

# Kathink Business Thinker User Agreement - US

## Introduction

Welcome to Kathink. These terms and conditions apply to the services available from the domain and sub-domains of <http://www.kathink.co.uk>, <http://www.kathink.ch>, <http://www.kathink.eu>, <http://www.kathink.com> and from all other Kathink branded websites provided for legal persons being individuals or incorporated entities who are resident or incorporated in the United States of America, and who wish to register on Kathink as Business Thinkers (together, the "Site"). You are contracting with Kathink Ltd, a Swiss limited liability corporation, domiciled at Pilatusstrasse 35, 6002 Lucerne, Switzerland. In this User Agreement, all Kathink contracting parties are known as "**Kathink**", "**we**", "**us**" or "**our**".

Your use of our services is governed by the following terms and conditions, including those additional terms referred to in the "Kathink Policies" section below (which are accessible by click-through links and which form part of these terms and conditions), (together, the "User Agreement"). Before you can become a member of Kathink, you must read and accept all of the terms and conditions of this User Agreement and each of the Kathink Policies. You should read through all the terms carefully. The User Agreement constitutes a legally binding agreement between you and Kathink.

This User Agreement is valid from 24 September 2007 and is effective upon acceptance for new users.

### Definitions

"**Administration Fee**" means the sum payable to Kathink by a Corporate as a result of the Corporate entering into a binding contract on the Site and commissioning the Full Details of an Idea from a Business Thinker. In all cases it is equal to 15% of the Commission Fee for the Commission.

"**Brief Resumé**" means the completed details of a pre-set template on the Site where the Business Thinker provides an overview of the areas and duration of his business experience to date.

"**Business Thinker**" means a user being a legal person (individual or incorporated), no matter in which country he she or it is resident or incorporated, who is permitted by the Site to register as a Business Thinker and to submit Proposals to Corporates..

"**Commission Fee**" means the sum payable by a Corporate to a Business Thinker as a result of the Corporate entering into a binding contract with the Business Thinker via the Site for the provision of Full Details of an Idea set out in a Proposal.

"**Commission**" means a process on the Site whereby a Corporate contracts with a Business Thinker to commission for an agreed Commission Fee the Full Details of a Proposal, plus any particular terms and conditions which the Corporate and the Business Thinker have agreed will form part of the process, for example the time period for the delivery of the Full Details.

"**Commissioned Response**" means the communication package, content and submission submitted by a Business Thinker to a Corporate in response to a Commission.

"**Corporate**" means any type of legal person (not being a human being but including professional partnerships), and incorporated in any of the member states of the European Union, Switzerland, Norway, Iceland, Australia, New Zealand, Canada, Japan or the United States which registers as a User on the Site and is permitted by the Site to submit Requests on the Site to Business Thinkers.

"**Full Details**" means the full description of the Idea which the Corporate has commissioned from a Business Thinker, as scoped and agreed by the Corporate and the Business Thinker in the course of agreeing the terms of the Commission.

"**Idea**" means the idea at the centre of a Proposal, or a Commissioned Response.

**Kathink Customer Services**” or “**KCS**” means the support services which Kathink provides to registered users of the Site, either via its own employees or via outsourcing partners.

“**Kathink Fees**” means Administration Fees, Introduction Fees, Penalty Fees, Recruitment Fees, Subscription Fees and any other fees that users of the Site owe at any point in time to Kathink Ltd.

“**Kathink Key**” refers to the invention owned by Kathink Ltd being a “perception and understanding test” tool for online transactions, with all rights reserved globally under the terms of a United States Provisional Patent application, submitted on 19 September 2007.

“**Penalty Fee**” means the sum payable by a Corporate to Kathink Ltd as a result of a non-declaration of a Commission, for example resulting in a failure to pay Kathink Ltd its 15% Administration Fee on a Commissioned Request where a Corporate develops a relationship with a Business Thinker online but proceeds to contract for the Full Details of the Proposal or a similar form of consulting relationship, offline. The Penalty Fee shall be equal to 100% of the Commission Fee (or 100% of the total sum that the Corporate pays to the Business Thinker offline for the provision of the services related for the Full Details).

“**Proposal**” means an initial reply from a Business Thinker to a Request submitted on the Site by a Corporate, including a brief description of the proposed idea, completion of a Kathink Key if the Corporate set one as part of the Request, the Brief Resumé of the Business Thinker and the Rating of the Business Thinker.

