

# KINUU

## TERMS OF SERVICE

(Eff. 02/01/2024)

Activarium LLC dba Kinuu (“Kinuu”, “we”, “us” or “our”) wants your Kinuu experience to be positive and impactful. Your access and use of our Services (defined below) is subject to these terms. If you have questions or comments, you can contact us at the email address or mailing address found at the end of these terms.

### 1. Overview of our Terms of Service

These Terms of Service (“Terms”) govern your access and use of our Services. The term “Services” as used herein includes our BrainyAct software and hardware, our website (Kinuu.com, or “Site”) and other products, goods, services, promotions, and technology and any other materials that we may provide as well as other services that link to, or contain references to, this document and are published or made available by us and our affiliates as applicable. Please read these Terms carefully. These Terms do not govern sites, applications, destinations, or services linked to from the Site or Services that we do not own or control.

You can access the Terms any time in the footer of our Site’s home page, via the menu button or on the Site description screen, or as otherwise indicated depending on the Services you are using. BY ACCESSING, OR USING THE SERVICES, YOU CONSENT TO THESE TERMS, INCLUDING THE AGREEMENT TO ARBITRATE AND WAIVER OF CLASS ACTION CLAIMS CLAUSE CONTAINED IN SECTION 20. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY CEASE USE OF THE SERVICES GOVERNED BY THESE TERMS. WE ADVISE THAT YOU PRINT OR RETAIN A DIGITAL COPY A COPY OF THESE TERMS FOR FUTURE REFERENCE.

In addition to reviewing the Terms, please also review our Privacy & Cookie Policy (“Privacy Policy”) and any other terms and conditions that may be provided elsewhere in the Services or Site or otherwise communicated to our users through the Services, because the Privacy Policy and all such other terms and conditions are also part of the Agreement between you and us.

**Additional terms will apply to your purchase or use of our Kinuu software and hardware, and such will be provided during the purchase or account setup process. Those terms may vary from the Terms provided herein.**

Persons under the age of 13, or any higher minimum age in the jurisdiction where that person resides, are not permitted to access or use the Services unless their parent has consented in accordance with applicable law.

### 2. Changes to These Terms

We may in our sole and absolute discretion change these Terms or our Privacy Policy from time to time to comply with laws or to meet our changing business requirements. These revisions shall be effective for new users immediately upon being posted to the Services; however, for existing customers, the applicable revisions shall be effective 30 days after posting unless otherwise stated. If you do not agree with any of the changes, you must discontinue using any and all Services. By continuing to use our Site or any other of our Services after any changes are posted, you expressly accept any applicable changes. Please note our employees, customer service representatives, or other agents are not authorized to modify any provision of these Terms, either verbally or in writing.

### **3. Account Creation**

Full use of the Services requires that you create an account by providing us with information such as your full name and a valid email address, as well as a strong password. You are responsible for all activity that occurs in association with your account. Kinuu is not liable for any loss or damages caused by your failure to maintain the confidentiality of your account credentials. Please contact us if you discover or suspect any security breach related to the Services or your account.

### **4. Necessary Equipment**

Full use of the Services is dependent upon your use of a computer with adequate software or a supported mobile device and Internet access. The maintenance and security of this equipment may influence the performance of the Services, and it is your responsibility to ensure the equipment's functionality. You are responsible for all Internet access charges. Please check with your Internet provider for information on possible Internet data usage charges. If you are using a computer or other hardware provided by Kinuu, additional terms will govern the use of such hardware.

### **5. Kinuu Intellectual Property**

Our Services, Site, products, information, and other content ("Kinuu Works") are intellectual property owned by Kinuu and are protected by copyright, trademark, patent, intellectual property, and other laws of the United States and foreign countries. These Kinuu Works are provided to you under license pursuant to the following terms, unless otherwise indicated expressly and in writing; you do not acquire any interest in any of the Kinuu Works other than the rights licensed to you by the terms below. None of these Kinuu Works may be copied, shared, or distributed at any time except as expressly provided on the Site or Services (for example, permissible downloading or sharing of any informational materials).

The trademark KINUU® and other website marks, graphics, logos, designs, page headers, button icons, scripts and service names that we use are trademarks or trade dress of Kinuu in the U.S. and/or other countries. Kinuu's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion as to source and may not be copied, imitated, or used, in whole or in part, without the prior written permission of Kinuu. All other trademarks and logos on our Site or other of our Services are the property of their respective owners.

### **6. User License; Termination**

Kinuu grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to (1) access and use the Services and (2) access and view the Kinuu Works. If you are using our Kinuu hardware, the above license includes use of the software that is embedded into our hardware as authorized in these Terms. With respect to all the foregoing, this license includes any third-party software embedded in any of our Services. This license is provided solely for your personal, non-commercial use and enjoyment of the Services as permitted in these Terms and is revocable at any time.

