

# Muhimbi Terms of Service

**Important Notice: Please read these terms and conditions carefully. Your attention is drawn in particular to clause 15, which contains important limitations on liability of Muhimbi.**

## 1. Description of Services

- 1.1. Muhimbi provide a variety of resources, including but not limited to hosted document processing software, APIs, web based information, documentation and customer support (collectively “Services”).

## 2. Agreement

- 2.1. The Services, including any trial or other free versions, updates, enhancements, new features, and/or the addition of any new Services, are subject to these terms and conditions (“Terms”). You agree to be bound by these Terms by indicating your acceptance of them by selecting a Free Plan by means of our website, executing an Order Form that references these Terms, or by using the Services. These Terms (and the other terms incorporated into them by reference) and the Order Form together comprise “this Agreement”. If you represent a company, organisation or other legal entity (“Entity”), you warrant that you have the authority to bind such Entity and its affiliates to these Terms, in which case the terms “you,” “your” or related terms herein shall refer to such Entity and its affiliates. If you do not have such authority, or if you object to any of these Terms or any subsequent modifications you must immediately discontinue your use of the Services.
- 2.2. The Services are provided to you by us, Muhimbi Ltd of 193 Camp Road St Albans, Hertfordshire, AL1 5NB UK (Company number 06702809) (referred to in these terms as “Muhimbi”, or “us”). Your details are set out in the Order Form.

## 3. Services

- 3.1. The Services may be offered in a range of service plans which define, for example, fees and charges (including the absence of fees for Free Plan Services), product features, number of users, support and usage limits (each a “Subscription” and collectively “Subscriptions”). “Free Plan Services” means any Subscription which is specified, when you select your subscription, to be provided to you on the basis of our Free or our Trial subscription.
- 3.2. We will make the Services available to you according to the Subscription(s) you order using the prescribed web pages, electronic or paper forms (collectively “Order Form”). Upon our acceptance of your Order Form and the receipt of the payment for your selected Subscription we hereby grant you a non-exclusive, non-transferable, revocable right to use the Services during the Subscription Term solely for your own business purposes. Except for any Affiliate, or as set out in clause 5.1, you must not use the Services for the benefit of any other person. The rights provided under these Terms are granted to you only. “Affiliate” means any company under common Control with you, and “Control” means the beneficial ownership of more than

50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.

- 3.3. Any additional terms specified in an Order Form or the Subscription(s) shall form part of these Terms and apply to your subscription. In the event of a conflict between these Terms and the terms specified on the Order Form the terms on the Order Form shall prevail.
- 3.4. Support for the Services is available at <http://support.muhimbi.com>. The level of support that you are entitled to will be detailed at <http://www.muhimbi-online.com/Pricing> as amended from time to time.
- 3.5. Subject to clause 3.8 below regarding Free Plan Services, we warrant that we shall provide the Services in a professional manner substantially in accordance with the features as set out at <http://www.muhimbi-online.com/Pricing> (to the extent comprised in your Subscription).
- 3.6. Clause 3.5 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to our instructions, or modification or alteration of the Services by any party other than Muhimbi or our duly authorised contractors or agents. If the Services do not conform with the warranty in clause 3.5, we will, at our expense and our option, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 3.5. Notwithstanding the foregoing, we:
  - 3.6.1. do not warrant that your use of the Services will be uninterrupted or error-free; or that the Services will meet your requirements or conversion fidelity standards; and
  - 3.6.2. are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.7. Our document processing Services (such as the PDF Converter for SharePoint Online) require that you have and shall maintain for the Subscription Term all necessary licences (including Microsoft Office licences) for the file types you are intending to process (for each user who accesses the Service). You agree that this is a condition of your use of the Services.
- 3.8. We may make Free Plan Services available to you. Your use of Free Plan Services is subject to these Terms. Use of the Free Plan Services is subject to the limitations on the Service specified in or linked to from <http://www.muhimbi-online.com/Pricing> as amended from time to time. In the event of a conflict between this clause 3.8 and any other portion of this Agreement, this section shall take precedence. We may terminate or modify at any time with or without prior notice the Free Plan Services or any part of them, or your use of all or any part of them. Without limitation on clause 13.1, the Free Plan Services are provided by us on an “as is” basis, without any warranty (including, without limitation, the warranty under clause 3.5 above). The confidentiality obligations on us under clause 10 shall not apply to any of your Customer Data in connection with the Free Plan Services. You are not entitled to benefit from more than one Free Plan Services subscription.

