

AKERO LICENCE TERMS

These terms and conditions ("**Terms**") apply to all use of the Aker software (the "**Software**") provided or made available through any medium by Natives Online Ltd trading as Akerolabs (a private limited company registered in England and Wales, company number 6597184 and registered address 4th Floor, Lees House, 21 Dyke Road, Brighton BN1 3FE ("**we, our, us**") to our licensee or client ("**you, your**"). These Terms apply to the exclusion of all other terms, express or implied, including any put forward by you, unless a separate agreement has been signed and entered by both parties. Please read these Terms carefully, as they contain some important provisions about our relationship, including obligations on you that are necessary for us to perform the Agreement, and terms that limit our liability to you. Your confirmation, in any form, that you wish us to provide or make available any software, or your use of any of our software (including as a service), constitutes acceptance of these Terms. Note that these Terms do not apply to the provision of creative, advertising or consultancy services by us – if you require such services that will be subject to a separate agreement.

Any materials or information submitted in relation to a proposal or pitch by us remain our exclusive property – you are not entitled to use any such item for any purpose, or to provide it to any other person, unless you select us to provide the relevant services to you, in which case these Terms will apply.

1 Definitions

The following definitions apply in these Terms:

Agreement – these Terms and the Order. Each Order shall constitute a separate contract. In the event of any conflict or inconsistency between these Terms and an Order, the Order shall prevail.

Critical Person – any person who is or was an employee, agent, director, consultant or independent contractor employed, appointed or engaged by us at any time within 12 months immediately preceding the date of expiry or termination of the Agreement.

Deliverables – the items stated in the Order to be delivered or made available by us to you.

Fees – the fees specified in the Order as being payable by you in respect of your use of the Software and Services, and any fees that may subsequently become due in respect of additional Services that you and we agree are to be provided (which will be based on our rate card as published from time to time or as otherwise agreed in writing).

Intellectual Property Rights – copyright, database rights, trade and service marks and names, domain names, design rights, patents and all other intellectual or industrial property rights, anywhere in the world, whether registered or unregistered, and including the right to apply for any registered right.

Order – the order submitted by you in relation to the Software and Services specified therein, whether online or otherwise.

Services – the services that we are to provide pursuant to the Agreement, including hosting and/or management of the Software and such other services as are specified in the Order or agreed in writing between us from time to time.

System – the combination of the Software and Services that you are permitted to use pursuant to the Agreement.