**We reserve the right (but are not required) to remove or disable access to the Services, the Site, the Kinuu Works, or your Content (defined below) at any time and without notice, and at our sole discretion, if we determine that your use of the Services is objectionable or in violation of these Terms. We have the right to investigate violations of these Terms and any conduct that affects the Services,**

**and in response may take any action we may deem appropriate. Unauthorized use of the Services may also violate applicable laws such as (but not limited to) copyright and trademark laws.**

As noted above, if you have a separate agreement with us for use of our Kinuu software or hardware, those additional terms will apply as to access of such software or hardware.

## **7. Other User Restrictions**

You may only use the Services for lawful purposes, and you must not use them in a way that infringes the rights of anyone else or that restricts or inhibits anyone else's enjoyment of any Services. In using any Services, you expressly acknowledge you are prohibited from, and agree that you will not without our prior express written consent:

- i. copy, reproduce, or improperly use or access any content you access or obtain from the Site or the Services;
- ii. modify, distribute, re-post or sell any content you access or obtain from the Site or the Services;
- iii. circumvent or disable any content protection system or digital rights management technology used with any Services;
- iv. decompile, reverse engineer, disassemble or otherwise reduce any Services to a human-readable form;
- v. remove identification, copyright or other proprietary notices in or on the Services
- vi. use the content on our Site for any commercial exploitation whatsoever.
- vii. disrupt or interfere with the security of, or otherwise abuse, our Site, or any of our Services, system resources, accounts, servers, or networks connected to or accessible through the Site or affiliated or linked sites;
- viii. access content, data or portions of our Site that are not intended for you, or log onto a server or account that you are not authorized to access;
- ix. attempt to probe, scan, or test the vulnerability of the Services, including websites, applications, or any associated system or network, or breach security or authentication measures without proper authorization;
- x. access any Services or our Site through any automated means, such as "robots," "spiders," or "offline readers";
- xi. interfere or attempt to interfere with the use of our website or applications or the Services by any other user, host or network, including, without limitation by means of submitting a virus, overloading, "flooding," "spamming," "mail bombing," or "crashing";
- xii. use any data mining, "scraping", web crawling, robots, or similar data gathering and extraction methods on our website;
- xiii. harass, "stalk", disrupt or interfere with any other user's enjoyment of our website or affiliated or linked sites;
- xiv. post or submit any content or other data that is libelous, defamatory, threatening, obscene, invasive of privacy, abusive, illegal, objectionable, fraudulent or will otherwise violate the rights of third parties;
- xv. upload, post, or otherwise transmit through or on our Site any viruses or other harmful, disruptive, or destructive files;

- xvi. use, frame, or utilize framing techniques to enclose any Kinuu trademark, logo, or other proprietary information (including the images found at our website, the content of any text, or the layout/design of any page or form contained on a page) without Kinuu's express written consent;
- xvii. use meta tags or any other "hidden text" utilizing a Kinuu name, trademark, or product name without Kinuu's express written consent;
- xviii. deep link to our Site without Kinuu's express written consent;
- xix. create or use a false identity on our Services or Site, share your account information, or allow any person besides yourself to use your account to access the Services;
- xx. harvest or otherwise collect information about Kinuu users, including email addresses and phone numbers;
- xxi. download, "rip," or otherwise attempt to obtain unauthorized access to any Services, content or other materials; and
- xxii. post any copyrighted material unless the copyright is owned by you or unless you have an express license from the copyright owner permitting such posting.

Violation of the above restrictions can lead to termination of your right to use the Services, as provided in Section 6.

## **8. Content You Submit**

In the event that our Services permits submission and sharing of content (images, video, textual work, sound works, other data, collectively "Content"), you agree that any such submission will be in compliance with all terms herein. You retain all rights to your Content that you post to the Services. By making Your Content available on or through the Services, you hereby grant to Kinuu a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, modify, publicly display, publicly perform, reproduce, translate, create derivative works from, and distribute your Content, in whole or in part, including your name and likeness, in any media. The rights you grant us in this Section 8 are only for the limited purpose of offering and improving the Services. We will not sell your Content without your express permission. Kinuu and its affiliates will not use the name you submit in connection with your Content for any purpose except account management without your express permission (for example, when you publicly share Content).

Our use and management of any data that you create, generate or submit in connection with your use of our Kinuu software and hardware will be governed by additional terms between us that will be made available to you as part of any receipt or use of such software and hardware.

If you submit comments, ideas, or feedback to us, you agree that we can use, disclose, reproduce, distribute, and exploit them without any restriction or compensation to you. We do not waive any rights to use similar or related ideas or feedback previously known to us, developed by Kinuu, or obtained from sources other than you.