## 4. Privacy and Customer Data

- 4.1. You shall own all right, title and interest in and to all of the Customer Data (as defined below) and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. “Customer Data” means the data inputted by you for the purpose of using the Services. You agree and acknowledge that you are wholly responsible for your Customer Data.
- 4.2. In the event that we are responsible for any loss or damage to Customer Data, your sole and exclusive remedy shall be for us to use our reasonable commercial endeavours to retrieve your Customer Data (from up to a maximum of 30 days from the date of your notice to us). We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (including those third parties sub-contracted by us to perform services related to Customer Data maintenance and back-up).
- 4.3. If we process any personal data on your behalf when performing our obligations under the Terms, the parties record their intention that you shall be the data controller and we shall be a data processor and in any such case the [Data Processing Terms available on our website \(“Data Processing Terms”\)](#) shall apply.

## 5. Permitted uses

- 5.1. You may use the Services for your own internal business purposes only in accordance with these Terms. For the avoidance of doubt this includes the integration of our Services, during the Subscription Term only, into your systems and products that you may make available or supply to third parties. Those systems and products are referred to as “Customer Services” and those third parties are referred to as “Your Customers”). Such integration is permitted on condition that (i) such integration does not make our Services available to Your Customer on a stand-alone basis; and (ii) Your Customers enter into either (at Muhimbi’s option) (i) an End User Agreement direct with Muhimbi on such terms as Muhimbi may specify from time to time; or (ii) an agreement with you no less protective of Muhimbi than these Terms, that asserts Muhimbi’s ownership of Muhimbi’s Intellectual Property Rights (as defined in clause 9 below), excludes Muhimbi’s liability to Your Customer as far as is permitted by law, and under which Your Customer’s right to use the Services ceases on termination of this Agreement.
- 5.2. All other uses are excluded and prohibited, including without limitation:
  - 5.2.1. accessing the Services for the purpose of developing or marketing any competing services or related products; attempting to discover the source code, trade secrets, designs, methods, or other intellectual property of Muhimbi; benchmarking or performance testing the Services;
  - 5.2.2. any resale, rental, lease, transfer, assignment, time share, or in any other way to commercially exploit or make the Services available to any third party (except as set out in clause 5.1 above):
  - 5.2.3. engaging in or promoting any surveys, contests, pyramid schemes, chain letters, unsolicited e-mailing or spamming;
  - 5.2.4. impersonating any person or entity;
  - 5.2.5. using the Services to upload, post, e-mail, transmit or otherwise make available any material that you do not have a right to make available under any law or contractual

obligation, or which contains viruses, or other computer codes, files or programs designed to interrupt, limit or destroy the functionality of other computer software or hardware;

- 5.2.6. breaching any applicable laws or regulations.
- 5.3. Muhimbi has no obligation to monitor any use of the Services, however we retain the right at all times to monitor, retain and disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request.
- 5.4. You will indemnify us if we suffer any loss or damage or incur any costs in connection with any breach of these conditions or any other legal obligation by you or your use of or conduct on the Services.
- 5.5. You shall not use the Services for any Customer Data that:
  - 5.5.1. can be used to identify an individual person under 16 years of age;
  - 5.5.2. relates to an individual's health, medical condition or genetic or biometric properties;
  - 5.5.3. is in a "special category of personal data" as defined in Article 9 of the EU General Data Protection Regulation;
  - 5.5.4. is unlawful or facilitates illegal activity;
  - 5.5.5. contains any financial account information (including details of any credit or payment card, bank account or PayPal account);
  - 5.5.6. infringes any copyright, trade mark, database right or other intellectual property rights, and Muhimbi reserves the right, without liability or prejudice to its other rights to you, to disable your access to any Customer Data that breaches the provisions of this clause.

## **6. Member account, password, and security**

- 6.1. Provision of the Services requires you to open an account, register, and/or pass secure credentials, you must complete such process by providing current, complete and accurate information. You are entirely responsible for maintaining the confidentiality of your account details including any passwords or other security keys. Furthermore, you are entirely responsible for any and all activities that occur under your account. You agree to immediately notify us of any unauthorised use of your account or any other breach of security. We will not be liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge. However, you could be held liable for losses incurred by Muhimbi or another party due to someone else using your account or password. You may not use anyone else's account at any time.