2 Provision of Software

- 2.1 We provide access to the Software either (a) on "Software as a Service" basis, where we host the application on our servers but you administer your own use of it or (b) on a fully "Managed Service" basis, meaning that in addition to hosting, we will manage the use of the Software on your behalf, as indicated in the Order. Use of the Software will be for the duration of the licence as determined in accordance with the Agreement or as otherwise subsequently agreed in writing by us.
- 2.2 You shall not:
 - 2.2.1 attempt to access our servers for any purpose other than your use of the Software as contemplated by this Agreement;
 - 2.2.2 have any right to receive or make copies of the Software, whether in object code or source code, except to the extent that transitional copies of any elements of such software may be made on your equipment when using such software in accordance with this Agreement, and you shall not attempt to download any of the Software;
 - 2.2.3 use the System for the benefit of any other person, nor allow any other person to access it
 - 2.2.4 use the System in excess of any usage restrictions specified in your Order, or in excess of any fair usage restrictions communicated by us from time to time. Any usage in excess of such restrictions shall be subject to additional charges.
- 2.3 We will provide support in relation to the System for the duration of the access provided under clause 2.1. Unless stated otherwise in the Order, we will provide online support for one hour per month, during business hours (9am-5pm Monday to Friday, excluding public holidays, UK time), to answer queries and investigate potential issues. The specified hours cannot be rolled forward if not required. If additional support hours are required or a job exceeds the support contract hours remaining, it will be quoted for outside the scope of the support package, at our normal rates, and we will raise a separate order confirmation for this work.
- 2.4 We will use reasonable endeavours to provide a monthly average overall application availability of not less than 99.5%.
- 2.5 Where application availability falls below the target stipulated above other than for scheduled maintenance, you may be entitled to a rebate totalling no more than the prorated amount charged for the time the application was unavailable. This will be your sole remedy in respect of application down-time.
- 2.6 From time to time we may interrupt availability to maintain or update the hosting platform. We will, where possible, give you at least 24 hours' notice of such events, and where possible will schedule such maintenance so as to cause minimum interruption to the System. For the avoidance of doubt, it may not be possible to give such notice where interruption to the System is necessary to deal with an emergency.
- 2.7 We may retain a copy of your application and any data on our servers for a period of up to 12 months after termination of the Agreement, following which we may destroy them.
- 2.8 An Order relating to the System shall only become binding on us when we have confirmed its acceptance to you in writing (including email). Any Order shall be subject to any changes noted in our confirmation of acceptance of the Order.
- 2.9 We shall provide the Services with reasonable skill and care and to acceptable industry standards.
- 2.10 We shall use reasonable and commercially prudent endeavours to supply the Services and make the Software available on the date stipulated on the applicable Order, but any delivery or commencement dates are estimates only, and time shall not be of the essence in relation to this clause.
- 2.11 We cannot, and do not, guarantee positive results of any Software or Services that we provide, such as any improvements in your business, turnover, reputation or internet traffic.
- 2.12 We welcome suggestions for changes and improvements to the Software and Services. These will be assessed on a case by case basis in the context of their effect on and benefit to our system as a whole, including other users. We reserve the right to make changes and improvements at any time. If any change or improvement will incur a fee or charge, we will not implement that without your prior written agreement.

3 Payment Terms / Fees

- 3.1 Use of the System in accordance with this Agreement is subject to your payment of the Fees.
- 3.2 All invoices must be paid within 30 days from invoice date unless different payment terms are agreed in writing. We reserve the right to require payment in advance at any time.
- 3.3 Payment is accepted via BACs or Cheque.

- 3.4 In the event that payment is not made on time, we reserve the right, in our sole discretion and without prejudice to any other remedies that we may have, to:
- 3.4.1 suspend your use of the Software or our provision of Services until payment has been made in full; and/or
- 3.4.2 charge interest on the outstanding balance at the rate of 2% per annum above the base rate of HSBC Bank PLC accruing from day to day (including the date on which payment was due) both before and after judgment; and/or
- 3.4.3 if you have still not paid within a further 7 days following notice of non-payment from us, to terminate the Agreement.
- 3.5 All Fees are exclusive of any Value Added Taxes or other applicable sales tax. Valued Added Tax will be charged at the applicable rate (if any).

4 Your obligations

- 4.1 You will ensure that all the material you provide to us for the purposes of this Agreement ("**Materials**"): (a) are legal, decent, honest and truthful (b) do not infringe any applicable laws, regulations, standards or codes of practice, or the rights of any third party; and (c) are not obscene, offensive, discriminatory, defamatory, harassing or otherwise inappropriate for publication over the internet, and do not indicate any intention to engage in any obscene, offensive, discriminatory, defamatory or harassing conduct. You will indemnify us against any loss, damage, liability, cost or expense that we may suffer as a result of any claim that any Materials infringe any other person's rights or any laws, regulations, standards or codes of practice.
- 4.2 You will not use any of the Software or Services for any purpose which is illegal, unlawful, offensive, discriminatory, harassing, likely to bring any of our software or services into disrepute or cause them to be black-listed, for spamming, or in any other way or for any other purpose which is, in our reasonable opinion, undesirable.
- 4.3 You will provide all Materials, as well as all instructions, information, assistance and approvals required or reasonably requested for us to perform the Services, in a timely manner.
- 4.4 You warrant that you are properly authorised to provide us with the information necessary for the proper provision of any Services, including any personal information, and that you are keeping and managing all personal information in accordance with the Data Protection Act 1998 and any other applicable legislation enacted from time to time.
- 4.5 You will take appropriate care over all user names and passwords that we issue to you for your use of the Software and Services, and you are responsible for all use made with the same.
- 4.6 We will not be liable for any failure or delay caused by your breach of any of the above terms.
- 4.7 We reserve the right to reject, remove or block access to any Materials which infringe the above terms.
- 4.8 We reserve the right to suspend your use of the Software and our provision of the Services with immediate effect where we reasonably believe that you have breached any of your obligations under the Agreement. We also reserve the right to suspend your use of particular features of the System if that use is detrimental to our service as a whole or other clients' use of it.

