

Terms of Service

Introduction

Please read these Terms of Service ("Terms") carefully as they are the legal terms and conditions that you agree to when you use the online photo and video sharing services provided to you by Kinoke through www.Kinoke.com (collectively, the "Service").

By using our Service you agree to be bound by Part A of these Terms which contains provisions applicable to all users of our Service, including casual visitors. If you choose to register as a member of, or make a purchase through, our Service, you will be asked to check a box to indicate that you have also read and agree to be bound by the additional wording set out in Part B of these Terms.

Part A: Provisions applicable to all Users of the Service (Whether Registered or Not)

Operator

This Service is operated by CALIFORNIA PROFIT CORPORATION ("Kinoke"), a company incorporated under the laws of the State of Delaware whose principal business address is PO Box 223, Los Gatos, CA 95031

Kinoke is also referred to in these Terms as "we" and "us".

Purpose of the Service

Kinoke offers a digital photo and video online sharing service to view, store and share digital images through a range of electronic devices including personal computers and hand-held devices.

Availability

Kinoke uses reasonable endeavors to ensure that the Service is available 24 hours a day 7 days a week. However, there will be occasions when the Service will be interrupted for maintenance, upgrades and emergency repairs or due to failure of telecommunications links and equipment that are beyond the control of Kinoke. Every reasonable step will be taken by Kinoke to minimize such disruption where it is within the reasonable control of Kinoke. You agree that Kinoke shall not be liable to you for any modification, suspension or discontinuance of the Service. Additionally, we reserve the right to modify or terminate the Kinoke service for any reason and without notice at any time.

Privacy

Kinoke has a firm commitment to safeguarding your privacy. The terms of Kinoke's privacy policy are incorporated into, and considered part of, these Terms.

Trademarks

All brand, product and service names used in this Service which identify Kinoke or third parties and their products and services are proprietary marks of Kinoke and/or the relevant third parties.

Nothing in this Service shall be deemed to confer on any person any license or right on the part of Kinoke or any third party with respect to any such image, logo or name.

Copyright

Kinoke is, unless otherwise stated, the owner of all copyright and database rights in the Service and its contents. You may not publish, distribute, extract, re-utilize or reproduce any such content in any material form (including photocopying or storing it in any medium by electronic means) other than in accordance with the limited use license set out in our copyright notice.

Reporting Violations of Your Copyrights

If you believe the copyright in your work has been violated through this Service, please contact Kinoke's agent for notice of claims of copyright infringement, at accounts@Kinoke.com, or at Kinoke PO Box 223, Los Gatos, Ca 95031

You must provide our agent with the following information, which Kinoke may then forward to the alleged infringer:

- identify the material on the Service that you believe infringes your work, with enough detail so that we may locate it on the Service;
- provide your address, telephone number, and email address;
- provide a statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- provide a statement that (i) the information you have provided to us is accurate, and (ii) you are the owner of the copyright interest involved or you are authorized to act on behalf of that owner; and
- provide your physical or electronic signature. Upon receiving your complaint, Kinoke may remove content that you believe infringes your copyright. In addition, Kinoke may terminate the account of the member who appears to be infringing your intellectual property rights.

External Links

From time to time Kinoke may provide links that will take you to other, third party websites. These links are provided for your convenience. If you decide to access linked websites you do so at your own risk. Kinoke does not endorse or take responsibility for the content on other websites or the availability of other websites and you agree that Kinoke is not liable for any loss or damage that you may suffer by using other websites.

Amendment of the Terms

Kinoke reserves the right to amend these Terms of Use from time to time without any notice to you. You can review the most current version of the TOS at any time at: <http://www.Kinoke.com/terms.html>

Applicable Law and Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising under or in connection with these Terms shall be subject to the non-exclusive jurisdiction of the state and federal courts of the State of California.

General

These Terms constitute the entire agreement between Kinoke and you with respect to your use of the Service. Kinoke's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more rights or provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable.

Comments

If you have any comments or questions about the Service please contact us by email at accounts@kinoke.com

Part B: Provisions Applicable to Registered Members and Customers

Registration

To purchase from or register as a member of the Service you must be 18 years or over. We reserve the right to refuse service to anyone for any reason at any time.

You agree that the information that you provide to us on registration and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which we will communicate with you about your account and your orders.

Password

When you register as a member you will be asked to provide a password. As you will be responsible for all activities that occur under your password, you should keep your password confidential. You must notify Kinoke immediately of any unauthorized use of your password or if you believe that your password is no longer confidential. We reserve the right to require you to alter your password if we believe that your password is no longer secure.