“**Rating**” means the consolidated history of ratings for a particular Business Thinker, as submitted by Corporates who have commissioned that Business Thinker on Kathink in the past.

“**Recruitment Fee**” means the sum payable to Kathink Ltd by a Corporate where the Corporate hires a Business Thinker from whom it has commissioned Commissioned Responses on the Site, within 12 months from the last contact with the Business Thinker on the Site. In all cases the Recruitment Fee will be equal to 15% of the total annual employment cost (being the first 12 months of employment, or lesser time period if the employment does not last 12 months) of the Business Thinker to the Corporate, including all bonus entitlements.

“**Request**” means a submission on the Site by a Corporate setting out details of the business issue in relation to which the Corporate would like Kathink’s registered Business Thinkers to submit Proposals in relation to. The Request may also include the completion by the Corporate of a Kathink Key for the issue.

“**Site**” means the services available from the domain and sub-domains of <http://www.kathink.co.uk>, <http://www.kathink.ch>, <http://www.kathink.eu>, <http://www.kathink.com> and from all other Kathink branded websites provided for the use of registered users.

“**Subscription Fee**” means the annual sum payable by a Business Thinker for the right to accept Commissions and receive Commission Fees on Kathink. Business Thinkers, who register and are accepted by Kathink, are permitted to use Kathink and its websites on a Free of charge basis from the moment of acceptance of their registration (subject to Kathink exercising its rights to suspend or cancel the registration of the Business Thinker), and to submit Proposals without limit. However Business Thinkers must pay an annual Subscription Fee of £200 in any 12 month period commencing on the date of their registration, before they are permitted to accept Commissions. In all cases the Subscription Fee shall be equal to £200 (inclusive of any Swiss VAT or EU Country VAT if the Business Thinker is not registered for VAT in the European Union) per Business Thinker registration per annum. Kathink Ltd reserves the right to change the amount of the Subscription Fee by posting a written notice on the Site, which changed amount shall be immediately applicable for all new registrations or annual renewals.

## Using Kathink

You may not use the Site if you are under the age of 18 or you are not able to form legally binding contracts, or if your Kathink membership has been suspended or terminated.

While using the Site, you will not:

- submit, post, list or upload content, communications or items on or via the Site, whether contained in a Request process or otherwise, which is offensive or contains pornographic images or text, is intended to mislead Kathink or another registered user, or is false or inaccurate or contains misleading or defamatory content (including your personal information);
- breach any laws, or seek to violate or in any other manner infringe the copyright, trade mark, patent, know-how, other intellectual property rights or other legal rights of third parties;
- breach any of our Site policies, including, without limitation the terms of the policies linked to via the "Kathink Policies" section below;
- represent to a Corporate or to Kathink or to the Site, that you are a licensed practitioner in a particular field or industry;
- provide advice via Kathink or the Site which is in a field which is regulated, and specifically you will not provide medical, legal or financial advice via Kathink or the Site;
- take any action that may undermine the Rating systems (such as displaying Rating information on, or exporting Rating information to, non-Kathink sites, or using it for purposes unrelated to Kathink);
- transfer your Kathink account (including Rating) and User ID to another party without informing us in writing of the change, including providing sufficient details of the new owner of the registration;
- distribute or post spam, chain letters, or pyramid schemes;
- distribute viruses or any other technologies that may harm Kathink, or the interests or property of Kathink users;
- copy, modify, or distribute Kathink's copyrighted works or trade marks, or other content from the Site, without our express consent; or
- harvest or otherwise collect information about users, including email addresses, without their express consent.

If you represent a corporate entity you represent that you have the authority to legally bind the Corporate for whom you are creating a registration on the Site.

We will commence supplying our services to you as soon as you accept this User Agreement.

## Abusing Kathink

Kathink and its community work together to keep the Site working properly and the community safe. Please report problems, offensive content, and policy breaches to us as soon as you become aware of them.

