

Terms & Conditions Kaiwa

General

1 Applicability and acceptance of terms

- 1.1 These Terms & Conditions are applicable to all (applications for) offers, activities services rendered by, and agreements with, Zilverline B.V., a limited liability company under the laws of the Netherlands, with respect to the Kaiwa Services as described herein.
- 1.2 These Terms & Conditions are applicable to (i) “**Customers**” and (ii) “**Users**” (being “**Organization Administrator(s)**” and “**Members**”), all as defined below.
- 1.3 These Terms & Conditions may be unilaterally changed by Kaiwa. Changes will be announced at logon. If the Customer or Organization Administrator does not wish to accept such changes the Agreement will terminate within 30 days thereafter.
- 1.4 Terms & Conditions of the Customer or User are not applicable. Possible applicability of such Terms & Conditions is explicitly rejected.

2 Definitions

Customer: the natural person who, or legal entity that, requests Kaiwa to make an offer for Services, or enters into an agreement with Kaiwa for the provision of Services, including the person that initially sets up the Group and any subsequent Organization Administrator;

Member: the natural person that is invited to join a Group and has accepted this invitation and/or uses the Services and/or for whom an account has been made at kaiwa.io for the use of the Services;

User: Organization Administrators and Members;

Group: the private messaging channel and/or list of Users as defined or accepted by the Organization Administrator (for instance teammates, co-workers, family or friends);

Services : the communication and messaging services provided through the Portal;

Organization Administrator(s): the natural person(s) for whom an account has been made at kaiwa.io with full control over the Customer’s account and/or the Group and/or User accounts;

Personal Data: any information provided in the scope of the Services relating to an identified or identifiable person;

Abuse:	acts as meant in article 9;
Agreement:	the agreement between the Customer and Kaiwa for the provision of the Services;
Portal:	the online platform for private social networking and associated services of Kaiwa, including the communication and messaging services, the website Kaiwa.io as well as any and all software, applications and systems in relation thereto, but excluding software applications or services provided to the User by a third party used in connection with the Services;
Fee:	the compensation that the Customer is obligated to pay to Kaiwa in connection to the Agreement;
Kaiwa:	Zilverline B.V.

3 Conclusion, term and termination of the Agreement

- 3.1 The Agreement is entered into with the Customer and the initial Organization Administrator when the Customer and/or the Organization Administrator creates an account in the Portal and accepts these Terms & Conditions. The Organization Administrator represents and warrants towards Kaiwa that he/she is fully authorized to represent the Customer in this respect.
- 3.2 This Agreement is entered into with a Member, subsequent Organization Administrator and any other User when an invitation to join a Group is accepted by them or the Services are used by them in any other way.
- 3.3 The Agreement is entered into for an indefinite period of time.
- 3.4 The Agreement can be terminated by either party with one month notice. In case of Abuse or failure to comply with the Agreement or these Terms & Conditions Kaiwa can suspend its Services with immediate effect.
- 3.5 After termination of the Agreement Kaiwa will retain Customer's data for two months, after which the data will be deleted.

4 Services

- 4.1 The services to be rendered by Kaiwa entail access to an online platform for private social networking. On this platform a group of users as defined and controlled by the customer (such as employees, co-workers, family or friends) can communicate and share files such as documents and pictures within the private group.

- 4.2 The Services can be rendered in the form of several plans. Functionality, limitations and pricing of the plans can be changed by Kaiwa at any time. Such changes will be communicated beforehand. If these changes are not accepted by the User of Customer, this Agreement will terminate with immediate effect.
- 4.3 The obligation of Kaiwa pursuant to the Agreement is an obligation to perform to the best of its ability and is not aimed at achieving a guaranteed result.

5 Accounts

- 5.1 The Customer or Organization Administrator can create an administrative account. For the creation of this administrative account personal information will have to be provided regarding the Organization Administrator and the Customer.
- 5.2 In addition to the administrative account, regular accounts for Members will have to be created by the Organization Administrator.
- 5.3 The Customer hereby explicitly acknowledges that the User of any account created by the Organization Administrator with a role that allows the privilege of reviewing Personal Data of other Users, is allowed to such privilege.
- 5.4 All login credentials for access to accounts are strictly personal and may not be shared with others. The User, Organization Administrator and/or the Customer will ensure the non-disclosure of these login credentials.
- 5.5 In case of a paid plan, the administrative account may only be used for one company.
- 5.6 Kaiwa's System Administrator will have access to maintain, update or install applications. Access to user accounts or data for technical support / troubleshooting will only take place in consultation with the Organization Administrator.