Formation of a Binding Contract

No contract will exist between you and Kinoke for the supply of any services or products unless and until Kinoke accepts your order by a confirmatory e-mail, SMS/MMS message or other appropriate means of communication.

Copyright in Your Images

Kinoke does not claim ownership rights in any image contained in your account. For the sole purpose of enabling us to display your images through the Service and fulfilling any orders for you or those you have shared your images with, you grant to Kinoke a non-exclusive, royalty-free license to use, copy, distribute, and display those images. Please note that when you share images, you allow the recipients to share and make photographic prints from those images.

Conduct

You are responsible for all of the images you upload, share or copy using the Service. You must have the legal right to copy and display each image that you upload, share or print. Professional images that are provided to you by professional photographers or made available through websites, magazines, books or other resources, are protected by copyright and should not be uploaded, shared or copied using the Service.

You agree not to use the Service:

- for any unlawful purposes;
- to upload, post, order for print, email or otherwise transmit or communicate any material that is obscene, offensive, blasphemous, pornographic, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- to upload, post, order for print, email or otherwise transmit or communicate any material that you do not have a right to transmit or communicate under any contractual or fiduciary relationship or which infringes any copyright, trade mark, patent or other intellectual property right or any moral right of any party including, but not limited to Kinoke;
- to harm minors in any way, including, but not limited to, content that violates child pornography laws, child sexual exploitation laws and laws prohibiting the depiction of minors engaged in sexual conduct;
- to forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service;
- to upload, post, email or otherwise transmit any material which is likely to cause harm to Kinoke or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;
- to make images hosted by Kinoke available for viewing by the general public through a publicly posted link to the image or otherwise;
- for any professional or corporate purpose. Kinoke is intended for personal use and not as a generic photo or video hosting service.

Violation of any of these agreements will result in the termination of your Kinoke account. While Kinoke prohibits such conduct and content on its site, you understand and agree that Kinoke cannot be responsible for the Content posted on its web site and you nonetheless may be exposed to such materials and that you use the Kinoke service at your own risk.

You further agree that you shall not:

a. interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or

regulations of networks connected to this Service; or b. provide any information to Kinoke that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose. b. make duplicate user accounts to bypass account restrictions.

Monitoring of Content

Kinoke does not control the content of members' accounts and does not have any obligation to monitor such content for any purpose. You acknowledge that you are solely responsible for all content and activity that occurs on your user account.

Suspension and Termination of Access and Membership

You agree that Kinoke may at any time without notice:

- refuse to accept your application to become a member of Kinoke;
- move or suspend any part of the Service; or
- refuse to fulfill any order, or any part of any order or terminate your account and delete any content stored in your account if, in Kinoke's sole discretion, you fail to comply with any of these Terms or if a competent regulatory authority requires Kinoke to do so.

Storage Policy

Kinoke provides online storage of media to its members. If your account becomes inactive for a period of **12 months**, Kinoke may, at its option, terminate access to the account altogether (including deletion of any account information held by Kinoke). Kinoke may change this policy at any time, upon reasonable notice to you.

Disclaimer of Warranty and Limitation of Liability

Kinoke agrees that all services will be carried out with reasonable skill and care, and any goods supplied will be of satisfactory quality and reasonably fit for their purpose.

THE SERVICE, KINOKE'S SITES AND ALL RELATED PRODUCTS AND SERVICES ARE PROVIDED BY KINOKE "AS IS" WITH NO WARRANTIES WHATSOEVER. ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, KINOKE DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE.

YOU UNDERSTAND AND AGREE THAT THE SUBMISSION OF ANY DIGITAL CONTENT OR FILM IMAGE TO KINOKE, AND THE DOWNLOAD OR UPLOAD OF ANY MATERIAL THROUGH THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR CONTENT OR IMAGE OR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OR UPLOAD OF ANY MATERIAL. YOU ARE SOLELY RESPONSIBLE FOR CREATING BACK-UPS OF YOUR DIGITAL CONTENT.

EXCEPT AS EXPRESSLY PROVIDED IN THE PRECEDING PARAGRAPH, TO THE FULLEST EXTENT ALLOWED BY LAW, KINOKE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES RESULTING FROM THE USE OR PROVISION OF THE SERVICE, KINOKE'S SITE AND ALL RELATED PRODUCTS AND SERVICES, EVEN IF KINOKE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.