



Akitra Terms of Service Agreement

Terms of Service ("Agreement") constitute a contract between Akitra Inc. ("Akitra"), and you, the customer that has signed up for the Services and agreed to the terms of this Agreement ("Customer") and is effective as of the effective date of an applicable signed order form electronically or in written form by and between the Customer and Akitra. The provisions of this Agreement will apply to the Services, Solutions and the Platform ("Services") provided to Customer under this Agreement and shall govern all Order Forms entered into between Akitra and the Customer. This Agreement includes and incorporates the Order Form with which you purchased the Services and any subsequent Order Forms (submitted in written or electronic form). By accessing or using the Akitra services, you are accepting the agreement and represent and warrant that you have the right, authority and you represent and warrant that you have the right, authority and capacity to enter into the agreement (on behalf of yourself or the entity that you represent). If you do not agree to be bound by all of the Agreement or do not agree with these terms and conditions, you may not use the Services. In the event of any inconsistency or conflict between the terms of the MSA and the terms of any Order Form, the terms of the Order Form control. Akitra and Customer may be collectively referred to as "Parties" or individually as "Party".

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereafter set forth, the Parties hereby agree as follows:

1. DEFINITIONS

For purposes of this Agreement and all Exhibits thereto, the following terms shall have the following meaning:

1.2 ORDER FORM

ervices means any of the products, solutions and services that are ordered by Customer from Akitra online or through an Order Form, whether on a trial or paid basis excluding any products or services provided by third parties, even if Customer has connected those products or services to Akitra Services.

1.3 DOCUMENTATION

Documentation means the on-line help files, user manuals, printed and digital instructions, white papers, solutions briefs and technical documentation provided by Akitra for the Services, which the company may modify from time to time.

1.4 INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights means all worldwide, whether registered or not, (a) patents, patent applications and patent rights; (b) rights associated with works of authorship, including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications and mask work registrations; (c) trademarks, trade names, service marks, logos, domain names, goodwill and trade dress; (d) rights relating to the protection of trade secrets and confidential information; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.

2. OWNERSHIP, LICENSE, SUPPORT SERVICES AND OTHER ITEMS

2.1 OWNERSHIP

Akitra or its licensors (as applicable) own all right, title, and interest in and to the Solution, including without limitation any and all data, computer code, UI, design and structure, and all modifications, enhancements and derivatives thereof and all Intellectual Property Rights related and to the Services and Akitra's Confidential Information, and Customer exclusively owns all right, title and interest in and to the Customer Data and Customer's Confidential Information.

2.2 LICENSE

In consideration of the Fees paid by Customer to the Akitra for the subscription period set forth in Order Form, and subject to the terms and conditions of this Agreement and the Order Form, Akitra grants to Customer a limited, non-exclusive, non-transferable and non-sublicensable right to use the Services internally, for its intended purpose. Customer may designate and provide access to its employees, independent contractors, or other agents to an account on the Services as authorized users (each an "Authorized User") up to the number of "users" set forth in the Order Form (unlimited if not specified in the Order Form). Each account may be used only by a single, individual authorized user, and Customer may be charged for additional users, or Akitra may terminate the agreement for cause, if this requirement is not adhered to. Customer is responsible for all use and misuse of the Services by authorized user accounts and for adherence to this agreement by any authorized users, and references to Customer herein will be deemed to apply to authorized users as necessary and applicable. Customer agrees to promptly notify Akitra of any unauthorized access immediately or use of which Customer becomes aware.

2.3 LICENSE RESTRICTIONS ON USE

All Software is licensed and subscription based, not sold. Customer shall not: (i) copy, reproduce, sell, license (or sub-license), lease, loan, assign, transfer, or pledge the Solution, or publicly perform, display or communicate, the Solution, or otherwise use the Software in a time-sharing, outsourcing, or service bureau environment or otherwise permit any third party to do any of the foregoing; (ii) modify, disassemble, decompile, reverse engineer, revise or create any derivative works of the Solution or attempt to access or discover its source code; (iii) ship, transfer, or export the Solution or use the Solution in any manner that is prohibited by law, including without limitation, to sell, distribute, download or export the Software or in violation of any law, statute, ordinance or regulation applicable to Customer (including but not limited to the laws and regulations governing publicity or privacy, export/import control, federal, state and local laws and regulations governing the use of network scanners and related software in all jurisdictions in which systems are scanned or scanning is controlled, or anti-discrimination, in each case that are applicable to Customer; (iv) negligently, intentionally or willfully propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (v) remove or modify any acknowledgements, credits or legal notices contained on the Appliance or any part thereof; (vi) perform any act or be responsible to any omission that is illegal; (vii) use the Solution for any purpose other than as permitted by this Agreement; (viii) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Solution, such as features that restrict or monitor use of the Software; or (ix) cause or permit any third party to do any of the foregoing.; use the Services other than in compliance with applicable federal, state, and local laws; (c) interfere with the Services or disrupt any other user's access to the subscription service; and (viii) file copyright or patent applications that include the Offering or any portion thereof.