## **9. E-Mail, Messaging, Blogging and Chat**

Kinuu may make email, messaging, blogging, or chat (collectively, "Communication Software") available through the Site or Services, either directly or through a third-party provider. Unless otherwise specified at the time of posting, your emails or messages to us will be treated as non-public communications. You acknowledge and agree that your communications with third parties or other users on the Site or Services are public and not private communications and that you have no expectation of privacy concerning those

communications. You acknowledge and agree that personal information that you communicate publicly or to third parties via the Communication Software may be seen and used by others and may result in widespread distribution of such information. We strongly encourage you not to disclose any personal information in your public communications via the Communication Software unless you wish such information to be made permanently available to the public.

#### **10. Third Party Links and Services**

Our Services may contain links to other websites or services. These links are provided as a convenience to you and as an additional avenue of access to the information contained therein. We have not necessarily reviewed the information on those other sites and are not responsible for the content of those other sites or any products or services that may be offered through other sites. Inclusion of links to other sites should not be viewed as an endorsement of the content of linked sites. Further, your dealings with any third parties found on or through the Site or Services, the purchase of goods or services, and any terms, conditions, warranties or representations associated with such activities, including privacy terms, are solely between you and the third party. You agree that Kinuu will have no liability for any loss or damage of any kind incurred as a result of any activities you undertake in connection with the use of or reliance on any content, goods, services, information or other materials available, or through such third parties, through the Site or Services.

#### **11. Changes to the Services**

Kinuu may change or discontinue, temporarily or permanently, any feature, component, or content of the Services at any time without notice. Kinuu is not liable to you or to any third party for any modification, suspension, or discontinuance of any feature, component, or content of the Services except as provided under separate agreement. We reserve the right to determine the timing and content of software and hardware updates to any portion of the Services.

#### **12. Privacy & Cookie Policy**

As noted elsewhere herein, the data that we obtain from you through your use of any of the Services, is, in addition to the terms herein, subject to our Privacy & Cookie Policy (“Privacy Policy”). The Privacy Policy can be viewed on our Privacy Policy page. The Privacy Policy contains terms and conditions that govern our collection and use of the information you provide to us, including our respective rights relative to that information. Please review the applicable [Privacy Policy](#) before you use the Services. **If you are unwilling to accept the terms and conditions of the Privacy Policy, please do not use our Services.**

#### **13. Disclaimers**

**THE SERVICES AND KINUU WORKS ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services or Kinuu Works will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of the Services or any Kinuu Work.**

#### **14. Releases**

You hereby release and discharge Kinuu and any affiliates from any and all claims, suits, rights of action, losses, charges, damages, demands, debts or causes of action, in law or in equity, that you have, or may come to have, against the Kinuu Affiliates, arising out of, or relating to, your use of the Services. You

understand and agree that this Release is a condition precedent to your access to the Services. You acknowledge that you are aware of Section 1542 of the California Civil Code, which provides that “a general release does not extend to claims which the creditor [or claimant] does not know or suspect to exist in his/her favor at the time of executing the release, which, if known by him/her, must have materially affected his/her settlement with the debtor [or opposing party].” Nonetheless, it is your intent to release Kinuu and the Kinuu Affiliates, fully and finally. You hereby waive any benefits you may have pursuant to California Civil Code Section 1542 to the fullest extent permitted by law and assume the risk of any and all claims against Kinuu and the Kinuu Affiliates, or any of them, that you do not know or suspect to exist whether through ignorance, oversight, error or otherwise.

#### **15. Limitation of Liability**

YOU UNDERSTAND AND AGREE THAT KINUU IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA, LOSS OF GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWSOEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE RESULTING FROM: (1) THE USE OF, OR THE INABILITY TO USE, THE SITE OR SERVICES, (2) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR PRODUCTS, (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA USE, (4) THE STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR IN OUR SITE OR OTHER SERVICES, (5) RELIANCE ON CONTENT OR USER CONTENT OR POSTINGS ON OR IN OUR SITE OR SERVICES, OR (6) ANY OTHER MATTER RELATING TO OUR SITE OR SERVICES. THESE LIMITATIONS WILL APPLY WHETHER OR NOT KINUU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EXCEPT AS REQUIRED BY THE INDEMNITY PROVISIONS HEREIN, IN NO EVENT WILL KINUU’S DIRECT LIABILITY HEREUNDER EXCEED \$100.00.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES. AS SUCH, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **16. Indemnification**

You agree to indemnify, defend and hold harmless, Kinuu and our affiliates, our officers, directors, employees, contractors, agents, licensors and suppliers, from and against any and all losses, liabilities, expenses, damages and costs, including reasonable attorneys’ fees and court costs, arising or resulting from any violation or breach of these Terms of Service. If you cause a technical disruption of any of our Services, or the Site or the systems that the Services or Site are hosted on, you agree to be responsible for any and all losses, liabilities, expenses, damages and costs, including reasonable attorneys’ fees and court costs, arising or resulting from that disruption.

