

# Terms of service

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Please read this document carefully before accessing or using the Services.

## Preamble and scope

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These Terms of Service (hereinafter "TOS") govern the Services provided to Users by LINAGORA, a simplified stock company (SAS) with a capital of 1 552 980 euros and a registered office located Tour Franklin, 100 Terrasse Boieldieu, 92042 Paris La Défense Cedex, registered with the Registry of Trade and Companies of Nanterre (France) under number 431 473 669, and/or any subsidiary of this company, hereinafter referred to as "LINAGORA".

By accessing and using the Services, Users agree to being bound by these TOS. Should any User disagree with any part of the present TOS, User may not use the Services.

## Definitions

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The following expressions in the TOS have the meaning indicated in this section:

**Content :** Content is defined as any data, regardless of nature (whether information, image, video, audio, file, sign, text, signal, program, software, code, or any other element) which is available (displayed and/or downloadable) through the Services platform. User Content is a specific type of Content.

**Services:** Twake, a secure open source collaboration platform focused on privacy, security and digital sovereignty, which notably includes Team messaging, Storage space, Team calendar, and Task management features.

**User:** An User means YOU as an individual, whether acting on your own account or on the behalf of any organization (company, association, or other) which requires you to access or use the Services in a professional context. When accessing and/or using Service features or purchasing a subscription to the Services on behalf of an organization, said organization is also considered to be a User, and, as such, is fully subject to the present TOS.

**User Content:** User Content is defined as Content which is directly or indirectly emitted, designed and/or created by a User, and uploaded to and/or broadcast through the Services platform.

## Enforceability

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By accessing and/or using the Services and their features, Users are signifying their understanding as well as their irrevocable and complete acceptance of the Terms of Service applicable at the time of such Services access and/or use.

Applicable free and open source licenses notwithstanding, no other contractual terms, regardless of origin or nature, are applicable to the accessing and/or using the Services.

The fact that LINAGORA does not enforce, at a given moment, any section of these TOS, can not be interpreted as a waiver of the right to enforce said section at a later date.

The present TOS may be updated by LINAGORA at will. Each new version of the TOS will be submitted to Users for agreement. Should an User decline to agree to an updated TOS, LINAGORA reserves the right to terminate the Service for said User.

## Availability, access and performance

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The Services are freely and publicly made available to Users by LINAGORA. Their features, availability, access and use conditions may change at any time without notice. LINAGORA reserves the right to suspend or terminate the Services, whether for one or for all Users.

LINAGORA undertakes to implement all appropriate measures to ensure reasonable availability of the Services. However, because of the characteristics of the distributed network that is Internet, LINAGORA can not be held responsible for the slowdowns or difficulties of access to the provided Services from other sites in the world or of external slowdowns. LINAGORA responsibility ends at the output of IP routers installed in its facilities and those of its partners in providing the Services.

LINAGORA makes no commitment whatsoever to keep the Services publicly available to Users, and makes no commitment regarding the stability or the performance of the Services.

LINAGORA disclaims any and all commitments regarding continuity, performance, stability, compatibility, quality of use of the Services. As such, LINAGORA may not be held liable for: \* network or load perturbations or failures affecting continuity, performance, stability, compatibility, or quality of use of the Services; \* technical infrastructure failures; \* delays in restoring or acting to restore the Services after a perturbation or failure; \* temporary or permanent unavailability of User Content, regardless of reason for such unavailability; \* temporary or permanent unavailability of the Services; \* temporary or permanent disruption of the Services.

In order to cover the evolution of IT environments and the Services, LINAGORA reserves the right to modify at any time the characteristics of its technical infrastructures and the choice of its suppliers. LINAGORA will make its best effort for these modifications to offer performances at least equivalent to those of the previous technical infrastructures.

LINAGORA may temporarily discontinue the Service for the purpose of maintaining its server centers. These interruptions will take place at the times of the day the least detrimental to European and American network traffic. Any such interruption of Service will be notified beforehand by LINAGORA to Users by e-mail and/or display of an appropriate notice in the Services main interface. LINAGORA will endeavor to minimize the duration of these scheduled interruptions.

## User commitments

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User Content is not controlled nor monitored in any manner by LINAGORA. LINAGORA only provides the technical infrastructure for providing Users with the use of the Services, and for uploading and downloading User Content, transmitting User Content, and for making available User Content to other Users and if applicable third-party recipients.

Any User is fully and completely responsible for the User Content he uploads. Users understand and accept that LINAGORA disclaims all liability for any User Content they upload or download from the Services.