Without limitation to any other remedies which may be legally available to Kathink, we may issue you with warnings, and / or limit, suspend, or terminate our services and your account(s), restrict your access to, and your activities on, the Site (including, without limitation, by canceling any Request processes and Commission processes which you are involved in, and by removing Proposals and any related content and / or other hosted content), warn the Kathink community not to transact with you and/or take technical and legal steps to stop you from using the Site if:

- we think that you are creating problems (including, without limitation, by harassing Kathink staff or other users) or exposing us or another Kathink user to financial loss or legal liabilities;
- we think that you are acting inconsistently with the letter or spirit of this User Agreement or our policies;
- we think that you are violating the intellectual property rights of a third person;
- we think that you are attempting to provide medical advice, legal advice, financial advice or any other kind of regulated advisory service via Kathink or the Site;

- despite our reasonable endeavours, we are unable to verify or authenticate any information you provide to us; or
- Your Rating data and scores are so poor in our exclusive judgment that your continuing use of the Site is detrimental to other users.

You agree not to hold Kathink responsible for any loss you may incur as a result of Kathink taking any of the actions described above and you understand and agree that you will have no entitlement to have any annual Subscription Fees refunded to you.

## Identity Warranty

If you registered as an Individual Business Thinker, you warrant that the registration details that you provided are accurate and current, and in particular that you are providing all services on Kathink from the country of residence that you have declared in your registration details.

If you registered as a Corporate Business Thinker, you warrant that the details that you provided for the registration of the Corporate are accurate and current, and that the Corporate has not been struck off, liquidated or otherwise prohibited or restricted from engaging in normal commercial activities.

Furthermore you confirm your understanding and agreement that your identity details may be revealed by Kathink or the Site when compelled to do so by a court of law or Governmental regulatory authority, or when generally considered expedient by the management of Kathink or the Site to do so, after due regard has been had by the management to Privacy of Data concerns.

## Indemnity

You will indemnify and hold us (and our officers, directors, agents, subsidiaries, joint ventures and employees), harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of your breach of this Agreement, or your violation of any law or the rights of a third party.

## No Liability Ideas Platform

You confirm your understanding and agreement that the Site and Kathink is a platform for registered Business Thinkers to provide Ideas to Corporates in relation to hypothetical business issues that they raise via Requests on the Site, and not a platform, forum or mechanism whereby Business Thinkers provide advice to Corporates; and that all Ideas provided by Business Thinkers to Corporates via Kathink are strictly provided on a "No Liability" basis. Corporates on the Site commission Commissioned Responses on a caveat emptor basis, and expressly waive any legal rights they may have to sue either a particular Business Thinker or the Site or Kathink for any damages, losses or liability that they may incur as a result of viewing, reading or implementing the details of a Proposal or a Commissioned Response. You undertake not to engage in false or misleading conduct on the Site to either Kathink or to any Corporate that you may correspond with as part of a communication, Proposal process or Commissioned Response process on Kathink.

You also confirm your understanding and agreement that the Site and Kathink merely provide a platform service for you to be able to view Requests and submit Proposals and Commissions to Corporates, and in no manner whatsoever is the Site or Kathink a principal in any Request process, Proposal process or Commissioned Response process or other transaction or communication between a Business Thinker and a Corporate, and in no manner whatsoever does it guarantee the quality or accuracy of any Ideas, data or content posted on the Site by a Corporate, nor the accuracy of the contents of any Brief Resumés or Ratings and associated data.

## **Requests to Contain Hypothetical Fact Patterns Only**

You confirm your understanding and agreement that Requests posted on Kathink are entirely of a hypothetical nature and do not refer to existing factual circumstances facing a particular Corporate nor do they contain the names of actual legal persons including companies. You confirm that the contents of any Proposals submitted by you and of any Commissioned Responses submitted by you to a Corporate do not constitute advice to that Corporate, but merely a hypothetical idea in response to a hypothetical question, and that your submissions do not contain the names or real legal persons. Additionally your submissions shall not refer to their contents being “advice” to a Corporate, nor shall you contend that you are licensed by any particular regulatory body to practice in a particular field.

## **No Provision of Regulated Advisory Services**

You confirm your understanding and agreement that:

- You will never enter into any Commissioned Response process on the basis or representation that you are a licensed professional in a particular field (that is licensed by a particular government regulatory or professional body), or that you are a qualified expert or similar warranty or representation of a specific level or standard or expertise;
- Specifically, you confirm and warrant that your Corporate will never attempt to use the Site or Kathink to obtain or procure regulated services or regulated advisory services, specifically regulated medical services, regulated legal services, or regulated financial services.

