

*Last updated 11 September 2019.*

## **Khoros Terms of Use and API Terms**

### **1. Overview**

Welcome to Khoros!

Please read these Terms of Use, which also incorporate our [Privacy Notice](#) (collectively the “**Terms**”) carefully, as they are a binding agreement between you (on behalf of you or your organization, as applicable) and Khoros, LLC and its wholly owned subsidiaries (“**Khoros**, or “**we**” or “**us**”) (each referred to individually as a “**Party**” and collectively as the “**Parties**”).

These Terms govern your use of this website, located at [khoros.com](http://khoros.com), as well as any other websites that link to these Terms. In these Terms, the word “**Website**” refers to each of these websites, as well as the application programming interfaces offered in connection with these websites (each an “**API**” and collectively the “**API(s)**”). By accessing or using the Website, you automatically agree to these Terms.

Khoros provides an open social marketing platform and related services which help connect our Customers to the people they care about the most (collectively “**Khoros Services**” and each individually a “**Khoros Service**”).

Please note that these Terms govern your use of the Website only. Your use of the Khoros Services may be governed by a separate executed agreement, the form of which can be found at [www.khoros.com/msa](http://www.khoros.com/msa). If you use the Khoros Services, those additional terms become part of your agreement with us. As used in these Terms, the term “**Customer(s)**” refers to our customers (and their authorized users) who have purchased access to or are otherwise authorized to access the Khoros Services.

As used in these Terms, the term “**Visitor(s)**” shall refer to both the non-Customer and Customer users of the Website.

You may not accept the Terms and you may not use the Website if (i) you are not of legal age to form a binding contract with Khoros, and/or (ii) you are an individual barred from accessing or using the Website under the applicable laws of the United States of America or the applicable laws of any other country, including the country in which you claim residence and/or from which you access the Website. You represent and warrant to Khoros that you have the authority to accept the Terms on behalf of yourself, a company, and/or any other entity, as applicable.

We may change, amend, or terminate the Terms at any time, for any or no reason, without notice to you, and with immediate effect. Any changes or amendments will be effective upon

your continued use of the Website on the date or after the date that those changes or amendments have been posted here.

## **2. Use of the Website**

You agree to use the Website only for purposes that are permitted by the Terms and by applicable laws, rules, and regulations. You agree not to access, or attempt to access, the Website by any means other than through the interface that is provided by Khoros. You specifically agree not to access, or attempt to access, the Website through any automated means, including through the use of scripts or web crawlers. You agree that you will not engage in any activity that interferes with or disrupts the Website. You agree that you are solely responsible for, and that Khoros has no responsibility to you or to any third party for, any breach of your obligations under the Terms and for the direct or indirect consequences of any such breach, including any loss or damage which you may suffer.

## **3. Social Standards**

Your use of the Website must comply with the following social standards (“**Social Standards**”):

*At Khoros, we value freedom of expression and promote the use of social media by our Customers to connect with the people they care about the most. In order to help safeguard the ability of companies and consumers to feel safe in engaging through social media and expressing themselves thereon, you agree to abide by the following:*

*No Visitor may use the Website to engage in or promote:*

- illegal activity or behavior;*
- abuse, violence, or related threats;*
- a threat to public safety;*
- harassment or discrimination; or*
- any other violation of applicable rules of a social media network used in connection with the Website.*

If you have evidence that the Website is being used in a way that violates these Social Standards or any other provision of these Terms, please contact [legal@khoros.com](mailto:legal@khoros.com) to report the activity. We will investigate and take appropriate action, which may include, in our sole discretion and judgment, the suspension of access to the Website or account termination.

## **4. Responsibility of Website Visitors**

You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive material. The Website may contain material containing technical inaccuracies, typographical mistakes, and

other errors. Khoros disclaims any responsibility for any loss or harm resulting from your use of the Website.

The Website may provide links to other sites that we do not own or operate. Please be advised that when you access such sites, you do so at your own risk and are responsible for compliance with terms and conditions applicable to such sites. Khoros makes no representation and shall have no responsibility with respect to the content, use, functionality or otherwise with respect to such sites.

