

# TERMS OF USE OF THE VOILÀ! APPLICATION'S EMPLOYER FEATURES

*Latest update:* September 11<sup>th</sup>, 2020.

To use the employer features of the Voilà! application, you must accept and comply with the terms, conditions and rules explained in these Terms of Use. These Terms of Use constitute a contract between the employer or a person authorized by the employer (whom we will refer to as “**you**” or the “**Employer**”) and the Application operator, Flash Romeo Inc. (which we will refer to as “**we**” or “**Voilà!**”).

The Application is accessible to employers who are our clients as well as to Employees of said Employers who have opened a user account.

## 1. Definitions

- 1.1. “**Application**” refers to the Voilà! application.
- 1.2. “**Employer**” means an entity, or any person it authorizes to use the Application, that has entered into a contract with us to use the Application and its employer features.
- 1.3. “**Agreement**” refers to these Terms of Use.
- 1.4. “**Employer Features**” refers to the features that only Employers can access on the Application.
- 1.5. “**User**” or “**Employee**” refers to an individual, including an employee of the Employer or any affiliated organization, who uses the Application.

## 2. Purpose of the Application

- 2.1. The Application is a tool intended to facilitate working relationships between you and your Employees by making it possible for Employers to, in particular, but not limited to, manage Employee schedules, effectively manage Employee files and easily communicate with Employees. It also tracks employee attendance and hours worked for the Employer.
- 2.2. When you interact with a User, you do so on your own behalf and not on behalf of Flash Romeo Inc. The Agreement does not create any mandate whatsoever and neither party represents the other, in particular in any interaction with a User.
- 2.3. You acknowledge that the Agreement will in no event be construed as establishing an employment contract between you and your Employees.

## 3. Access to the Application

- 3.1. **Versions.** We offer access to the Application in mobile iOS, Android and desktop versions for all your Employees.

- 3.2. **Automated tools.** Access to the Application by automated tools (such as robots, spiders or crawlers) is prohibited unless you have entered into a specific agreement with us to that effect.
- 3.3. **Accessibility.** We guarantee that the Application will be accessible and functional 99.5% of the time. We reserve the right to suspend access to the Application for the general public or for one or more Employer and / or Employers in particular for any period of time, on reasonable grounds and with written notice.

#### 4. Costs and Payment Terms

- 4.1. **Packages.** To access all the features of the Application, you must pay the costs related to the use your company makes, in accordance with the various packages and prices available at the following hyperlink: <https://voila.app/en/pricing/>.
- 4.2. **Costs.** The Employer's monthly Application usage cost is calculated according to the number of active Employees. The number of active Employees at month end determines the fees for the next billing cycle.
- 4.3. **Billing period.** Your monthly invoice, payable by automatic payment, gives you access to the Application for the 30-day period following the invoice date.
- 4.4. **Payment terms.** Our Stripe online payment tool accepts all major credit cards, like Visa, Mastercard and American Express, in accordance with the PCI standard. However, we reserve the right to change the payment methods at any time. You agree that your credit card may be used to pay for renewals, additional active Employees or unpaid costs, as the case may be.
- 4.5. **Taxes.** Applicable sales taxes will be added to any amount payable under paragraph 4.1.

#### 5. Employer Account

- 5.1. **Account.** To use the Employer Features and the Application as an Employer, you must create an employer account.
- 5.2. **Authorized persons.** Only entities operating a business may create an employer account. If you are a consumer as defined in consumer protection laws, you may not use the Employer Features. You warrant that the information that you provide to create your employer account is true and accurate. If you are an individual creating the employer account on behalf of another entity, you warrant that you are authorized to legally bind such Employer or entity and act on its behalf.
- 5.3. **Liability.** You are fully liable for your employer account and any action taken or performed from it. You may not share your account with any other person or company, and you must keep your password confidential at all times. The entity that holds an employer account is responsible for ensuring that any individual who uses that account is authorized to legally bind such entity and act on its behalf with respect to the use of the Application and its Employer Features.