## **7. Usage**

- 7.1. The Subscription you select is based on a fixed level of usage per calendar month and service support. You should closely monitor your use of the Services to ensure you are not running out of allocated resources. Our system will automatically send you alerts when you are about to exceed your level of usage in any calendar month. You acknowledge and agree that we may suspend the Services in any given calendar month (for the remainder of such calendar month) if your usage level exceeds the level of usage you have selected in your Subscription. Alternatively, you may elect to upgrade your Subscription to a plan that allows for a higher level of usage for the remainder of your term. Upon payment for such upgrade we shall promptly reinstate your Services.

## **8. Third party services**

- 8.1. Websites and web service APIs operated by third parties (collectively “Third-party Services”) may be accessed from or through the Services. These Third-party Services are not under our control and we accept no responsibility for the contents, operation, availability, or accuracy of any such Third-party Services. If you access any such Third-party Services you do so entirely at your own risk. Integration with any Third-Party Service is provided on the basis of the Third-Party Service’s API and service as they exist on the date of the Order Form. Muhimbi shall use reasonable endeavours to continue such integration but makes no warranty that such integration shall remain throughout the Subscription Term.

## **9. Muhimbi IP**

- 9.1. You acknowledge and agree that we and/or our licensors own all patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services (the “Intellectual Property Rights”). Except as expressly stated herein, these terms do not grant you any rights to, or in, the Intellectual Property Rights. All right, title, and interest in and to the Services (excluding your Customer Data) are and will remain the exclusive property of Muhimbi and its licensors.
- 9.2. The Muhimbi name, branding, product names, logos, insignias and other distinctive marks are the property of Muhimbi. Other trade marks are displayed on the Services and these may be the property of third parties. Nothing displayed on the Services should be construed as granting any licence or right of use of any logo, masthead or trade mark, without the express written permission of the relevant owner.
- 9.3. Except to the extent to which rights are expressly granted under these Terms, Muhimbi reserves all its rights in respect of the Intellectual Property Rights.

## 10. Confidentiality

- 10.1. You acknowledge that the ideas and expressions contained in the Services and any modifications or particulars of them that may be provided to you by us are confidential (except to the extent that they have entered the public domain other than through a breach of these Terms by you) and we acknowledge that Customer Data is similarly confidential (“Confidential Information”). Both parties undertake not to disclose this Confidential Information to any person other than our respective agents and employees and then only to enable the Services to be used in accordance with these Terms.
- 10.2. Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:
  - 10.2.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 10.2.2. was in the other party's lawful possession before the disclosure;
  - 10.2.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 10.2.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 10.2.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.3. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.
- 10.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these Terms.
- 10.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6. You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute our Confidential Information.
- 10.7. You hereby authorise Muhimbi to include details of Muhimbi's relationship with you in any training, marketing or promotional material produced by it or on its behalf in relation to Muhimbi or the Services.
- 10.8. This clause 10 shall survive termination of these Terms, however arising.

## 11. Fees and taxes

- 11.1. You shall pay the fee for your Subscription as set out and defined in the Order Form (“Fee”).
- 11.2. Unless expressly stated to the contrary, all fees and charges related to the Services are quoted exclusive of all taxes, duties and imposts. If we are or will be liable for any taxes, duties or imposts (including goods and services tax or value added tax, sales tax, or withholding taxes) on or relating to the provision of the Services to you, then you must pay us an amount equal to that liability at the time that you pay any fees, costs or charges to which the liability relates.
- 11.3. All Fees paid by you to us are non-cancellable and non-refundable.