## **5. Intellectual Property**

### *A. License grant*

Subject to your compliance with these Terms, Khoros grants you a limited, non-exclusive, worldwide, royalty-free, revocable, non-sublicensable license to access and use the Website in accordance with the Terms.

### *B. Content*

At our sole discretion, we may provide opportunities for you to post text, photographs, videos, or other content (collectively, "**Content**") on the Website. You may only post Content on the Website if you own all the rights to that Content, or if another rights holder has given you adequate permission. Please be prepared to promptly provide written evidence of such third-party permission if we request it.

You do not transfer ownership of your Content simply by posting it on the Website. However, by posting Content on the Website, you grant us, our agents, licensees, and assigns an irrevocable, perpetual, non-exclusive, right to reproduce, encode, store, copy, transmit, publish, post, broadcast, display, publicly perform, adapt, modify, create derivative works of, exhibit, and otherwise use your Content. You further agree to indemnify, release, and hold us harmless from any and all liability, claims, actions, loss, harm, damage, injury, cost, or expense arising out of or related to any Content you post on the Website.

We are not responsible for, and do not endorse, Content posted on the Website by any other person or entity. Accordingly, you agree that we may not be held liable, directly or indirectly, for any loss or damage caused to you in connection with any Content posted by any Visitor.

The copyright in all material provided on the Website is held by Khoros or its licensors. You may not copy, reproduce, distribute, republish, download, display, post, or transmit any of the material in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Khoros or the copyright owner, as applicable, except that you are permitted to download and retain a copy of any agreement related to your use of the Website for your records.

Except as set forth above, these Terms do not transfer from Khoros to you any Khoros or third-party intellectual property rights, and all right, title and interest in and to such intellectual property rights will remain solely with Khoros. The name “Khoros,” the URL of khoros.com, the Khoros logo, and all other trademarks, service marks, graphics, and logos used in connection with the Website are trademarks or registered trademarks of Khoros or Khoros’s licensors. Other trademarks, service marks, graphics, and logos used in connection with the Website may be the trademarks of other third parties. YOUR USE OF THE WEBSITE GRANTS YOU NO RIGHT OR LICENSE TO REPRODUCE OR OTHERWISE USE ANY KHOROS OR THIRD-PARTY TRADEMARKS, SERVICE MARKS, GRAPHICS, OR LOGOS.

### C. *APIs*

You hereby acknowledge and agree that Khoros owns all right, title, and interest, including intellectual property rights, in and to all the APIs. You further acknowledge and agree that you are not granted any right, title, or interest in any Khoros intellectual property, other than the limited usage rights provided herein.

You also agree not to create any derivative works or other intellectual property related to any API (“**Derivative Works**”). Any Derivative Works that you create shall be the sole and exclusive property of Khoros, and Khoros shall retain all rights, title, and interest in such Derivative Works, including intellectual property rights. You will have no right or interest in or to the Derivative Works. You hereby assign to Khoros at no additional consideration all right, title, and interest, including intellectual property rights, in the Derivative Works. Upon Khoros’s request, you agree to execute a written assignment of such rights to Khoros as well as any other documents necessary for Khoros to establish, preserve, perfect, or enforce its rights in the Derivative Works. You hereby agree not to assert at any time, and otherwise waive, any “moral rights” that you may have in the Derivative Works supplied by you to Khoros hereunder, and you hereby assign to Khoros all moral rights therein.

## 6. **Notice of Infringement – DMCA Process**

If you believe that any Content on the Website infringes your copyright, you may follow the following process, which is consistent with the process suggested by the Digital Millennium Copyright Act (the text of which can be found at the U.S. Copyright Office Web Site, <http://www.copyright.gov>):

If you believe any Content on the Website infringes your copyright, you may send us a written notice, provided that you are the copyright owner of the Content. Please note that you may be liable for damages, including court costs and attorneys’ fees, if you materially misrepresent that any Content is copyright infringing. When in doubt, you should consult an attorney. In any event, if you believe your copyrights are being infringed, we strongly urge you to contact the alleged infringer directly, if possible.