5 Agency clients

If you are an agency using the System on behalf of or for the benefit of any of your clients or customers ("**Agency Client**") in any way, you will require a separate Order for each Agency Client, and are prohibited from using the System under a single Order for the benefit of more than one Agency Client. The agency is responsible for all use of the System by or on behalf of its Agency Client, for compliance with the terms of this Agreement by both itself and the Agency Client, and for the payment of all Fees in relation to such use.

6 Data Protection

To the extent that we process any personal data on your behalf, you acknowledge that, for the purposes of the Data Protection Act 1998, you are the data controller and we are the data processor. In such cases, we agree to maintain appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction of or damage occurring in relation to such data, and only to act in accordance with your instructions (including the terms of this Agreement) in relation to the processing of such data.

7 Non- Solicitation

You undertake that you will not without our prior written consent directly or indirectly and whether alone or in conjunction with or on behalf of any other person for the duration of this Agreement and for a period of 12 months from the date of expiry or termination (for any reason) of the Agreement:

- (a) solicit, induce or entice away from us, employ, engage or appoint or in any way cause to be employed, engaged or appointed a Critical Person whether or not such person would commit any breach of his/her/its contract of employment or engagement by leaving our service; and/or
- (b) engage in any capacity (whether as customer, investor, participant, agent or in any other capacity) with any person who has supplied goods or services to us in the preceding 12 months if such engagement causes or would cause the supplier to cease or materially reduce its dealings with us; and
- in the event that you deal with any person in contravention of this clause 7 you shall be liable to pay us an amount equal to that person's annual remuneration or fees from us immediately prior to their ceasing to be engaged or to deal with us.

8 Confidentiality

- 8.1 The parties acknowledge that during the provision of the Services they will be exposed to and entrusted with confidential information in respect of the other party's business, its commercial affairs, trade connections, etc. Such confidential information includes but is not limited to:
- (a) information about the other party's customers, employees, contractors, suppliers, policies, salaries, employment conditions and arrangements, whether these are actual or potential;
- (b) information on any of the other party's databases which is not publicly available;
- (c) information about and concerning the software and services provided by the other party and those which are in the development stage;
- (d) information regarding prices, discounts, business and financial marketing development, manpower plans, financial position or future plans; and/or
- (e) all other information, whether technical, non technical, scientific or non scientific which the other party considers might cause considerable harm were it to be available and/or used by any other person.
- 8.2 Each party hereby acknowledges that all of the confidential information relating to the other party which it obtains during the course of this Agreement is the property of the other party.
- 8.3 Each party acknowledges that the wrongful disclosure of the other party's confidential information (whether directly or indirectly) to any other person may place it at a competitive disadvantage and/or do damage (whether financial or otherwise) to the other party's business.
- 8.4 Each party undertakes that, save to the extent expressly permitted by this Agreement, it will not at any time during the course of this Agreement or after its expiry or termination for any reason, unless expressly authorised in writing by the other party:
- (a) disclose the other party's confidential information to any person;

- (b) use the other party's confidential information for any purposes other than the provision of the Services or enjoyment of the results of the Agreement; or
 - (c) through any failure to exercise all due care and diligence, cause or permit any unauthorised disclosure of any of the other party's confidential information.
- 8.5 This clause 8 shall not apply to any confidential information which, otherwise than through the default of either party, becomes available to the public generally or to the extent that disclosure is ordered by a court of competent jurisdiction.
- 8.6 The provisions of this clause 8 shall come into effect on the date of this Agreement and shall continue in full force and survive the termination of this Agreement.