## 6. User Profiles

- 6.1. **Features.** The Employer Features make it possible to manage User profiles by creating employee profiles on the Application, entering personal information related to Employees' employment (i.e. name, email, telephone number and hiring date) and uploading files to their profiles, including their resume, annual evaluations and disciplinary notices.
- 6.2. **Use.** You agree to use the information in your Employee profiles solely for the purpose of facilitating your contractual employment relationship with your Employees.
- 6.3. **Liability.** You are fully liable for the documents and information entered in or uploaded to the Application by you or your Employees, and you hold us harmless from any such liability.

## 7. Employer-generated Content

- 7.1. **Content creation.** The Application makes it possible to create content that will be published on the Application ("**User Content**"). You are liable for any User Content that you create through the Application. You warrant that your User Content complies with the law and respects the rights of others, if applicable.

For example, User Content includes any announcement that you may make to your Employees about your company (statutory holidays or other) or notes (disciplinary records, employee successes, etc.) that you may include about an Employee in the Application. However, personal information about Employees (e.g. name, address, telephone number) does not constitute User Content.

- 7.2. **Property.** You retain the rights that you own in and to your User Content. However, you hereby grant us a limited, royalty-free, non-exclusive, transferable license to reproduce, represent, use, modify, adapt, translate, transform and share any User Content, limited to usage necessary to operate the Application in accordance with these Terms of Use and our Privacy Policy.
- 7.3. **Deletion.** We may, at our sole discretion, delete any User Content that does not comply with these Terms of Use or that we consider inappropriate after a 24 hours written notice. However, we do not systematically monitor User Content shared through the Application, and we do not assume any liability for User Content made available through it.

## 8. Prohibited Use

- 8.1. **Authorization.** You may not use the Application for any purpose that is unlawful or prohibited under this Agreement.
- 8.2. **Prohibitions.** Without limiting the generality of the foregoing, you are prohibited from making any use of the Application or allowing any third party to make any of use of the Application that:
  - a) Violates this Agreement;
  - b) Is unlawful, infringing, harmful, threatening, devious, defamatory, slanderous, insulting, obscene, invasive of a person's privacy, hateful, fraudulent or malicious;

- c) Disseminates or encourages the dissemination of pornographic content;
  - d) Harasses or advocates harassment of another person;
  - e) Involves sending any malicious computer code, virus, Trojan horse, worm, malicious code, access-denial mechanism or any similar mechanism;
  - f) Encourages illegal activities or conduct;
  - g) Solicits passwords or personal identification information for commercial or illegal purposes from other Users;
  - h) Interferes with or disrupts the functionality of a website or any server or network involved in the operation of a website or the Application;
  - i) Except as permitted by this Agreement, systematically collects or extracts names or other information about Application Users from the Application; or
  - j) Violates any local, national or other applicable law or regulation.
- 8.3. **Non-compliance.** Failure to comply with the obligations provided for in this Agreement may result in the termination of the Application's use privileges and the cancellation of the contravening User's account.

## 9. Our Rights and Intellectual Property

- 9.1. **Property.** We own or are duly authorized to use all content available on the Application, including all text, images, drawings, videos and sounds as well as its source code.
- 9.2. **Prohibition.** You may not modify, copy, distribute, run, transmit, transfer, display, provide, reproduce, publish, grant any license or sub-license or sell any of the content, information or services obtained from or through the Application except as required to visit and use the Application in a manner consistent with this Agreement, unless you have obtained our prior written consent.
- 9.3. **Integrity of the Application.** You may not alter, improve or otherwise modify the Application's technical information or data, unless the parties hereto agree to do so in writing. You agree that you may not at any time disassemble or decompile the Application's technical data, reverse engineer the Application's technology or prepare work derived from the Application's technical data.

## 10. Use of Intellectual Property

- 10.1. **No implicit license.** The parties agree that nothing in this Agreement may be construed as granting to the other party any license or other right whatsoever with respect to their respective trademark(s), except as specifically provided herein.
- 10.2. **Domain name.** You agree not to use the word or any part of the word "Voilà!" or any other term that may be misinterpreted as said word in the title of a domain name belonging to you or to a company under your control.
- 10.3. **Advertising and promotion.** Any advertising or promotional operation using a party's trademark, name or logo, other than those referred to below, must be subject to the prior written agreement of that party:
- a) We authorize you to display our name, trademark and/or logo (which may be modified by us at any time) on your promotional tools to promote your employer brand and workforce management practices in a positive manner.