## **No Economic Interest with Business Thinker**

You confirm and warrant that you will not forward Proposals or accept Commissions from any Corporates where you are a Director or shareholder or employee of that Corporate, or of any affiliated company to that Corporate, and that you will not use the Site for any improper purpose or as a justification for receiving payments from such related parties, particularly on a non-commercial basis.

## **Anti-Money Laundering**

You warrant that you will not your registration as a Business Thinker on Kathink for any illegal or improper purpose, and specifically that you will not use the Site for any domestic or international money-laundering purposes.

You confirm your understanding and agreement that if Kathink in its sole opinion concludes that the Site has or is in fact being used for money-laundering purposes, then Kathink shall have full legal capacity to report the matter and all related communications to the appropriate authorities without any notice to you.

## **Insider Trading**

You warrant that you will not use Kathink or the Site to engage in any illegal insider trading activities or material misrepresentations under Securities laws, or the illegal communication of non-public information particularly concerning listed companies and investments in listed securities, and that you indemnify Kathink and the Site against any liability it may incur as a result of you using the Site for any such illegal activities.

## **No Violation of the Intellectual Property Rights of Another Legal Person**

You confirm and warrant that you are not seeking to use the Site to violate the Intellectual Property rights or other property rights of a third person, including trademarks, patents, know-how, copyrights and other forms of intellectual property. You expressly agrees to indemnify Kathink and the Site against any damages or liability it suffers as a result of a breach of this clause by you.

## **Ownership of Intellectual Property in Proposals and Commissioned Responses**

You confirm your understanding and agreement that the ownership of all intellectual property rights (and all other property rights including any moral or authorship rights where appropriate) in any Proposals that you submit or any correspondence or communications relating to Proposals, remains with you. However you grant a perpetual, royalty-free non-transferable license to the Corporate to whom you submitted the Proposal or the communication to use, apply, amend or develop any intellectual property contained in the Proposal or the communication in its business and for commercial gain.

You confirm the understanding and agreement of your Corporate that the ownership of all intellectual property rights (and all other property rights including any moral or authorship rights where appropriate) in Commissions is transferred by the Business Thinker to your Corporate in the course of the submission of the Commissioned Response on Kathink and the Site. If a further step is required by law to transfer the intellectual property rights as a matter of law (for example, by signing and forwarding to you a signed written transfer of the copyright or other rights in the content and data in a Commissioned Response), Kathink requires the Business Thinker to complete this step as a condition precedent to the entitlement of the Business Thinker to claim payment of the Commission Fee.

Where however a court of law concludes in finality that in a particular process on the Site, in fact there was no effective legal transfer of the intellectual property rights, you forever release from liability and waive any claims that you may have against Kathink or the Site for failing to ensure a valid transfer at law of the intellectual property in question.

## **No Modification of Communications by Kathink**

You confirm your understanding and agreement that at no time does Kathink or the Site select, modify, amend or correct any of the information or Ideas transmitted from a Business Thinker to a Corporate, or involve itself in any manner with the content of Proposals or Commissioned Responses, save to filter communications passing through the Site using various filtering programs as part of the Site employing best practices to ensure that the Site rules and policies, particularly in relation to offensive content or money-laundering or insider trading abuses, are being respected and enforced.

## **Temporary Storage Only of Site Communications, Requests, Proposals and Commissioned Responses**

You confirm your understanding and agreement that Kathink only stores Site communications, Requests, Proposals and Commissioned Responses on a temporary basis, for a limited time period sufficient only to administer the Site, resolve Disputes and enforce the payment of Fees, and as a general matter, does not retain back-up copies of any of the above data, material or content.

## **Payment from Corporates**

You confirm your understanding and agreement that the legally binding contract that is formed on Kathink or the Site when you accept a Commission, is a contract entered into between the Corporate and yourself, and that Kathink is not a principal party to this contract. Accordingly in the event that for whatsoever reason a Corporate does not pay you any Commission Fee, you waive all rights and claims you may ever have of whatever nature against Kathink for the payment by it of all or part of the outstanding Commission Fee or any other debt owed to you at any time by a Corporate.