#### **17. No Medical Advice**

We are not a health care provider and do not collect or process healthcare information. We do not provide medical advice, and our Site and Services are not intended to be used to diagnose, treat, cure or prevent any disease, health concern or condition. Rather, the Services provided by Kinuu are to be used for self-development purposes only. Our Services do not establish any physician-patient relationship or supplant an in-person medical consultation or examination. Appropriate medical attention and advice should always be sought for any health issues or concerns that you may have, and you should not ignore medical advice or delay seeking medical advice because of any information offered through the Site or Services. If you have any current medical conditions, you should consult your physician before using any

of our hardware or software products. HIPAA does not apply to our Site or Services. For additional information, see our Privacy Policy.

### **18. Epilepsy Warning.**

Please note that certain people are susceptible to epileptic seizures or loss of consciousness when exposed to certain flashing lights or light patterns in everyday life. Such people may have a seizure while watching certain monitor images or playing certain video games. This may happen even if the person has no medical history of epilepsy or has never had any epileptic seizures. If you or anyone in your family has ever had symptoms related to epilepsy (seizures or loss of consciousness) when exposed to flashing lights, consult your doctor prior to your use of Kinuu software or hardware. We advise parents to monitor the use of video games by their children. If you or your child experience any of the following symptoms while playing a video game, immediately discontinue use of the video game and consult your doctor: dizziness, blurred vision, eye or muscle twitches, loss of consciousness, disorientation, any involuntary movement and/or convulsion.

### **19. International Users**

Our website is controlled, operated, and administered by Kinuu from its offices within the United States of America. We recognize that it is possible for you to obtain access to the Services and Site from any jurisdiction in the world, but we have no practical ability to prevent such access. The Services and Site have been designed to comply with the laws of the State of Minnesota and of the United States. Kinuu makes no representation or warranty that the materials contained within our Services are appropriate or available for use at other locations outside of the United States, and access to them from territories where the contents or products available through the website are illegal is prohibited.

By accessing or otherwise using the Services, you represent and warrant that: (a) your access to and use of the Services, or any content or software therein, will comply with any and all requirements in these Terms; (b) you are not located in a country that is 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; and (c) you will comply with all applicable local, national, and international laws, rules, regulations and ordinances in connection with your use of any of our Site or Services.

Privacy provisions applicable to persons in the EU may be found in our [Privacy Policy](#).

### **20. Governing Law; Dispute Resolution**

You agree that any dispute between you and Kinuu arising out of or relating to our Services, including our game hardware and software products (collectively, "Disputes") will be governed by the arbitration procedure outlined below.

The Terms of Service and the resolution of any Disputes shall be governed by and construed in accordance with the laws of the State of Minnesota and the United States without regard to its conflict of laws principles. These Terms shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

We want to address your concerns without needing a formal legal case. Before filing a claim against Kinuu, you agree to try to resolve the Dispute informally by contacting us at [Hope@Kinuu.com](mailto:Hope@Kinuu.com). We'll try to resolve the Dispute informally by contacting you through email. If a dispute is not resolved within 15 days after submission, you or Kinuu may bring a formal proceeding.

You and Kinuu agree to resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below. You can decline this agreement to arbitrate by

contacting us at [Hope@Kinuu.com](mailto:Hope@Kinuu.com) within 30 days of first accepting these Terms of Service and stating that you (include your first and last name) decline this arbitration agreement.

The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in Minneapolis, Minnesota, or any other location we agree to. The AAA rules will govern payment of all arbitration fees.

Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Services, Kinuu Works, or your Content, or infringement of intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

You may only resolve disputes with Kinuu on an individual basis and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations aren't allowed under our agreement.

In the event that the agreement to arbitrate is found not to apply to you or your claim, you and Kinuu agree that any judicial proceeding will be brought in the federal or state courts of Hennepin County, Minnesota. Both you and Kinuu consent to venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your use of the Services or other Kinuu products or services must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.

## **21. CALIFORNIA COMPLAINT ASSISTANCE**

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice. If you have a question or complaint regarding the Services, please feel free to contact us by writing to us at [Hope@Kinuu.com](mailto:Hope@Kinuu.com). California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Suite N-112, Sacramento, California 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

If you have any questions or concerns with respect to the Services, the Site or these Terms, you may contact a representative of Kinuu at:

Email: [Hope@Kinuu.com](mailto:Hope@Kinuu.com)

Mail: Kinuu  
915 Mainstreet,  
Hopkins, MN 55343

I HEREBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE FOREGOING TERMS OF SERVICE AND AGREE THAT MY USE OF THE SITE AND SERVICES IS AN ACKNOWLEDGMENT OF MY AGREEMENT TO BE BOUND BY THE TERMS OF SERVICE.