- b) You authorize us to display your name, trademark and/or logo (which you may modify at any time) on the Voilà! website and on any other material promoting the Voilà! Application for the sole purpose of identifying you as an Employer using it.

10.4. **End of the Agreement.** Upon the termination of this Agreement, the parties will cease all use of the other party's trademark, name or logo for any purpose whatsoever, unless a party obtains the prior written consent of owner.

## 11. Your Data

11.1. **Your property.** We do not claim any ownership rights in the data that you upload to the Application, and we acknowledge that there is no assignment of your rights to such data to us under this Agreement.

11.2. **License.** You grant us a non-exclusive, universal, royalty-free license to reproduce, use and modify your data to the extent necessary to provide you with the Application's functionality and perform analyses relating to the Application's use. We will not share any commercial data about you with third parties without your consent.

11.3. **Authorized use.** Notwithstanding the foregoing, we are authorized to use your data, which will have been previously anonymized in a way that will make it impossible to identify the Employer or its Users, to aggregate it with data collected from our other clients and use such aggregated data for analytical and statistical purposes. The results of these analyses and statistics may be disclosed to any person at our sole discretion.

## 12. Suggestions

12.1. If you choose to contact us about improvements to the Application or the products and services that we offer (we will refer to such communications as "**Suggestions**"), we will retain any right, title and interest in and to the Suggestions and will be entitled to use the Suggestions without restriction. You hereby irrevocably grant us all rights, titles and interest in and to the Suggestions, waive all moral rights on the Suggestions and agree to provide us with such assistance as we may request to document, refine and retain our rights in such Suggestions. You represent that your Suggestions do not contain confidential information or information that is the property of third parties and you agree that:

- a) We have no explicit or implicit obligation of confidentiality with respect to the Suggestions;
- b) We are authorized to use or disclose (or choose not to use or disclose) the Suggestions for any purpose whatsoever, in any manner whatsoever, on any medium whatsoever, anywhere in the world;
- c) We may already have considered or be in the process of developing the same or similar features as those mentioned in the Suggestions;
- d) You will not receive any compensation or reimbursement of any kind from us, regardless of the circumstances under which the Suggestions are given to us.

### 13. External Links

- 13.1. The Application contains links to other websites (the “**Third Party Websites**”) owned and operated by other persons or Employers. We have no control over Third Party Websites and are not liable for their content. We link to Third Party Websites to facilitate navigation, and the inclusion of such links does not imply that we endorse or recommend the content of Third Party Websites.
- 13.2. The websites and pages we link to (e.g. our Facebook page) are governed by their own terms of use and policies, and these may differ from this Agreement and may even not be under our control. We encourage you to take cognizance of the applicable terms of use and policies before visiting and using these linked websites or pages.

### 14. Use of Cookies

- 14.1. We use cookies to improve the performance of the Application and your experience. Cookies are very small files stored on your hard drive by the server on which the Application is hosted or by servers operated by third parties (for traffic analysis purposes).
- 14.2. The cookies used mainly consist of an ID that identifies your computer or mobile device when you visit the Application again. Some cookies are deleted when you close your browser (session cookies) while others are stored indefinitely (permanent cookies). You may be able to disable the storage of cookies or certain types of cookies from your browser. If you disable this feature, you will still be able to use the Application, but your experience may change.
- 14.3. For more information about the information that we collect about our visitors and clients, please refer to our [Privacy Policy](#).

### 15. Confidentiality

- 15.1. **Confidential information.** We undertake to keep confidential and treat in a confidential manner the confidential information that we may collect from you from time to time or to which we may have access in connection with the provision of the services referred to in this Agreement (the “**Confidential Information**”). We undertake to apply the same standards of care and diligence to maintaining the confidentiality of said Confidential Information as we apply to maintaining the confidentiality of our own confidential information. You acknowledge that Confidential Information will be disclosed to our hosting providers or any other service provider to the extent necessary to provide our services and perform our undertakings. We undertake to select suppliers who undertake to us in writing to maintain the confidentiality of the Confidential Information and will be responsible for any breach of the confidentiality obligations of our suppliers.
- 15.2. **Exception.** Our obligations with respect to the Confidential Information do not apply to any information that:
  - a) Becomes known to the public through no fault of our own;
  - b) Was already known to us before it was disclosed by the Employer;
  - c) Is independently developed by us;

- d) Is disclosed to us by a third party who is not bound by an obligation of confidentiality to you.