Users uploading User Content agree to indemnify, defend and hold harmless LINAGORA, its authorized representatives, its partners, and its employees from and against any liability, loss, injury (including injuries resulting in death), demand, action, cost, expense, lawyer fee, or claim of any kind from a third-party, including but not limited to intellectual property infringement claims, relating in any way to said User Content.

Users warrant that their use of the Services (and notably User Content which they upload): \* complies with the present TOS; \* does not present any direct or indirect security risk for LINAGORA, its partners, its other Users and/or their personel; \* complies with any and all enforceable laws, rules, regulations and administrative - including without limitation data privacy Laws - in the country from where the User Content is being broadcast as well as the countries where said User Content is being received; \* can not directly or indirectly be considered to be a harmful, deviant, abusive, illicit, unlawful activity nor an activity prohibited by law, rules, or regulations, whether national or international; \* can not be in any manner defined as unsolicited messaging, also known as spamming; \* is not designed nor does include any software designed to directly or indirectly disrupt or alter computer systems on which it is downloaded and/or deployed; \* can not directly or indirectly be considered as: \* promoting, encouraging, or eulogizing the commission of crimes or offenses, and particularly crimes against humanity; \* constituting, promoting or encouraging acts of war, terrorism, violence, suicide, production or use or consumption or distribution of illicit substances, racial hatred, racist, xenophobic, or negationist messages or behavior, pedopornography either directly or by the trivialization of such acts; \* constituting insults, slander, violation or injury to the right of personal privacy, image, honor and/or reputation, or to the rights of LINAGORA or any third party; \* constituting, promoting or encouraging fraudulent access to a LINAGORA or any third-party computer system, or the illegal collection, processing, or transmission of data; \* incurring an infringement of LINAGORA or third-party intellectual property rights.

Any such use of the Services (or uploading of User Content) that LINAGORA is made aware of may lead the User to be banned from using the Services, and will be reported, along with any and all data available to LINAGORA, to the proper authorities, for prosecution to the full extent of the Law.

Please alert LINAGORA of any such abuse that you may come across by sending an e-mail to **abuse@twake.app**

## Contents

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LINAGORA makes no claim of any kind whatsoever regarding User Content, which it does not review before its uploading by an User, nor during its storage on its infrastructure, nor after its downloading by any User.

Any and all other data, information, materials (including, without limitation, HTML, hyperlinks, text, audio, video, white papers, press releases, data sheets, product descriptions, software and FAQs and other content) available on or from the Services may, except as otherwise provided, be the copyrighted works of LINAGORA or subject to licenses and specifically to free and open source licenses.

Except as expressly permitted, either in the present TOS or in the specific licenses governing particular materials available from the Services, any use of the Website content may violate copyright and/or other applicable laws. Any such violation, as well as any infringement of the aforementioned specific licenses, will be prosecuted by LINAGORA to the full extent of the law.

## Intellectual property

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User does not acquire any rights whatsoever to elements of LINAGORA intellectual property, such as product brands developed by LINAGORA.

LINAGORA does not acquire any right whatsoever to any User Content, nor any intellectual property elements owned by User.

In the event that Contents available through the Services platform created by LINAGORA are not governed by a free and open source software license, User is granted a right of use of said Contents limited to the Services platform, which excludes the right to reproduce and reuse the Contents with other services other than the Services platform.

## Payment conditions

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By purchasing a subscription to the Services, User agrees to pay in advance the full annual subscription fees indicated for said Service. Payments will be due as of the first day User signs up for the Services, and will cover an annual period, as indicated when signing up.

Configurations and prices of the Services are subject to change at any time, and LINAGORA shall at all times be entitled to modify configurations, fees, prices and quotations, provided that no price changes shall be made applicable to User during a subscription term, and shall only take effect after LINAGORA and User have agreed upon an extension, upgrade or renewal of the subscription term.

User is deemed to agree to such change if User does not object in writing to LINAGORA within seven (7) business days of receiving a notice of LINAGORA, or an invoice, incorporating or announcing the fee and/or price changes. All prices are exclusive of, and User shall pay all taxes, duties, levies or fees, or other similar charges imposed on LINAGORA or the User by any taxing authority (other than taxes imposed on LINAGORA income) related to User subscription.

In case of changes in law such that a tax is levied that is or becomes irrecoverable with a consequent increase to the costs incurred by LINAGORA in delivering the Services, whereby and to such an extent LINAGORA is entitled to increase its prices accordingly and retroactively.

