

# **ALOHA TERMS OF SERVICE**

Date of last modification: July 14, 2019.

1. **Agreement.** The following Terms of Use (the "Terms") constitute a binding agreement between you and Friendly, Inc. ("Aloha"). These Terms set forth conditions regarding your access to and use of the Aloha application and any other services offered as part of the Aloha platform (the "Services").

By accessing or using the Services in any manner, including but not limited to visiting or browsing Aloha's application or Aloha's website (<https://www.heyaloha.app/>) or contributing content or other materials to Aloha's platform, you agree to be bound by these Terms.

PLEASE NOTE THAT, EXCEPT AS PROVIDED BELOW, THESE TERMS REQUIRE RESOLUTION OF DISPUTES THROUGH USE OF AN ARBITRATION SERVICE. YOU HEREBY AGREE THAT ALL DISPUTES ARISING FROM, RELATED TO, OR IN CONNECTION WITH YOUR USE OF ALOHA WILL BE RESOLVED IN ACCORDANCE WITH THE ARBITRATION AND GOVERNING LAW PROVISION SET FORTH IN SECTION 22 BELOW.

2. **NO PROFESSIONAL HEALTH SERVICES.** PLEASE NOTE THAT ALOHA IS NOT A LICENSED HEALTH PROVIDER AND DOES NOT HAVE MENTAL HEALTH TRAINING QUALIFICATIONS. WHILE ALOHA PROVIDES ASSISTANCE WITH YOUR SOCIAL WELLNESS, MENTAL WELLNESS, AND PERSONAL RELATIONSHIP MANAGEMENT, IT IS NOT A LICENSED THERAPIST AND IT DOES NOT HAVE ANY PROFESSIONAL QUALIFICATIONS. ACCORDINGLY, ALOHA DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE MENTAL WELLNESS BENEFITS OR OTHER WELLNESS CHARACTERISTICS OF THE SERVICES. PLEASE SEE MORE INFORMATION ABOUT OUR DISCLAIMERS IN SECTION 6.
3. **Modification.** Aloha reserves the right, at its sole discretion, to modify these Terms at any time and without prior notice. If we modify these Terms, we will either post a notification of the modification on our website or otherwise provide you with notice of the change. The date of the last modification will also be posted at the beginning of these Terms. It is your responsibility to check from time to time for updates. By continuing to access or use the Services, you are indicating that you agree to be bound by any modified Terms.
4. **Privacy Policy.** These Terms include the provisions in this document, as well as those in the Privacy Policy (<https://www.heyaloha.app/privacy-policy.pdf>).
5. **Eligibility.** The Services are intended solely for persons who are at least 18 years old. By using the Services you represent and warrant that you are at least 18 years old. If you are not 18 or older, you may not use the Services.
6. **Acceptable Use.** Aloha hereby grants you permission to use the Services and, if you are a registered user, permission to access and use those aspects of the Services that are offered to registered users, provided such use is in compliance with these Terms, and you further specifically agree that you use will adhere to the following restrictions and obligations:

- a. You may only use the Services for lawful activity. In addition, you may not use the Services in any manner that is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable.
  - b. You may only use the Services for personal use. If you wish to create an organizational or business account, please contact Aloha at [hello@heyaloahapp.com](mailto:hello@heyaloahapp.com).
  - c. You may not interfere with or damage the Services, including, without limitation, through the use of viruses, bots, harmful code, denial-of-service attacks, backdoors, packet or IP address spoofing, forged routing, or any similar methods or technology.
  - d. You may not use the Services to upload, transmit, or promote any material that constitutes junk mail, spam, or commercial offers.
  - e. You may not use the Services to upload, transmit, or promote any material that infringes or violates the intellectual property rights or any other rights of anyone else (including Aloha).
  - f. You may not decompile, reverse engineer, or otherwise attempt to obtain the source code or underlying ideas or information of or relating to the Services.
7. **User Accounts.** In order to use the Services, you are required to sign up for an account, and select a password and user name ("User ID"). You promise to provide us with accurate, complete, and updated registration information about yourself. You may not select as your User ID a name that you don't have the right to use, or another person's name with the intent to impersonate that person.
8. If you would like us to terminate your account, please contact us at [hello@heyaloahapp.com](mailto:hello@heyaloahapp.com). Upon receipt of your request, and except as set forth below, we will remove your account and your associated information from the Services within a reasonable time period. Please note that any information you have submitted to publicly accessible areas of the Services (such as a blog or message board) may not be removeable. If we intend to remove your account, we will try to provide advance notice to you prior to our removal of your account so that you are able to retrieve any important User Content you may have stored in your account (to the extent allowed by law and these Terms), but we may not do so if we determine it would be impractical, illegal, not in the interest of someone's safety or security, or otherwise harmful to the rights or property of Aloha. You may not transfer your account to anyone else without our prior written permission.