15.3. **Permitted disclosure.** We may disclose and/or use the Confidential Information if we are bound to do so by an order of a court or competent authority in accordance with applicable law, provided that reasonable steps have been taken, if possible, to notify you of such disclosure or forced use and enable you to take appropriate steps to protect the Confidential Information.

15.4. **Your undertaking.** You agree to keep confidential information obtained through the Application strictly confidential and not to share it outside the Application.

## 16. Protection of Personal Information

16.1. **Undertaking.** You agree to abide by our [Privacy Policy](#), as updated from time to time at our discretion (you may access the latest version of the Privacy Policy relative to the Application at any time).

16.2. **Liability.** You are fully liable for complying with all applicable legislation involving privacy and the protection of personal information.

## 17. No Warranty

17.1. Your use of the Application and the services offered by means of or through it is entirely at your own risk. The Application and the services offered through it are provided “as is” and, to the extent permitted by law, without warranty of any kind, whether implied or given expressly or tacitly. Any implicit warranty relating to the quality of the services offered, the capacity of the services to meet a specific need or the absence of counterfeiting is explicitly excluded.

17.2. We do not warrant that access to the Application and the services offered by means of or through it will be uninterrupted and secure, and that the content available through the Application will be error-free, accurate, complete and up-to-date. We do not warrant the results obtained through the use of the Application or the accuracy or reliability of any information obtained through the Application, regardless of the equipment with which you access the Application.

17.3. All material and/or data uploaded, downloaded or otherwise obtained through the use of the Application is at your discretion and risk. You will be fully liable for any damage to your computer or loss of data that may result from uploading and/or downloading such material and/or data through the Application.

17.4. Notwithstanding Section 17, we work to set up reasonable security processes to protect your data.

## 18. Limited Liability

18.1. Neither party (nor their affiliates or subcontractors) shall be liable to the other party for damage resulting from loss of business, anticipated profits or savings, loss of data, loss of interruption of work, nor shall it be liable for punitive or exemplary damages, nor for special, incidental, consequential or indirect damages based on this Agreement or on your use of the Application.

- 18.2. Our total liability for direct damages that you may suffer as a result of a breach of our obligations under the Agreement is limited to the charges that you have paid in consideration for your use of the Application in the 6 months prior to the event generating responsibility.
- 18.3. The limitation provided in paragraph 18.2 does not apply to (a) our obligation to compensate you under paragraph 19.2, (b) to damages for which a limitation of liability is prohibited by law, in particular bodily injury and damages resulting from our gross negligence or an intentional act.

## **19. Indemnification**

- 19.1. You agree to indemnify and hold us and our affiliates, directors, officers, shareholders, employees, mandataries and licensors harmless from and against any and all damages, claims, liabilities, losses, costs, fines, penalties and debts, including reasonable legal fees and costs that we or they may incur or be required to pay, directly or as a result of a third-party claim resulting from:
- a) Your use of the Application;
  - b) Any use of your User Content authorized by this Agreement;
  - c) Any complaint from a third party regarding soliciting electronic messages sent by you;
  - d) Any other alleged violation this Agreement on your part.
- 19.2. We agree to indemnify and hold harmless you and your affiliates, directors, officers, shareholders, employees and agents against all damages, claims, liability, losses, costs, claims, fines, penalties, costs and debt, including reasonable legal fees and expenses that you may or that they may suffer or be required to pay as a result of a third party's claim alleging an infringement of its intellectual property rights by the Application;

The obligation to indemnify under this paragraph does not apply to any violation of the rights of a third party resulting from a modification made to the Application by you or a User or from the use of the Application by you, or a User in contravention of the provisions of the Agreement.

