

# Terms of Service for Schools

Last updated: August 2024

## 1. Background

- 1.1. Kudos Kids & Co Pty Ltd (ACN 671 717 285) (**Kudos, we, our or us**) provides a school communication platform that connects schools, educators, students, parents and family members Australia-wide (**Kudos Platform**).
- 1.2. In these Terms of Service, a reference to **you** or **your** is a reference to a School.
- 1.3. These Terms of Service set out the basis on which we permit you to access the Kudos Platform. By accessing and using the Kudos Platform, you agree to be bound by these Terms of Service as amended from time to time.
- 1.4. We may amend these Terms of Service by publishing the amended version on our website. The amended version will apply from the date of its publication on our website.

## 2. Definitions

- 2.1. The following words and terms have a particular meaning in these Terms of Service:
  - (a) **Account** means a registered account for a School which enables access to and use of functionalities within the Kudos Platform.
  - (b) **Additional Family Member** means an approved individual who has been given access to the Kudos Platform and is linked to a Student.
  - (c) **Content** means anything uploaded or posted on the Kudos Platform by Students, Educators, Family Member Admins or Additional Family Members, including (but not limited to) photographs, videos, and text comments.
  - (d) **Educator** means a teacher, childcare worker, education support officer or any other educator who has been registered by the School in the Kudos Platform.
  - (e) **Eligible Data Breach** has the meaning given to it in the *Privacy Act 1988* (Cth).
  - (f) **Family Member Admin** means the primary parent or guardian of the Student as designated by the School.
  - (g) **Intellectual Property** means all intellectual property rights throughout the world, whether registered or unregistered, including rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and right to apply for registration of such rights.
  - (h) **Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth).
  - (i) **Privacy Policy** means the privacy policy published on our website as amended from time to time.
  - (j) **Purchase Order** means the agreement between Kudos and the School that sets out the fee structure and Subscription Period.

- (k) **School** means a school, childcare centre, or other educational institution that has accepted these Terms of Service.
- (l) **School Administrator** means any individual authorised to administer the Kudos Platform by the School.
- (m) **Student** means a student or child at the School that has been registered by the School in the Kudos Platform.
- (n) **Subscription Period** means the period during which your account is active and you have paid any fees which are owed to us by you in accordance with these Terms of Service.

### 3. Your access to the Kudos Platform

- 3.1. We grant you a limited, non-exclusive and revocable licence to access and use the Kudos Platform during the Subscription Period, on the basis that you:
  - (a) comply with these Terms of Service at all times; and
  - (b) comply with any reasonable request by us in relation to your use of and access to the Kudos Platform.
- 3.2. While we take all reasonable steps to limit any interruptions to your access to the Kudos Platform, you acknowledge and agree that we cannot, and do not, promise continuous or error-free access to the Kudos Platform. However, we will use our reasonable endeavours to minimise the occurrence and duration of any outages, downtime (for planned maintenance or otherwise) or other causes of inaccessibility to the Kudos Platform.

### 4. Subscription Period

- 4.1. Your Subscription Period commences on the date on which you make a Purchase Order and may be terminated or suspended in accordance with this clause 4.
- 4.2. The length of the Subscription Period, and the amount of fees payable, are set out in the Purchase Order.
- 4.3. Either party may terminate the Subscription Period immediately if the other party has materially breached any of its obligations under these Terms of Service and the breach either cannot be remedied, or is not remedied within 30 days of being requested to do so.
- 4.4. If we terminate the Subscription Period in accordance with clause 4.7, we will not refund any fees paid in advance.
- 4.5. Either party may terminate the Subscription Period at any time and for any reason by providing thirty (30) days' written notice to the other party. If notice is not provided within thirty (30) days of the expiry of the Subscription Period, the Subscription Period will automatically roll over to a new Subscription Period of the same length.
- 4.6. Our fees will not change during an active Subscription Period. If our fees are to change as of the next Subscription Period, we will provide you written notice of the change at least thirty (30) days before the expiry of your current Subscription Period.

- 4.7. On expiry or termination of the Subscription Period, all rights and licences granted to you under these Terms of Service will cease. Any Content may be permanently deleted in our discretion, but will be deleted no later than 7 years of expiry or termination.
- 4.8. Expiry or termination of the Subscription Period for any reason will not affect:
- (a) the rights of either party against the other that accrued before expiry or termination or that otherwise relate to or may arise at any future time from any breach or non-observance of obligations under these Terms of Service that arose before expiry or termination; or
  - (b) any provision of these Terms of Service that are intended by their nature to survive termination or expiration.

## **5. Your management of your Account**

- 5.1. You acknowledge that in order to access the Kudos Platform, you must register an Account.
- 5.2. You agree that you are responsible for correctly setting up your Account and for the accuracy of any information you (or any third party you authorise) enter into the Kudos Platform, including the details of Family Member Admins, Students and Educators.
- 5.3. You warrant that any Students and Educators that are added to the Kudos Platform are current students or staff members at your School and are authorised by you to use the Kudos Platform.
- 5.4. Any person who registers an Account on behalf of a School warrants that they are an authorised representative of the School and has the authority to bind the School to these Terms of Service.