You may also be allowed to create an Aloha account by logging into your account with certain third-party social networking sites ("SNS," including, but not limited to, Facebook). You may link your Aloha account with a SNS by either: (i) providing your SNS account login information to us through the Services; or (ii) allowing us to access your SNS. PLEASE NOTE THAT YOUR RELATIONSHIPS WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS ARE GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND THOSE AGREEMENTS WILL DETERMINE WHAT INFORMATION WE WILL BE ABLE TO ACCESS AND USE THROUGH THOSE SOCIAL NETWORKING SITES. Your Aloha account will be created for your use of the Services based on the personal information you provide us or that we obtain via an SNS.

9. **Content.** The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, and User Content (all of the foregoing, the “Content”), are protected by copyright and/or other intellectual property laws.

Further, you acknowledge that as between you and Aloha, the Services and Content other than User Content, including all associated intellectual property rights, are the exclusive property of Aloha.

Conditioned upon your compliance with these Terms, Aloha grants you a limited, non-exclusive, non-transferable license, to (i) access, view, and use the Services solely for your personal use and (ii) access and view any Content to which you are permitted access. You have no right to sublicense the licensed rights granted in this section. You may not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, transmit, broadcast or otherwise exploit the Services, except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Aloha or its licensors, except for the licenses and rights expressly granted in these Terms.

We may, at our sole discretion, permit you to post, upload, publish, submit or transmit content, including but not limited to details for shared calendars (“User Content”). By submitting any User Content on or through the Services, you grant to Aloha a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, view, copy, adapt, modify, distribute, license, transfer, publicly display, transmit, stream, broadcast, access, and otherwise exploit such User Content, in any media, in order to operate, promote, improve, or market the Services. In addition, to the extent that Aloha de-identifies and aggregates any User Content, you agree that such derived data is no longer User Content, and is thus owned by Aloha.

You acknowledge and agree that you are solely responsible for all User Content. Accordingly, you represent and warrant that you have all rights, licenses, consents and releases that are necessary to grant to Aloha the license above.

## 10. **Payment and Billing Information.**

- a. **Paid Services.** While many aspects of the Services are free of charge, some aspects of the Services are not. For each term of your Subscription (whether monthly or annually), you will be billed at the beginning of that term (see Section 10(c) for our automatic renewal policy). By providing a credit card or other payment method for the purchase of our Services, you represent and warrant that you are authorized to use the designated payment method and that you authorize us (or our third-party payment processor) to charge your payment method for the total amount of your purchase (including any applicable taxes and other charges) (collectively, as applicable, an “Order”). If the payment method cannot be verified, is invalid, or is otherwise not acceptable, your Order may be suspended or cancelled. You must resolve any problem we (or our third-party payment processor) encounter in order to proceed with your Order. You acknowledge that the amount billed may vary due to promotional offers, changes in the Services, or changes in applicable taxes or other charges, and you authorize us (or our third-party payment processor) to charge your payment method for the corresponding amount.
- b. **Pricing and Availability.** All prices are shown in U.S. dollars and applicable taxes and other charges, if any, are additional. Prices may be adjusted at any time and for any

reason (or no reason) and without providing you prior notice. Services are subject to availability, and we reserve the right to cancel all or part of the Services and to discontinue making certain Services available without prior notice.