We will attempt to notify the Visitor who posted the allegedly infringing Content. If we are successful at notifying the Visitor, that Visitor then has the right to request that the Content be re-enabled. If they properly make such a request, we will re-enable the Content unless and until you and said Visitor jointly ask us to remove it, or a court orders us to remove it.

*A. What to Include in Your DMCA Notice*

Your DMCA notice must include the following information:

- Your name, mailing address, telephone number, and email address;
- Sufficient detail about the copyrighted work;
- The URL or other specific location on the Website that contains the Content that you claim infringes your copyright;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law (e.g., "I have a good faith belief that use of the copyrighted materials described above as allegedly infringing is not authorized by the copyright owner, its agent, or the law.");
- A statement by you that the information contained in your notice is accurate and that you attest, under the penalty of perjury, that you are the copyright owner or that you are authorized to act on the copyright owner's behalf (e.g., "I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."); and
- An electronic or physical signature of the owner of the copyright or a person authorized to act on the owner's behalf.

*B. Where to Send Your Notice*

Your notice can be sent to our copyright agent by mail at:

Khoros, LLC  
Attn: Chief Legal Officer  
1 Pier,  
Suite 1A  
San Francisco, CA 94111

Or by email at: [legal@khoros.com](mailto:legal@khoros.com)

*C. Our Response*

After we receive a proper written DMCA notice from you, we will promptly remove or disable the allegedly infringing Content. We will document any alleged infringements on which we take action. Also, we will notify the Visitor and, if requested, provide the report to the Visitor. Please note that in addition to being forwarded to the Visitor who provided the allegedly infringing

Content, a copy of the notice (with your personal information removed) may be sent to a third-party which may publish and/or annotate it.

#### *D. Restoration of the Removed Content*

If a Visitor to our Website believes that their Content was removed or disabled by mistake or misidentification, the Visitor can send us a written counter-notification which includes the following:

- The Visitor's name, mailing address, telephone number and email address;
- Identification of the material that has been removed or disabled and the URL or other specific location on the Website where the material appeared before it was removed or disabled;
- A statement that the Visitor consents to the jurisdiction of the United States Federal District Court in which the Visitor's address is located, or in Austin, Texas if the Visitor's address is located outside the United States;
- A statement, under penalty of perjury, that the Visitor has a good faith belief that the Content in question was removed or disabled as a result of mistake or misidentification of the Content to be removed or disabled (e.g., "I swear, under penalty of perjury, that I have a good faith belief that each search result, message, or other item of content identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled, or that the material identified by the complainant has been removed or disabled at the URL identified and will no longer be shown."); and
- The Visitor's physical or electronic signature.

We will restore the removed or disabled Content following ten (10) business days from the date that we received a proper written counter-notification, unless our copyright agent first receives notice that a court action has been filed to restrain the Visitor from engaging in infringing activity related to the removed or disabled Content.

## **7. Khoros APIs**

As stated above, your access and use of any of our APIs is subject to these Terms. Should a conflict arise between these Terms and any additional terms provided in an API's documentation, the additional terms in that API documentation will govern for purposes of the conflict.

These Terms may be updated from time to time without prior notice. By accessing an API, you agree to these Terms. Please read these Terms carefully. If you do not agree to all of its terms, you may not access any API.

#### *A. API Use and Access*

By accessing or using the APIs, including within a software application, tool, service, website, or product that you create and/or make available to end users (your “**Application**”), you are accepting the Terms.

You agree to use or access the APIs only for purposes allowed by the Terms, as well as in accordance with applicable laws, rules, and regulations.

You agree not to access, or attempt to access, the APIs by any means other than through the interface that is provided by Khoros.

Subject to your compliance with the entirety of the Terms, Khoros hereby grants you a limited, non-exclusive, non-assignable, non-transferable, revocable license to use the APIs to develop, test, and support your Application, and further to allow Customers to use your incorporation of the APIs into your Application. You may use the APIs only as expressly permitted in the Terms. Violation of the Terms may result in the suspension or termination of your use of the APIs.