## **Kathink Administration Fees**

Unless otherwise agreed by the parties as part of a Commission, all Fees on the Site are in GB pounds sterling. You should ensure that you have selected, if the Site presently permits it, “US Dollars” or “\$” in any Requests or Commissions or other communication via the Site, if you are working in USD.

There is no charge by Kathink or the Site for you to submit Proposals to Corporates, nor to communicate back and forth with a specific Corporate via the Site in relation to a prospective Commission. However once a Corporate decides to commission the Full Detail of an Idea from you as a Business Thinker, by means of commissioning a Commissioned Response, and this Commissioned Response is accepted by you and a binding legal contract is formed, an Administrative Fee is payable by the Corporate to Kathink Ltd in the amount of 15% of the Commission Fee as set out in the Commissioned Response. This Administrative Fee is in addition to, and not deducted from the Commission Fee, all of which remains payable to you directly from the Corporate.

## **Kathink Introduction Fees**

You understand and agree that if a Corporate enters into an offsite consulting relationship with a Business Thinker that it first met on Kathink, that the Corporate becomes legally bound to pay to Kathink Ltd an Introduction Fee equal to 100% of all Commission Fees between the Corporate and that Business Thinker over the last 12 months, in lieu of Fees which Kathink would otherwise have earned had the business continued to have been conducted over Kathink’s websites.

Such sum shall equally be payable to Kathink Ltd if the Corporate contacts the Business Thinker through some other means other than via the Site, provided always that the Corporate and that Business Thinker were first introduced to each other via the Site.

In the event that you enter into a offline or offsite consulting relationship with a Corporate to whom you have submitted a Proposal or submitted a Commission within 12 months of the date of the commencement of the consulting relationship, you agree that you will notify Kathink of this fact at the time of entering into the consulting relationship.

## **Kathink Recruitment Fees**

You confirm your understanding that in the event that you enter into an employment relationship with a Corporate that you first were introduced to via Kathink or the Site, within 12 months of the last direct communication on the Site between the Corporate and yourself, then the Corporate shall be legally liable to pay a Recruitment Fee to Kathink Ltd in the sum of 15% of the full gross salary and bonus package accruing to you as its employee during the first 12 months of the employment relationship.

You agree that you will notify Kathink if you enter into an employment contract with a Corporate that you first met on Kathink, within 12 months of your last direct contact on Kathink, as soon as possible after the employment commences.

## **Kathink Subscription Fees**

You confirm your agreement and understanding that access by you as a Business Thinker (Individual or Corporate) to the Site and services of Kathink, is Free of charge, subject to your registration being accepted by Kathink. However you confirm and agree that you will not be permitted to accept a Commission on Kathink before you have paid to Kathink an annual, upfront, non-refundable Subscription Fee equal to £200. The obligation to pay the Subscription Fee in order to be permitted to accept Commissions, shall accrue again on an annual basis, being 12 months after the date of registration of the Business Thinker. You confirm that you waive any and all claims that you may have against Kathink for any damages or losses that you may suffer as a result of the suspension or cancellation of your access and registration on Kathink as a Business Thinker, in particular the failure to accept a Commission before it expired, on account of the non payment or late payment of your annual Subscription Fee.

## **“Refer a Friend” Commissions**

You confirm your agreement and understanding that in the event that you, as a registered Business Thinker, recommend to a Friend of yours that they also register on Kathink as a Business Thinker, and that person or Corporate does go on to register on Kathink as a Business Thinker AND enters your specific referral code at the time that they register, that you will become entitled to a commission of £40, but ONLY once the annual registration process is completed by the person or Corporate and is accepted by Kathink, and IN ADDITION the Business Thinker elects to pay to Kathink during the 12 month period from its registration, the annual Subscription Fee of £200 to enable it to accept Commissions. Again, you specifically confirm and agree that Kathink is under no legal liability to pay the commission of £40 to you until such time as the person or Corporate you referred has elected to pay to Kathink the annual Subscription Fee of £200 to enable it to accept Commissions. You also confirm and agree that the commission is only payable to you on a one-time basis in relation to a person or Corporate that you referred, regardless of whether the person or Corporate subsequently pays further annual Subscription Fees to Kathink in relation to further years of registration as a Business Thinker.