c. **Automatic Renewal.**

**YOUR SUBSCRIPTION WILL CONTINUE INDEFINITELY UNTIL CANCELLED BY YOU. YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW AFTER EACH TERM (WHETHER THAT IS A MONTHLY OR ANNUAL PLAN) FOR AN ADDITIONAL TERM OF EQUAL LENGTH. ALL SUBSCRIPTION FEES ARE BILLED AT THE BEGINNING OF EACH TERM. SOME SUBSCRIPTIONS MAY BE FREE OF CHARGE FOR A LIMITED PERIOD OF TIME, AS FURTHER EXPLAINED ON OUR WEBSITE, BUT YOU WILL BE CHARGED FOR THE SERVICES WHEN THE FREE PERIOD ENDS IN ACCORDANCE WITH THE SELECTED SUBSCRIPTION UPON REGISTRATION FOR THE FREE TRIAL.**

**IF YOU DO NOT WANT YOUR ACCOUNT TO RENEW AUTOMATICALLY, OR IF YOU WANT TO CHANGE OR TERMINATE YOUR SUBSCRIPTION, YOU CAN DO SO BY CONTACTING US AT HELLO@HEYALOA.APP. IF YOU CANCEL YOUR SERVICES, YOU MAY USE YOUR SERVICES UNTIL THE END OF THE PAID-FOR MONTH OR YEAR AND YOUR SUBSCRIPTION WILL NOT BE RENEWED THEREAFTER.**

- d. **No Refunds.** Please note that if you purchase or renew a subscription through the Apple iTunes Store or the Application, the Order is final, and we will not provide a refund. Your purchase will be subject to Apple's applicable payment policy, which also may not provide for refunds. If you purchase or renew a subscription through the Google Play store, the Order is final and we will not provide a refund. Your purchase will be subject to Google's applicable payment policy, which also may not provide for refunds. We do not provide refunds or credits in the case of cancellations, downgrades, or unused portions of subscriptions.

11. **Feedback.** We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Services ("Feedback"). You agree that Aloha has the right, but not the obligation, to use such Feedback without any obligation to provide you credit, royalty payment, or ownership interest in the changes to the Services.
12. **Notice of Alleged Copyright Infringement.** Aloha respects copyright law and expects our Users to do the same. In accordance with the Digital Millennium Copyright Act ("DMCA") of 1998, the text of which may be found on the U.S. Copyright Office website at <https://www.copyright.gov/legislation/dmca.pdf>, Aloha will respond to claims of copyright infringement committed using the Services that are reported to us, provided they meet the criteria below.

If you are a copyright owner, or a designated agent thereof, please report alleged copyright infringements taking place on or through the Services by providing us the following information (the "Notice"):

- i. the identity of the copyrighted work that you claim has been infringed, or, if multiple

- copyrighted works are covered by this Notice, a comprehensive list of the copyrighted works that you claim have been infringed;
- ii. the material that you claim is infringing, and information reasonably sufficient to permit us to locate the material, including at a minimum, the URL of the link shown on the Services where such material may be found;
  - iii. your mailing address, telephone number, and, if available, email address;
  - iv. a statement that you have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law;
  - v. a statement that the information in this Notice is accurate and, under penalty of perjury, that you are the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed; and
  - vi. your full legal name and your electronic or physical signature.

You may deliver this notice, with all items completed, to us, as follows:

195 Binney Street, #1303, Cambridge, MA 02142

Upon receipt of the Notice as described above, Aloha will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged material from the Services.

