otherwise victimizes or intimidates an individual or group on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- 5.4. is spam, is machine- or randomly-generated, constitutes unauthorized or unsolicited advertising, chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;
- 5.5. contains or installs any viruses, worms, malware, Trojan horses, or other content that is designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;
- 5.6. infringes on any proprietary right of any party, including patent, trademark, trade secret, copyright, right of publicity, or other rights;
- 5.7. impersonates any person or entity, including any of our employees or representatives; or
- 5.8. violates the privacy of any third party.

#### **6. Review of User Content by XB Software**

XB Software cannot and does not undertake to screen, review, edit, censor or otherwise filter or control User Content or the behavior of users of User Content or the Website. XB Software may, but shall not be obliged to, review, either by manual or automated means, all User Content which is or may be uploaded on this site, and monitor or review any areas of this site where users transmit or post communications or communicate with each other or XB Software (as applicable). XB Software retains the right (but disclaims any obligation) to reject, not post, not use, remove, amend, deny access to and/or delete any User Content, without notification, which it, in its sole discretion, deems a breach these Terms. XB Software retains the right to co-operate with any law enforcement authorities, or in response to court and other official requests directing that XB Software disclose the identity of anyone posting User Content.

#### **7. Trademarks**

“KUKU.io,” the KUKU.io logo, and any other product or service name or slogan displayed on our Services are trademarks of XB Software, Inc and its suppliers or licensors, and may not be copied, imitated or used, in whole or in

part, without the prior written permission of XB Software or the applicable trademark holder. You may not use any metatags or any other “hidden text” utilizing “KUKU.io” or any other name, trademark or product or service name of KUKU.io without our prior written permission. In addition, the look and feel of our Services, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of KUKU.io and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned in our Services are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation thereof by us.

## **8. Feedback**

We may provide you with a mechanism to provide feedback, suggestions, and ideas, if you choose, about our Services (“Feedback”). You agree that we may, in our sole discretion, use the Feedback you provide to us in any way, including in future enhancements and modifications to our Services. You hereby grant to us and our assigns a perpetual, worldwide, fully transferable, sublicensable, irrevocable, royalty free license to use, reproduce, modify, create derivative works from, distribute, and display the Feedback in any manner any for any purpose, without in any media, software, or technology of any kind now existing or developed in the future, without any obligation to provide attribution or compensation to you or any third party.

## **9. Disclaimer of Liability**

8.1. XB Software is under no obligation to become involved in any dispute that you have with other users or in any incident that you are party to with other users, or that are affected by or otherwise related to the Website.

9.2. XB Software disclaims all liability relating to any User Content, including any error, virus, defamation, libel, obscenity or inaccuracy contained in any User Content, whether or not arising under the laws of copyright, libel, privacy or otherwise, any prohibited User Content and any other User Content.

9.3. XB Software disclaims all liability for unauthorized use (by other users) of User Content, and disclaims (without limitation) all liability for use of User Content which breaches any copyright, trademark rights or other intellectual property rights of any other user or person.

9.4. You are solely responsible for any damage (including to the Website) resulting from use (or submission) of any User Content or the Website (including disputes and incidents described in the preceding sections) and related transactions or occurrences. XB Software shall have no responsibility for unauthorized access to your account, or automatic forwarding of messages and/or viruses (caused by viruses or otherwise).

## **10. No Liability for Lost Data**

10.1. Where XB Software provides web hosting or other services via the Website involving the provision of computer storage space, or in relation to other relevant Services, XB Software reserves the right to impose and vary limits and/or restrictions (temporary or otherwise) on the use of the Service, including, without limitation, limits on the storage provided by reference to storage space, time/age of files, number and/or size of files, amount of data down- or uploaded or any other criteria XB Software may specify. Without limiting the following paragraph, material, which exceeds any such limit, may be deleted or not accepted for such storage.

10.2. XB Software shall not be liable for any loss, deletion, removal or failure of delivery to the intended recipient of User Content, whether caused by computer virus, unauthorized access or otherwise. You are encouraged to retain a back-up copy of all User Content and you undertake that you shall do so in respect of all uploaded User Content. XB Software reserves the right to deny access to this site and delete User Content at any time without notice.

### **10. Disclaimer of Warranties and Limitation of Liability**

YOUR USE OF THE WEBSITE IS AT YOUR SOLE RISK, WHICH IS PROVIDED ON AN AS IS AND AS AVAILABLE BASIS. WE AND OUR SUPPLIERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. WE DO NOT GUARANTEE THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SERVICES OR ANY SERVICE CONTENT, AND YOU RELY ON THE SERVICES AND SERVICE CONTENT AT YOUR OWN RISK. ANY MATERIAL THAT YOU ACCESS OR OBTAIN THROUGH OUR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE

FOR ANY DAMAGE TO YOUR COMPUTER OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY MATERIAL THROUGH OUR SERVICES. SOME STATES MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR SUPPLIERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), RESULTING FROM YOUR USE OF OUR SERVICES. UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY OF US AND OUR SUPPLIERS AND LICENSORS OF ALL KINDS ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICES (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNTS, IF ANY, THAT YOU HAVE PAID TO US FOR YOUR USE OF THE SERVICES.

## **11. Indemnity**

You will indemnify and hold us, our suppliers and licensors, and our respective subsidiaries, affiliates, officers, agents, employees, representatives, and assigns harmless from any costs, damages, expenses, and liability caused by your use of the Website, including, without limitation, User Content, your violation of these Terms, or your violation of any rights of a third party through use of the Website or User Content.

## **12. Miscellaneous**

12.1. This Agreement constitutes the entire agreement between XB Software and you concerning the subject matter hereof, and they may only be modified by a written amendment signed by an authorized executive of XB Software, or by the posting by XB Software of a revised version.

12.2. Except to the extent applicable law, if any, provides otherwise, this Agreement and any access to or use of the Website will be governed by the laws of the state of California, U.S.A., excluding its conflict of law provisions. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court without the posting of a bond), any dispute arising under this Agreement shall be finally settled in accordance with the Comprehensive Arbitration Rules of the Judicial Arbitration and Mediation Service, Inc. (JAMS) by three arbitrators appointed in accordance with such Rules. The arbitration shall take place in San Francisco, California, in the English language and the arbitral decision may be enforced in any court. The prevailing party in any action or proceeding to enforce this Agreement shall be entitled to costs and attorneys fees.

12.3. You agree that we may reference you as our customer, and that we may reasonably use, on a royalty-free basis, your trademark or logo for such purpose.

12.4. Severability. If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties original intent, and the remaining portions will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

12.5. Assignment. You may not assign your rights under this Agreement to any other party without XB Softwares express written consent; XB Software may assign its rights under this Agreement without condition. This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns.

12.6 Force Majeure. Except for payment obligations, neither XB Software nor Customer will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third party hosting provider or utility provider, shortages, riots, fires, acts of God, war, strikes, terrorism, and governmental action.