Finally, you confirm and agree that Kathink shall be under no legal obligation whatsoever to pay to you any commission in relation to a Corporate who you recommend to register on Kathink, but who registers on Kathink as a Client only (that is, not as a Business Thinker and therefore accordingly does not pay to Kathink an annual Subscription Fee).

## **Commissions – Binding Legal Contracts**

You confirm your understanding and agreement that the act of a Corporate in submitting a Commissioned Response to a Business Thinker on the Site, represents a formal contractual offer to the Business Thinker to prepare Full Details on a Proposal for the agreed sum being the Commission Fee and on the other specified terms and conditions as set out in the Commissioned Response, and that if the Business Thinker accepts the terms of the Commission before it is withdrawn by the Corporate, then the Corporate becomes legally and contractually bound to pay the Commission Fee upon the receipt of the Full Details document via the Site.

You also confirm your understanding and agreement that a Corporate commissions Commissions on a “caveat emptor” basis, and that prima facie, any disappointment that the Corporate eventually has with the Full Details once it gets to see them as contained in the Commissioned Response, is NOT a grounds for the Corporate to claim that it is no longer contractually bound to pay the Commission Fee to the Business Thinker. Notwithstanding this general principle, a Corporate is permitted to object to the payment of the Commission Fee in one of 4 strictly limited circumstances, called collectively a “Commissioned Response Dispute” as follows: (i) The Business Thinker has violated the intellectual property rights of a third party in the course of preparing the Full Details in the Commissioned Response; (ii) the Business Thinker has failed to effectively transfer the ownership of the intellectual property rights in the Commissioned Response to the Corporate (for example the Business Thinker has not provided the Corporate with a signed agreement transferring the intellectual property rights as per the “Agreement for the Transfer of All

Intellectual Property Rights in a Commissioned Response” Template provided to the Business Thinker on the Site); (iii) the Commissioned Response is fraudulent in a material aspect; or finally (iv) the Full Details have failed to take into account a very clear pre-condition which the Corporate communicated to the Business Thinker prior to the act of commissioning the Commission.

## **Objection Process, Legal Rights and Dispute Resolution**

You confirm your understanding and agreement that in the event that a Corporate or a Business Thinker claims a Commissioned Response Dispute in relation to a particular Commission, the Corporate or the Business Thinker shall contact KCS for a review of the Commission and the onsite communication leading to the act of commissioning the Commission, and the content of the Commissioned Response (“the KCS Review”). KCS shall provide the KCS Review within a reasonable time frame and without charge to either the Corporate or to the Business Thinker. KCS shall then make a final determination (“the Final Determination”) as to whether the Commission Fee is payable or not. KCS may also make a recommendation that only a part of the Commission Fee is payable, in its absolute discretion. The Final Determination shall be made entirely at the absolute discretion of KCS and shall be a final decision and binding at law on the Corporate, the Business Thinker and Kathink Ltd. No further discussions shall be entered into by Kathink Ltd or KCS on the Commissioned Response Dispute with any party, unless required to do so by a court of law. KCS may enter Rating comments or data for either the Corporate or the Business Thinker, which it in its absolute discretion finds appropriate. Both the Corporate and the Business Thinker waive their rights to pursue a resolution to a Commissioned Response Dispute in an alternative format, including arbitration or legal proceedings.

Kathink requires all users to undertake bona fide efforts to resolve all disputes, including Commission Disputes, between themselves using onsite communication, prior to a Corporate claiming a Commissioned Response Dispute with KCS.

Subject to the above 2 paragraphs, where a user has a dispute or claim against another user, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

## **No Spam**

Kathink does not tolerate unsolicited commercial communications (spam). Please set your Kathink notification preferences so that we can communicate with you as you prefer. Please note that you are not permitted to add other Kathink users, even a user who has been involved in a Proposal or Commission process with you, to your mailing list (e-mail or physical mail) without their consent.

You may not use our communication tools to send spam or otherwise send content that would breach our User Agreement. We filter and automatically scan e-mail messages before they are sent via our communication tools for viruses and other illegal or prohibited content but we do not permanently store such messages.