9 Intellectual Property Rights and data

- 9.1 Each party retains ownership of all Intellectual Property Rights in items and materials that it provides to the other party for the purposes of the Agreement.
- 9.2 You grant us a non-exclusive licence in respect of the Materials for the sole purpose of and to the extent necessary for performing our obligations under the Agreement.
- 9.3 We grant you a non-exclusive licence in respect of any of our Intellectual Property Rights included in the Software for the sole purpose of and to the extent necessary for enjoying your rights under the Agreement, and subject to all the restrictions set out in clause 2.2 above.
- 9.4 All rights granted under the foregoing licences cease immediately upon termination or expiry of the Agreement unless otherwise agreed in writing.
- 9.5 We reserve the right to promote Akero and related brands on all of our technology and client work, unless agreed otherwise between the parties. You may not remove or alter any such branding without our prior written approval. We may also use aggregated data relating to our clients and individuals interacting with them, provided that it does not identify any client or individual as the source or subject of specific information. You further agree that we may include cookie technology in the Software which enables us to collect non-personal data from users. We may refer to our clients in our promotional activity.
- 9.6 If We purchase any SSL certificates, or anything similar, for you, we will own all such items. If you provide your own SSL certificates or similar items, you will retain ownership of them.

10 Duration and termination

- 10.1 The Agreement comes into force on the date on which we communicate acceptance of your Order. It will continue in force unless terminated by either party giving the other not less than three months' written notice of termination at any time, unless a different period of notice is specified in the Order.
- 10.2 Without limiting its other rights or remedies, each party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing of the breach, or if the other party enters administration, receivership, administrative receivership, liquidation, winding up, creditors arrangement, bankruptcy or anything similar or analogous in any jurisdiction, or has any preparatory steps taken for the same.

11 Consequences of Termination

On termination of the Agreement for any reason:

- (a) you shall immediately pay us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which you shall pay immediately on receipt;
- (b) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12 Limitations of Liability

- 12.1 Nothing in any Agreement shall limit or exclude our liability for:
- a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or
 - b) fraud or fraudulent misrepresentation.
- 12.2 We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- a) increased costs or expenses;
 - b) loss of profit, contracts, revenues or opportunities;
 - c) loss of anticipated savings;
 - d) loss of goodwill;
 - e) loss of data or information; or
 - f) special, indirect or consequential loss or damage.
- 12.3 Subject to clauses 12.1 and 12.2 our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the fees payable in relation to this Agreement.

13 Force majeure

In the event that we are being prevented, frustrated or impeded from providing or completing the Services by any cause beyond our reasonable control including but not limited to Acts of God, war, invasion, civil war, terrorist activity, change in law, government orders, strikes, lockouts, fire, accidents, severe weather, natural disaster, inability to obtain supplies, utility or telecommunications failure or any other cause (whether of like nature or not), we shall be under no liability for any loss or damage suffered by the you. None of the aforementioned events shall entitle you to cancel the Agreement.

14 Assignment and subcontracting

- 14.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under the Agreement and may subcontract or delegate in any manner any or all of our obligations under the Agreement to any third party or agent.
- 14.2 You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Agreement.

15 Notices

Any notice required to be given by either party to the other under this Agreement shall be in writing addressed to that party at its registered office or principal place of business or such other address that may have been notified to the party giving the notice. For the purposes of this clause, writing includes email.

16 Waiver

A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or at law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17 Severance

17.1 If a court or any other competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

17.2 If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18 No partnership

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

19 Third parties

A person who is not a party to the Agreement shall not have any rights under or in connection with it.

20 Variation

Any variation, including the introduction of any additional terms and conditions, to the Agreement, shall only be binding when agreed in writing and signed by us. We may alter these terms and conditions by giving written notice to you.

21 Governing law and jurisdiction

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

22 Entire Agreement

The Agreement constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Agreement. No terms, whether express or implied (including any implied by law) shall form part of the Agreement except to the extent that they are expressly set out in the Agreement.