6 Fees and payment

- 6.1 In case of a paid plan, the Customer shall pay to Kaiwa the Fee for the Services rendered as outlined in the specific plan, on the moments set out therein.
- 6.2 Kaiwa is entitled to periodically change the Fee. If the Customer or Organization Administrator does not wish to accept the changed Fee, the Agreement will terminate with immediate effect.
- 6.3 Payment shall be made in the way indicated by Kaiwa.
- 6.4 The Customer is not allowed to suspend its payment obligation or to compensate or set off payments.
- 6.5 In the absence of payment in a timely manner, the Customer shall without any further notification being required, be liable for the statutory commercial interest pursuant to article 6:119a or 6:119 of the Dutch Civil Code, whichever is applicable, without prejudice to Kaiwa's entitlement to suspend its Services.

7 Obligations Kaiwa

- 7.1 Kaiwa's obligations pursuant to the Agreement are obligations to perform to the best of its ability. This relates to the Services, the accessibility and proper operation of the Services and the Portal. Error free operation and 24/7 uptime of the Portal and/or the Services are strived for but cannot be guaranteed. The Services are provided on an "as is" and "as available" basis without any warranties of any kind.
- 7.2 Kaiwa shall to the best of its ability prevent accidental loss of data.
- 7.3 For the provision of the Services Kaiwa may use hardware and infrastructure owned by, or under the control of third parties, such as servers in a datacentre.
- 7.4 Kaiwa shall, with respect to Customers located in the European Union, not make use of datacentres or servers located outside the European Union.
- 7.5 Kaiwa is not responsible for the availability, accessibility or proper operation of systems outside its direct sphere of influence, such as Customer's systems or systems of third parties.

8 Obligations Customer and User

- 8.1 The Customer shall at all times act as the Controller with respect to the Personal Data and shall comply with its obligations pursuant thereto.
- 8.2 The Customer or the User shall not Abuse the Services and Portal. The Customer acknowledges and agrees that the Customer is responsible for acts of Users.

9 Abuse

- 9.1 Abuse shall mean:
- performing acts that may harm the proper operation of the systems used by Kaiwa;
 - using the Services to try to obtain access to data or systems to which the Customer and/or the Organization Administrator and/or the User do not have access or sufficient privileges;
 - using the Services to perform acts, publish or share content or communication that are in violation of applicable law, public order or public morals;
 - using the Services to publish content that is (i) sexually explicit, pornographic or violent, or (ii) illegal (including infringements of intellectual property rights of a third party), or (iii) reasonably likely to cause harm, or that could be reasonably considered as slanderous or libellous
 - any other unauthorized use as set out in Kaiwa's policies from time to time.

Kaiwa has a Notice and Takedown policy in place. As a follow-up to notices received, Kaiwa has the right but not the obligation to block, remove or modify and review communications or content sent with its Services, at any time and for any reason, without prior notice to the User, Customer or Organization Administrator.

10 Confidentiality and (Personal) Data

- 10.1 The Customer and User hereby grant Kaiwa the right to copy, store and transmit any content and Personal Data for the provision of the Services to the Customer and User.
- 10.2 Parties will not disclose confidential information of each other received pursuant to the Agreement or the Services, except insofar this information is already in the public domain or such disclosure is in compliance with a legal obligation.
- 10.3 Parties will observe applicable data protection laws. The Customer shall be the (sole) responsible Controller with respect to Personal Data entered into the Portal.
- 10.4 Further information regarding privacy and notice and takedown requests is laid down in the Privacy Policy which forms part of this Agreement.

11 Intellectual Property

- 11.1 All intellectual property rights of the Portal shall remain with Kaiwa or its licensors. No intellectual property rights shall transfer to the User or Customer, unless explicitly agreed in writing. The User or Customer shall not perform acts that may breach, limit or otherwise hinder intellectual property rights to which the User or Customer is not entitled.

12 Liability

- 12.1 Kaiwa shall not be liable for loss of profits, loss of goodwill, or missed opportunities, or any form of indirect or consequential damages.
- 12.2 Without prejudice to article 12.1 any liability of Kaiwa shall be limited to the Fee paid by the Customer in the relevant calendar year.
- 12.3 The Customer and/or the User indemnifies and holds Kaiwa harmless for any claim of third parties, including employees of the Customer or Users, related to the Services, including any use or misuse thereof.

13 Applicable law and competent court

- 13.1 Without prejudice to the applicability of the Data Protection laws applicable in the EU member state where the Personal Data is located, the relationship between Kaiwa and the User or Customer is exclusively governed by Dutch law.
- 13.2 The Dutch courts shall have exclusive competence to judge any disputes between the parties arising from or relating in any way to the Agreement. In first instance disputes shall be submitted exclusively to the District Court of Amsterdam.