## **Using Information About Other Kathink Users**

Our Site enables users to share personal and financial information in order to complete transactions. In addition, the Site permits users (both Corporates and Business Thinkers) to act anonymously if they so elect

and to the maximum extent which is practically possible. However when users are involved in a process on the Site, and even when acting anonymously, usually inevitably at the payment stage, users by necessity disclose to each other their details - name, User ID, email address, and other contact information, postal information and financial information. You confirm the understanding and agreement of your Corporate that ALL data and information of another Kathink user which you come into contact with as a result of a process on the Site is to be treated as valuable, proprietary and confidential, and is to be kept completely confidential by your Corporate and not released to any third parties without the consent of the other user, the exceptions to this being limited financial and other data necessary to process a payment or the release of data as required by a court order or direction in writing from a Government regulatory body. This confidentiality requirement is to be particularly stringently applied where you are aware that the user whose data you have possession of has requested during the process that you shared together on the Site, that he act anonymously and that his anonymity be strictly respected.

Despite the contractual requirements set out in the User Agreements on the Site that confidentiality of user data and information be strictly maintained, we cannot guarantee that other users will respect the privacy or security of your information and therefore we encourage you to evaluate the privacy and security attitudes and representations of other users of the Site before entering into processes and choosing to share your information with them. Similarly, we ask you to respect other users' privacy and disclose your privacy and security attitudes, representations and policies to them. In all cases, you must give other users upon request a chance to remove themselves from your database and a chance to review the information you have collected about them.

You agree to use user information only in accordance with applicable laws and regulations (including, without limitation, data protection laws) and only for:

- Kathink process purposes that are not unsolicited commercial communications
- using services offered through Kathink; and
- other purposes that a user expressly agrees to.

## Content Licence

When you give us content, you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (through multiple tiers) right to exercise the copyright, trade marks, database rights and all other intellectual property rights you have in the content, in any media known now or in the future. In addition, you waive all moral rights you have in the content to the fullest extent permitted by law. (We may need these rights to host and display your content on the Site to Business Thinkers.)

## Liability

Nothing in this User Agreement shall limit or exclude our liability for fraudulent misrepresentation, for death or personal injury resulting from our negligence or the negligence of our agents or employees or for any other liability that cannot be limited or excluded by law.

You will not hold Kathink responsible for other users' actions or inactions. Although Kathink may in some places be referred to as an online marketplace or auction Site for business ideas, you acknowledge that we are not a traditional auctioneer. Instead, the Site is a venue to allow Corporates to solicit Business Thinkers for business ideas. At no point does Kathink or the Site take title to the Ideas generated or sold by Business Thinkers to Corporates, and Kathink is not involved in any reselling of Ideas from Business Thinkers to Corporates. We do not review user's Requests, Proposals, Commissioned Responses and other Site communications and we are not a party to the actual processes or transactions between Corporates or Business Thinkers. You will not hold Kathink responsible for the actions or inactions of other Corporates or Business Thinkers involved in processes or transactions on the Site (whether such transactions are carried out on or off Kathink) or for ensuring that they actually complete processes or transactions.

We have no control over, do not guarantee, and you will not hold us responsible for:

- the quality, safety or legality of Ideas processed or transferred over the Site;
- the truth or accuracy of Ideas Processed or transferred over the Site;
- the truth or accuracy of Rating or other content posted by users on the Site;
- the ability or expertise of Business Thinkers on the Site;
- the ability of Corporates to pay for Ideas processed or transferred; or
- whether a Corporate or Business Thinker will actually complete a transaction.

You accept sole responsibility for the legality of your actions under laws applying to you and the legality of any actions that you take on the Site.

Although we use techniques that aim to verify the accuracy and truth of the information provided by our users, user verification on the internet is difficult. Kathink cannot and does not confirm, and is not responsible for ensuring, the accuracy or truthfulness of users' purported identities or the validity of the information which they provide to us or post on the Site.

We cannot guarantee continuous or secure access to our services, and operation of the Site may be interfered with by numerous factors outside of our control. While we will use our reasonable endeavours to maintain an uninterrupted service, we cannot guarantee this and we do not give any promises or warranties (whether express or implied) about the availability of our services.

We (including our parent, subsidiaries, affiliates, officers, directors, agents and employees) shall not be liable to you in contract, tort (including negligence) or otherwise for any business losses, such as loss of data, profits, revenue, business, opportunity, goodwill, reputation or business interruption or for any losses which are not reasonably foreseeable by us arising out of your use of our Site.