## **20. Technical Support**

- 20.1. We provide you with the installation of the Application free of charge and technical support for the creation and configuration of your account. You remain fully liable for the configuration of your account and its possible consequences (sharing and visibility of information between employees, lack of workers due to required approvals, etc.).
- 20.2. We undertake to provide you with technical support by phone, email or instant messaging during the week during regular business hours, that is from Monday to Friday between 09:00 a.m. and 5:00 p.m., Montréal, Quebec time. In case of an emergency outside regular business hours, we invite you to contact us by email.
- 20.3. For any request for technical assistance or support requiring specialized expertise, we will assess the feasibility of such a request as well as applicable costs on a case by case basis.

20.4. You remain fully liable for the configuration of your account, the data associated with it and the possible consequences of such configuration (sharing and visibility of information between employees, lack of workers due to required approvals, etc.). Please note that your account configuration includes the capacity of deleting your account's data. In such a case, it is up to you to make sure that you perform operations in accordance with your intentions before performing any data manipulation.

## 21. Term and Termination

21.1. **Term.** The parties agree that this Agreement is of indefinite duration subject to termination in accordance with the following paragraphs.

### 21.2. Termination by the Employer.

- a) *Without reason.* You may terminate the Agreement at any time, directly within your Voilà! account, or by contacting us at [support@voila.app](mailto:support@voila.app) up to 48 hours before the end of your license's term. Upon receipt of your notice, we will take all necessary steps to stop automatic payments for your account and cancel your access to the Application. However, you will continue to have access to the Application during the month in which the Agreement is terminated if the payment for said month has already been made.
- b) *With reason.* We may terminate this Agreement if you fail to comply with your obligations under this Agreement and you do not remedy such failure within ten (10) days of receiving notice in writing from us. In such a case, we will not reimburse any sums paid to us and an invoice will be sent to you for any services performed but not yet paid for.
- c) *Serious misconduct.* We may terminate this Agreement at any time and without notice in the event of serious misconduct on your part, including, but not limited to, any attempt to steal information, share personal data, reverse engineer or make fraudulent, illegal or unlawful use of the Application's features.

21.3. **Employer data.** Upon termination of the Agreement, we undertake to keep the data contained in the Application for a period of thirty (30) days.

21.4. **Survival of obligations.** The termination of the Agreement terminates any license or sub-license granted to you and our obligation to provide you with services and access to the Application. However, obligations relating to confidentiality, intellectual property, indemnification, warranties and limitation of liability will continue to apply.

## 22. Assignment

22.1. Your rights and obligations under the Agreement may not be assigned without our prior written consent and vice-versa.

22.2. We may assign all or part of our rights and obligations under this Agreement in connection with the disposal of all or most of the assets used to operate the company providing the Application. You will be notified of such assignment in writing.

### **23. Applicable Law**

This Agreement is governed by the laws of the Province of Quebec and the laws of Canada applicable therein and must be interpreted in accordance with them.

### **24. Dispute Settlement**

Any dispute relating to this Agreement or your use of the Application must be submitted to a court of competent jurisdiction in the Province of Quebec in the judicial district of Québec, to the exclusion of any other court or jurisdiction.

### **25. Divisibility of the Provisions**

If any provision of this Agreement is, for any reason, held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the remaining provisions hereof, and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never formed part of it.

### **26. Independent Contractors**

This Agreement should not be construed as creating a partnership or joint venture. In addition, the parties hereto will in no event act on behalf of the other party or otherwise expose that other party to liability, unless consent to do so is given in writing.

### **27. Amendment to this Agreement**

We may change the terms of this Agreement at any time. We will notify you of such changes by email or directly through the Application. Any substantial modification of the terms of the Agreement will be notified by email before the entry into force of the amended Agreement.

If you establish that a modification to the Agreement materially reduces your rights under the Agreement, you may terminate your subscription to the Application without penalty by notifying us in writing within 30 days of receiving the notice. noting the modification.

### **28. Contacting Us**

We welcome your questions, comments and feedback regarding this Agreement. If you have any questions, please write to us at: [info@voila.app](mailto:info@voila.app).