## TOS breach

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Any breach of the following TOS by User may incur immediate suspension by LINAGORA of User access and/or use of the Services. In addition, should this TOS breach present a particular severity (notably if such breach also constitutes an infringement of applicable laws, rules and regulations, presents a risk of infringement or injury, or constitutes an actual injury for LINAGORA or any third-parties), LINAGORA reserves the right to automatically terminate access and use of the Services by User, without notice, notwithstanding possible prosecution.

In any breach case incurring suspension or termination of the Services, User is not entitled to any refund by LINAGORA.

User acknowledges and agrees that LINAGORA has no liability of any kind should any third-party who have been granted access to User Content by the User, modifies, destroys, corrupts, copies or distributes said User Content, or violates the terms of use or any other limitations that User may have imposed on the use of said User Content.

## Service activation

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Services are activated immediately upon subscription payment by the User. A few minutes delay after effective payment might sometimes be necessary to provision and deploy the technical platforms for providing the Services to the user.

# Refunds and cancellations

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Considering that activation of the Services is immediate upon payment of the subscription by the User or the organization on behalf of which User is acting, and given the digital nature of the Services, any subscription purchase is final and all payments to LINAGORA are non-refundable.

User does not benefit from any cooling-off period enabling him to receive a full refund upon retraction / cancellation of the Services subscription.

In case of cancellation by a User during a subscription term, the Services will continue until the end of the paid subscription period, without any refund.

In order to cancel his subscription, User must

**FOR NOW** send a mail to [contact@twake.app](mailto:contact@twake.app) and say that User wants to cancel his subscription. **IN JULY** go in the console page > "Subscription" > "Change plan" > "Cancel plan"

# Trademarks

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Twake and the LINAGORA logo are registered trademarks owned by LINAGORA. Any unauthorized use of these trademarks for promoting any goods or services not affiliated with LINAGORA is strictly prohibited, and will lead to prosecution.

# Third-party subservices

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The Services platform is hosted by OVH Cloud.

**UPDATED** Third-party subservices : \* Chargebee \* Adyen \* Segment \* Amplitude \* Customer.io \* Google Analytics \* Google Tag Manager \* Yandex \* LinkedIn Insight \* Facebook Pixel \* Twitter Pixel

# Disclaimer of warranties & limitation of liability

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THE SERVICES AND THEIR CONTENT ARE PROVIDED STRICTLY ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND LINAGORA MAKES NO WARRANTY THAT THE SERVICES AND THEIR CONTENT ARE COMPLETE, ACCURATE OR SUITABLE TO A SPECIFIC PURPOSE.

LINAGORA DISCLAIMS ANY AND ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED WITH REGARD TO THE SERVICES AND AVAILABILITY THEREOF INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

ANY RISK RELATED TO THE USE OF THE SERVICES RESTS ENTIRELY WITH THE USER AND LINAGORA MAKES NO REPRESENTATION OR WARRANTY OF UNINTERRUPTED AVAILABILITY OF THE SERVICES, NOR THAT THE SERVICES ARE ERROR-FREE.

LINAGORA CANNOT BE HELD LIABLE FOR PIRACY BY A THIRD-PARTY, FOR THE TRANSMISSION OR RECEPTION BY THE USER OF MALICIOUS PROGRAMS HIDDEN IN OTHER USER CONTENT DOWNLOADED THROUGH THE SERVICE PLATFORM, DESPITE ALL THE SECURITY PRECAUTIONS TAKEN BY LINAGORA.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LINAGORA SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR CONNECTED TO THE USAGE OR INABILITY OF USAGE OF THE SERVICES INCLUDING, WITHOUT LIMITATION, ANY AND ALL DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR STATUTORY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF GOODWILL OR FOR ANY COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), EVEN IF LINAGORA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH DAMAGES ARE SOUGHT, WHETHER IN BREACH OF CONTRACT OR IN TORT, INCLUDING NEGLIGENCE.

# Miscellaneous provisions

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In the case of difficulty of interpretation resulting from a discrepancy or contradiction between one of the titles appearing at the head of the clauses, and one of the clauses, the concerned title will be declared non-existent.

If one or more stipulations hereof are held or declared void pursuant to a law, regulation or final decision of a competent court, any other stipulations shall remain in full force and scope.

# Governing law

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The TOS are governed by French law. Any arising dispute relating to the access or use of the Services will be submitted to the exclusive jurisdiction of the Courts of law of Nanterre, France.