Regardless of the previous paragraph, if we are found to be liable, our liability, and the liability of our parent, subsidiaries, affiliates, officers, directors, agents and employees, to you is limited in any 12 month period to the greater of: (a) the total fees you paid to us in relation to the listing or other service offered which gave rise to the liability, and (b) USD 40,000.

## **Release**

If you have a Dispute with one or more users, you release us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such Disputes.

## **Access and Interference**

The Site contains robot exclusion headers. Much of the information on the Site is updated on a real-time basis and is proprietary or is licensed to Kathink by our users or third parties. You agree that you will not use any robot, spider, scraper or other automated means to access the Site for any purpose without our express written permission.

Additionally, you agree that you will not:

- take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure;
- copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (except for your information) from the Site without the prior expressed written permission of Kathink and the appropriate third party, as applicable;

- interfere or attempt to interfere with the proper working of the Site or any activities conducted on the Site; or
- bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Site.

## Privacy

We do not sell or rent your personal information to third parties for their marketing purposes without your express consent. We use your information only as described in the [Kathink Privacy Policy](#). We view protection of users' privacy as a very important community principle. We store and process your information on computers that are protected by physical as well as technological security devices. You can access and modify the information you provide us and choose not to receive certain communications by signing-in to your account. If you object to your information being transferred or used in this way please do not use our services.

## Compensation

You agree that you will only use the Site in accordance with the terms and conditions set out in this User Agreement. You will compensate us in full for any losses or costs (including reasonable legal fees) we incur arising from any breach by you of this User Agreement.

## No Agency

No agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this User Agreement.

## Notices

Except as explicitly stated otherwise, notices to Kathink shall be sent by registered mail to Kathink Ltd, Pilatusstrasse 35, 6002 Lucerne, Switzerland. We shall send notices to you by e-mail or by registered mail to the email address or postal address (as applicable) that you provided to Kathink when you registered as a member of Kathink. Notices sent to you by e-mail shall be deemed to have been received by you 24 hours after they are sent, unless we receive notice that the email address is invalid. Notices sent to either party by registered mail shall be deemed to have been received by that party 3 days after they are sent.

## Governing Law

This User Agreement shall be governed by and construed in accordance with United States law. You and Kathink both agree to submit to the non-exclusive jurisdiction of the United States Courts.

If a dispute arises between you and Kathink, we strongly encourage you to first seek a resolution by contacting Kathink Customer Support. Alternatively you may address complaints to Kathink Ltd, Pilatusstrasse 35, 6002 Lucerne, Switzerland. We will consider reasonable requests to resolve any dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

However if a Dispute arises between you and a Corporate which is incorporated outside the United States, then you agree the Dispute shall be determined under English law.

## Kathink Policies

The following policies (together with all further policies that can be accessed via click-through links contained in such policies) are part of this User Agreement and provide additional terms and conditions related to specific services offered on the Site. We expect you to read all of the linked documents carefully:

- [Prohibited and Restricted Subject Matter for Requests](#)
- [Privacy Policy](#)
- [Removal upon Notice of Offensive or Defamatory Material Policy](#)

Each of these policies may be changed from time to time. Changes take effect when we post them on the Site. When using particular services on the Site, we advise you to check whether the applicable policy or rule has been amended on the Site as you will be bound by the latest version of any applicable policies or rules which may be posted on the Site from time to time. All such policies or rules are hereby incorporated into this User Agreement.

## General

If any provision of this User Agreement is held to be invalid or unenforceable, such provision shall be struck out and the remaining provisions shall be enforceable.

In our sole discretion, we may assign this User Agreement to a third party by giving you notice in accordance with the Notices section above (but without your prior express consent), provided that we assign the User Agreement on the same terms or terms that are no less advantageous to you.

Section headings are for reference purposes only and do not limit the scope or extent of the sections.

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

We may amend this User Agreement at any time either by e-mail by posting the amended terms on the Site. Except as stated elsewhere in this User Agreement, all amended terms shall automatically be effective 30 days after they are initially posted on the Site. This User Agreement may not be otherwise amended except in a writing signed by you and us.

This User Agreement sets forth the entire understanding and agreement between us with respect to its subject matter.

The following Sections survive any termination of this User Agreement: Fees (with respect to fees owed for our services), Content Licence, Liability, Release, Compensation, and Governing law.

**END**