## **6. Acceptable use and your obligations**

- 6.1. You must only use the Kudos Platform for its intended purpose as set out in these Terms of Service.
- 6.2. In accessing or using the Kudos Platform, you must:
- (a) not permit any unauthorised person to access or use the Kudos Platform;
  - (b) ensure that you comply with any relevant laws when using the Kudos Platform;
  - (c) ensure that you have obtained any relevant permissions, consents and approvals when using the Kudos Platform;
  - (d) comply with our directions and restrictions regarding access and use of the Kudos Platform;
  - (e) ensure that Educators at your School comply with the policies of the Kudos Platform in existence from time to time; and
  - (f) not infringe any person's rights, including intellectual property rights and rights of confidentiality.

## **7. Third party operators**

- 7.1. We use certain third-party operators, including (but not limited to):
- (a) payment providers;
  - (b) information technology and hosting services; and

- (c) email services.
- 7.2. You acknowledge that we are not responsible for interruptions to the availability of the Kudus Platform due to the actions of third-party operators, and that we are not responsible for the content contained on the website or linked by any third-party operator.

## **8. Privacy**

- 8.1. You acknowledge and agree that:
  - (a) in order to provide you and all users of the Kudus Platform with access to the functionality of the Kudus Platform, we need to collect and use Personal Information;
  - (b) you will only disclose Personal Information to us where you are permitted to do so by applicable privacy laws; and
  - (c) you have obtained all necessary consents from individuals whose Personal Information may be uploaded to the Kudus Platform or otherwise provided to Kudus, prior to uploading or providing that Personal Information.
- 8.2. We will collect and handle Personal Information in accordance with our Privacy Policy and in compliance with applicable privacy laws.
- 8.3. Both parties will provide reasonable assistance to the other in relation to any privacy-related complaint or regulatory enquiry, and will notify the other party upon becoming aware of an Eligible Data Breach that relates to the Personal Information stored in the Kudus Platform.

## **9. Data**

- 9.1. We take the privacy of all users of the Kudus Platform seriously, as well as the security of the Kudus Platform. You agree that:
  - (a) you will not do anything to prejudice or negatively affect the security or privacy of the Kudus Platform or of the information on the Kudus Platform;
  - (b) you are solely responsible for the security of your login details for accessing the Kudus Platform; and
  - (c) you will notify us immediately if you become aware of any unauthorised access to the Kudus Platform.
- 9.2. We will take all reasonable precautions to ensure that the transmission of data occurs according to acceptable industry standards, however you acknowledge that the internet is not a fully secure environment and that we cannot accept responsibility for the misuse, unauthorised access, or loss of data where the security of the data is not within our control. If you provide us data via the internet, you do so accepting the risk.

## **10. Intellectual property**

- 10.1. Except as expressly provided in these Terms of Service, no ownership is transferred or other rights granted to the other party, with respect to the Intellectual Property of a party.

- 10.2. Both parties own and retain all of their Intellectual Property existing prior to the Subscription Period or which is developed independently of the agreement between the parties.
- 10.3. We own and retain all Intellectual Property rights with respect to the Kudos Platform.
- 10.4. You own and retain all Intellectual Property rights with respect to any data you upload to the Kudos Platform.
- 10.5. Any Intellectual Property developed by us during the course of the Subscription Period, including changes, additions or improvements in the Kudos Platform, immediately vests in us upon its creation and forms part of our Intellectual Property. You must do all acts and things necessary to give effect to this clause.
- 10.6. You grant us a non-transferable, non-exclusive and royalty-free licence to:
- (a) (if written consent is provided by you at a later point) use your logo or other branding or media for the purpose of promoting or marketing the Kudos Platform; and
  - (b) store and otherwise use, copy or modify any content, data or material provided by you to us for the purpose of the Kudos Platform.
- 10.7. You warrant that:
- (a) you have all necessary rights, licences, permissions and consents to grant us the licences referred to in clause 10.6; and
  - (b) our use of any data or material in any form provided by you to us will not infringe the rights of any third party (including their Intellectual Property rights) or breach any applicable law.

## **11. Liability**

- 11.1. To the extent permitted by law, you acknowledge and agree that:
- (a) your use of the Kudos Platform is at your own risk;
  - (b) we provide the Kudos Platform only and are not responsible or liable for the conduct or activities of any third parties, including third-party providers, Students, Educators, Family Member Admins or Additional Family Members; and
  - (c) we are not liable to you for any injury or harm resulting from the use of the Kudos Platform.
- 11.2. You agree to indemnify us for any loss, damage or claim that we may suffer or incur as a result of a breach of these Terms of Service by you.

## **12. General**

- 12.1. You acknowledge that you have not relied on any representation, warranty or statement made by us, other than as set out in these Terms of Service or our Privacy Policy.
- 12.2. The laws of the state of Victoria govern these Terms of Service, and you agree to the exclusive jurisdiction of courts of Victoria for any disputes which might arise.
- 12.3. Any clause which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms of Service.