Please note that the license granted to you by Khoros in the previous paragraph is also predicated on the following non-exclusive list of restrictions:

- i. You will use API in accordance with descriptions provided on khoros.com or a subdomain thereof, other Khoros documentation, or communications between you and an authorized Khoros representative;
- ii. When requested by Khoros, you will immediately provide us with your use case or other reasonable information regarding your use of any API; and
- iii. You will not engage in any of the following activities:
  - You will not breach any obligation stated in the Terms, including a breach of the terms herein related to Confidential Information (defined below);
  - You will not provide access to any API to any third party without prior written approval from an authorized representative of Khoros;
  - You will not use any API in such a way that could damage or impair Khoros, the APIs, any Khoros Service, or any party’s use of the APIs or the Khoros Services;
  - You will not transfer any data collected from any API without prior written approval from an authorized representative of Khoros;
  - You will not use or transfer any data accessed or obtained using the APIs, including any data aggregated, anonymized, or derived from that data, for advertising or marketing purposes;
  - You will not use the APIs in a way that could create, in Khoros's sole discretion and judgment, an unreasonable risk to Customers from a security or privacy perspective;
  - You will not use the APIs or any information accessed or obtained using the APIs for the purpose of disrupting or impairing any agreements that Khoros has with any party, including but not limited to Customers;

- You will not use the APIs, or any information gained therefrom, for the purpose of migrating any Customer away from, or in any way attempting to persuade any Customer to discontinue or reduce their usage of, any Khoros Service;
- You will not scrape or otherwise create copies of any data accessed or obtained using the APIs without prior written approval from an authorized Khoros representative;
- You will not request from the APIs an amount of data in excess, or any types of data in excess, of that which your Application requires for Customers to enjoy the functionality of your Application (as you have communicated that functionality to Khoros);
- You will not attempt to circumvent any limitations that Khoros sets on your use of the APIs;
- You will not use APIs in any manner to reverse engineer, decompile or disassemble the APIs or any Khoros Service without prior written approval from an authorized Khoros representative;
- You will not use the APIs, or any data obtained using the APIs, to conduct performance testing of a Khoros Service without prior written approval from an authorized Khoros representative;
- You will not redistribute, resell, or sublicense access to the APIs, any data obtained using the APIs, or any other Khoros Service; and
- You will not use any API to violate, or facilitate the violation of, any applicable laws or regulations.

## **8. Modification; Termination**

We reserve the right to modify the Website at any time, with or without notice to you. For example, we may add or remove functionality or features, or we may suspend or stop a particular feature altogether.

Khoros may terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately. Khoros may change the provisions of the Terms at any time without prior notice to you by posting the revised Terms on the Website. All provisions of the Terms, which by their nature should survive termination, shall survive termination, including but not limited to [Section 5 \(Intellectual Property\)](#), [Section 10 \(Disclaimer of Warranties\)](#), [Section 9 \(Confidentiality\)](#), [Section 11 \(Indemnification\)](#), and [Section 12 \(Limitation of Liability\)](#).

## **9. Confidentiality**

“**Confidential Information**” means information, disclosed by a Party to the other in connection to the Terms, which is either marked confidential or disclosed in circumstances in which a reasonable person would consider the information to be confidential. Without limiting the generality of the foregoing, all personally identifiable information and all data owned by Customers shall constitute Confidential Information. Confidential Information does not include information that the receiving Party can demonstrate (i) was in the receiving Party’s possession

before receipt from the disclosing Party, (ii) is or becomes publicly available other than through a breach of the Terms, (iii) is rightfully received from a third party without a duty of confidentiality, or (iv) is independently developed by the receiving Party without any access to or use of the Confidential Information of the disclosing Party as shown beyond a reasonable doubt by documented evidence provided by the receiving Party. If Confidential Information is required to be disclosed pursuant to applicable law, regulation or court order, the receiving Party must provide prompt advance notice thereof (except to the extent otherwise prohibited by applicable law, regulation or court order) to enable the disclosing Party to seek a protective order or otherwise prevent such disclosure.