## 12. Term and Termination

- 12.1. Except in respect of the Free Plan Services, your Subscription shall commence on our acceptance of the Order Form and our receipt of your payment of the Fee for such Subscription and continue for a period of 12 months (or such longer period as may be specified in the Order Form) (the “Subscription Term”). In respect of the Free Plan Services, your Subscription shall commence on our acceptance of the Order Form for such Subscription and continue for a maximum period of 12 months (or one month, for the Trial subscription), subject to earlier termination by us at any time in accordance with clause 3.8.
- 12.2. At any time during the Subscription Term you may upgrade your Subscription to one that provides higher levels of Service. To upgrade contact our support on [support@muhimbi.com](mailto:support@muhimbi.com). We shall calculate the value of your upgraded Subscription for the remainder of the Subscription Term on a pro-rata basis (the “Additional Fee”) and notify you. Upon our receipt of your payment to us of the Additional Fee your usage level shall be increased to your new Subscription level.
- 12.3. At one time only during the Subscription Term you may downgrade your Subscription to one that has a lower level of Service (excluding, for the avoidance of doubt, the Free Plan Services). To downgrade contact our support [support@muhimbi.com](mailto:support@muhimbi.com). We shall calculate the value of your downgraded Subscription for the remainder of the Subscription Term on a pro-rata basis (the “Reduced Fee”) and notify you. Upon your confirmation of the Reduced Fee we give you a rebate for your downgraded Subscription and your usage level shall be decreased to your new Subscription level.
- 12.4. If you breach these Terms, we may terminate your subscription, or cancel or suspend your access to the Services, at our absolute discretion, and we will not refund any fees.
- 12.5. We may cease providing any of the Services at any time, for any reason or no reason. If we do this we will give you reasonable notice and will refund any unused prepaid fees for the affected Services.

### **13. Warranties**

- 13.1. Except where expressly stipulated under these Terms we make no warranties or representations to you as to the performance or operation of the Services. We make no other warranty express or implied with respect to us, the Services provided by us, and subject to this clause, any condition or warranty which would otherwise be implied in these terms is hereby excluded. Where legislation implies in these terms any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of or liability under such condition or warranty, that condition or warranty will be deemed to be included in these Terms.

### **14. Indemnity**

- 14.1. You shall defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services, provided that:
- 14.1.1. we give you prompt notice of any such claim;
  - 14.1.2. we provide reasonable co-operation to you in the defence and settlement of such claim, at your expense; and
  - 14.1.3. you are given sole authority to defend or settle the claim.

### **15. Liability and Limitation of liability**

- 15.1. This clause 15 sets out our entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you:
- 15.1.1. arising under or in connection with these Terms;
  - 15.1.2. in respect of any use made by you of the Services or any part of them; and
  - 15.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.
- 15.2. Except as expressly and specifically provided in these Terms:
- 15.2.1. you assume sole responsibility for results obtained from the use of the Services by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services, or any actions taken by us at your direction;
  - 15.2.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and
  - 15.2.3. the Services are provided to you on an "as is" basis.
- 15.3. Nothing in these Terms excludes our liability:
- 15.3.1. for death or personal injury caused by our negligence; or
  - 15.3.2. for fraud or fraudulent misrepresentation.

15.4. Subject to clause 15.2 and clause 15.3:

15.4.1. we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following:

- loss of profits, loss of business, depletion of goodwill and/or similar losses; or
- loss or corruption of data or information, or pure economic loss, or
- for any special, indirect or consequential loss, costs, damages, charges or expenses in all cases, however arising under these Terms; and

15.4.2. our total maximum aggregate liability in contract (including in respect of the Data Processing Terms), tort (including without limitation, negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the greater of (i) the total Fees paid during the 12 months immediately preceding the date on which the claim arose; and (ii) one hundred dollars.

## **16. General provisions**

16.1. We shall have no liability to you under these Terms if we are prevented from or delayed in performing our obligations under these Terms, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

16.2. Except where otherwise expressly set out in this Agreement, no variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.3. No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.4. Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

16.5. If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16.6. These Terms, and any documents referred to in it, and the Order Form constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

- 16.7. Each of the parties acknowledges and agrees that in entering into these Terms it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms or not) relating to the subject matter of these Terms, other than as expressly set out in these Terms.
- 16.8. You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under these Terms.
- 16.9. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms.
- 16.10. Nothing in these Terms are intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.11. These Terms do not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 16.12. The following sections shall survive the expiration or termination of this Agreement: 4. Privacy and Customer Data; 8. Third Party Services; 9. Muhimbi IP; 10. Confidentiality; 13. Warranties; 14. Indemnity; 15. Limitation of Liability; and 16. General Provisions.
- 16.13. These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).