### 13. Termination

Aloha may immediately and without notice terminate these Terms and disable your access to the Services if Aloha determines, in its sole discretion, that (a) you have materially breached these Terms; (b) you have violated applicable laws, regulations or third party rights; or (c) Aloha believes, in good faith, that such action is needed to protect the safety or property of other users, Aloha, or third parties.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

14. **Third Party Content.** By using the Services, Aloha may provide you with access to third party websites, information, and services, including but not limited to third party databases, networks, servers, software, programs, systems, directories, applications, or products. You hereby acknowledge that Aloha does not control such third-party websites and services, and cannot be held responsible for their content, operation, or use. Your use of those services is subject to their respective terms of service. Aloha does not give any representation, warranty, or endorsement, express or implied, with respect to the legality, accuracy, quality, or authenticity of content, information, or services provided by such third-party websites and services. Aloha disclaims any and all responsibility or liability for any harm resulting from your use of such third-party websites and services, and you hereby irrevocably waive any claim against Aloha with respect to the content or operation of any such third-party websites and services.

15. **Apple App Store Terms.** These Terms apply to your use of all the Services, including the iPhone and iPad applications available via the Apple, Inc. (“Apple”) App Store (the “Application”), but the following additional terms also apply to the Application:

- (a) Both you and Aloha acknowledge that the Terms are concluded between you and Aloha only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- (b) The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;
- (c) You will only use the Application in connection with an Apple device that you own or control;
- (d) You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- (e) In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
- (f) You acknowledge and agree that Aloha, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
- (g) You acknowledge and agree that, in the event of any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Aloha, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- (h) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- (i) Both you and Aloha acknowledge and agree that, in your use of the Application, you will comply with any applicable third party terms of agreement which may affect or be affected by such use; and
- (j) Both you and Aloha acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and that upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third party beneficiary hereof.

**16. Disclaimer of Warranties.** YOU HEREBY ACKNOWLEDGE THAT YOU ARE USING THE SERVICES AT YOUR OWN RISK. THE SERVICES AND CONTENT ARE PROVIDED "AS IS," AND ALOHA, ITS AFFILIATES AND ITS THIRD PARTY SERVICE PROVIDERS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF ACCURACY, RELIABILITY, RESULTS, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTY, CONDITION, GUARANTEE OR REPRESENTATION, WHETHER ORAL, IN WRITING OR IN ELECTRONIC FORM. ALOHA, ITS AFFILIATES, AND ITS THIRD PARTY SERVICE PROVIDERS DO NOT REPRESENT OR WARRANT THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED OR THAT THERE WILL BE NO FAILURES, ERRORS OR OMISSIONS OR LOSS OF TRANSMITTED INFORMATION, OR THAT NO VIRUSES WILL BE TRANSMITTED THROUGH THE SERVICES.

Because some states do not permit disclaimer of implied warranties, you may have additional consumer rights under your local laws.

17. **Limitation of Liability.** TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ALOHA (OR ITS LICENSORS) BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$20 OR (II) THE AMOUNTS PAID BY YOU TO ALOHA IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (C) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Aloha hereby expressly disclaims, and you hereby expressly release Aloha from, any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm or damages arising from or related to disputes, dealings, or interactions between you and any other users or third parties.

18. **Notices.** Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given by Aloha (a) via email (in each case to the address that you provide), (b) via text message (in each case to the phone number that you provide) or (c) by posting to the Application.
19. **No Waiver.** The failure of Aloha to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.
20. **Assignment.** You may not assign or transfer these Terms, by operation of law or otherwise, without Aloha's prior written consent. Any attempt by you to assign or transfer these Terms without such consent will be null and of no effect. Aloha may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns. Unless a person or entity is explicitly identified as a third party beneficiary to these Terms, these Terms do not and are not intended to confer any rights or remedies upon any person or entity other than the parties.
21. **Severability.** If for any reason an arbitrator or a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.
22. **Arbitration and Governing Law.** These Terms are governed by and will be construed under the laws of the Commonwealth of Massachusetts, without regard to the conflicts of law provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in Suffolk County, Massachusetts, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS")

then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of these Terms, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in Suffolk County, Massachusetts. YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS, YOU AND ALOHA ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY.

23. **Entire Agreement.** These Terms constitute the entire agreement between you and Aloha regarding your use of the Services, and supersede all prior written or oral agreements.
24. **Contact Us.** If you have any questions about the Services, please do not hesitate to contact us at [hello@heyaloa.app](mailto:hello@heyaloa.app).