The receiving Party shall use at least the same degree of care as it uses to protect its own confidential information of a like nature, but no less than a reasonable degree of care, to prevent (a) use of the disclosing Party's Confidential Information for any purpose other than to carry out the Terms, and (b) disclosure of such Confidential Information to any person or party other than those who need to know such Confidential Information to carry out the Terms and who are bound by written confidentiality agreements, with terms no less restrictive than those included in the Terms. Each Party acknowledges that unauthorized disclosure of the other Party's Confidential Information would cause irreparable harm to the other Party and would entitle the other Party to seek injunctive relief upon disclosure or threatened disclosure, without a requirement to prove irreparable harm or the posting of a bond.

#### **10. Disclaimer of Warranties**

The Website is provided "as is" and Khoros and its suppliers and licensors hereby disclaim all warranties of any kind, express or implied, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement. Neither Khoros nor its suppliers and licensors make any warranty that the Website will be error-free or that access thereto will be continuous or uninterrupted. You understand that you download from, or otherwise obtain Content through, the Website at your own discretion and risk. You understand that you access and/or use the APIs hereunder at your own discretion and risk.

#### **11. Indemnification**

You will defend, hold harmless, and indemnify Khoros from any claim or action brought by a third party, including all damages, liabilities, costs and expenses, and reasonable attorney fees, to the extent resulting from, alleged to have resulted from, or in connection with (i) your use of the Website, (ii) your breach of any obligation or restriction in the Terms, (iii) infringement of the intellectual property rights of Khoros or any third party, or (iv) violation of any applicable law or regulation.

#### **12. Limitation of Liability**

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL KHOROS BE LIABLE HEREUNDER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL,

CONSEQUENTIAL, OR COVER DAMAGES INCURRED BY THE OTHER PARTY OR BY ANY THIRD PARTY, INCLUDING DAMAGES BASED ON LOSS OF PROFITS, REVENUE, DATA, SERVICE OR USE, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **13. Arbitration; Class Action Waiver**

Notwithstanding Section 14 (Governing Law; Venue) below, either Party may, instead of filing its claim with a court as set forth in Section 14 (Governing Law; Venue), submit any dispute hereunder for arbitration under the Rules of Arbitration of the International Chamber of Commerce, provided that: (1) no claim has been properly filed for the same dispute; (2) Customer is a non-US entity; and (3) there has first been a good faith attempt at amicable resolution. The other Party shall thereafter submit to and cooperate in such arbitration as the sole resolution mechanism for the dispute. The place of arbitration shall be one of the following cities, which is the closest to an equally convenient location for both Parties: San Francisco, New York, Austin, or London. The language of the arbitration shall be English, and the award shall be final and binding on the Parties, and each Party hereby waives to the fullest extent permitted by law any right it may otherwise have under the laws of any jurisdiction to any form of appeal.

The terms of this Section 13 (Arbitration; Class Action Waiver) will survive the termination of your relationship with us.

### **14. Governing Law; Venue**

The Terms are governed by the laws of the State of Texas, without regard to its choice of law statutes. Any disputes must be brought in the U.S. District Court for the Western District of Texas located in Austin, Texas. If that court cannot hear the dispute, the dispute shall be brought before the State District Courts of Travis County located in Austin, Texas. The Parties agree that venue and jurisdiction is proper in such court and agree not to contest notice from this court. The United Nations Convention on the International Sale of Goods is hereby disclaimed. EACH PARTY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF, OR RELATED TO, THE TERMS.

### **15. Miscellaneous**

The Terms, together (if applicable) with any other agreement you may have with us relating to the Website or the Khoros Services, constitute the entire agreement between Khoros and you concerning the subject matter hereof, and they may only be modified by a prior written amendment signed by an authorized representative of Khoros, or by the posting by Khoros of a revised version thereof, as applicable. Any variation to the Terms or any other agreement relating to the Website or the Khoros Services must be agreed to in prior writing by Khoros. If

any part of the Terms is held invalid or unenforceable, that part will be construed to reflect the original intent of the Parties, and the remaining portions will remain in full force and effect. A waiver by either Party of any term or condition of the Terms or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. You may not assign your rights under the Terms without prior written consent from an authorized representative of Khoros. Khoros may assign its rights under the Terms without condition. The Terms will be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. You acknowledge and agree there are no third-party beneficiaries to the Terms.

**[END OF DOCUMENT.]**