2.4 SUPPORT SERVICES

During the subscription period, Akitra will provide the Standard Support Services for the Term and any Support Service Options specified in the Order Form (collectively, the "Support Services").

2.5 FEEDBACK

Customer may from time to time provide suggestions or comments for enhancements or improvements, new features or functionality or other feedback with respect to the Services. Akitra will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality and will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.

2.6 THIRD PARTY SERVICES

Customer's use of third-party products or services that are not licensed to Customer directly by Akitra shall be governed solely by the terms and conditions applicable to such third-party Services, as agreed to between Customer and the third party. Akitra does not endorse or support, is not responsible for, and disclaims all liability with respect to Third Party Services, including without limitation, the privacy practices, data security processes or other policies related to Third Party Services. Customer agrees to waive any claim against Akitra with respect to any third-party Services.

2.7 INTEGRATION

Customer may enable integrations between the Services and third-party Services. By enabling an Integration between the Services and its third-party services, Customer is instructing Akitra to share the Customer Data necessary to facilitate the Integration. Customer is responsible for providing any and all instructions to the third-party service provider about the use and protection of Customer Data. Akitra and third-party service providers are not sub-processors of each other.

2.8 IMPROVING SERVICE

Customer acknowledges that a key component of the services is the use of data aggregation and machine learning for the purpose of improving and providing Akitra products and services. Notwithstanding anything to the contrary, Customer agrees that Akitra is hereby granted the right to use during and after the term hereof information submitted using the Services to aggregate personally identifiable information and anonymize such information, including information related to vendors and train its algorithms internally through machine learning techniques for such purpose. Customer agrees that Akitra has the right to aggregate, collect and analyze data and other information relating to the access or use of the Services by or on behalf of Customer or any User, including any performance, analytics or statistical data and shall be free during and after the term hereof to (i) use such data and other information to improve Akitra's products and services, and (ii) disclose such data and other information solely in an aggregated and anonymized format.

2.9 PRIVACY

Customer acknowledges that the Services will require Users to share with Akitra certain information which may include personal information regarding Users such as usernames, passwords, email address and/or phone number solely for the purposes of providing and improving the Services. Prior to authorizing an individual to become a User, Customer is fully responsible for obtaining the consent of that individual, in accordance with Applicable Law, to the use of his/her information by Akitra, which use is described in Akitra Privacy Notice, located at <https://akitra.com/privacy/>. Customer represents and warrants that all such consents have been or will be obtained prior to authorizing any individual to become a User. Customer will be fully responsible for Users' compliance with this Agreement and any breach of this Agreement by a User shall be deemed to be a breach by Customer. Akitra relationship is with Customer and not individual Users or third parties using the Services through Customer, and Customer will address all claims raised by its Users directly with Akitra.

3. SUBSCRIPTION FEES

3.1 Customer shall pay Akitra all fees set forth in the Order Form in accordance with the timetables therein in the United States dollars. The Fees are non-refundable, non-cancelable and non-pro-ratable for partial months. Akitra reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the initial term, as specified in the Order Form, or then current renewal term, upon thirty (30) days prior notice to Customer and may be sent by email. All payments not made when due shall bear interest at the rate of 1.5% per month, or at the highest interest rate allowed by law, whichever is less, from the due date until paid. In addition, and without derogating from any other right Akitra has under law or contract, in the event the customer fails to make any payment when due, it shall constitute sufficient cause for Akitra to immediately suspend its services and grant of rights under this Agreement.

3.2 Except as expressly provided in this Agreement, each party shall bear its own costs and expenses incurred in the course of its performance of this Agreement. All amounts due to Akitra under this Agreement shall be payable to Akitra' account, free and clear from any withholdings and/or deductions of any amounts, including without limitations of any bank fees, taxes (including VAT), duties or levies whatsoever. If Akitra is required to pay or collect any local, value added, goods and services taxes or any other similar taxes or duties arising out of or related to this Agreement, not including taxes based on Akitra's income, then such taxes and/or duties shall be billed to and paid by Customer.

4. CONFIDENTIAL INFORMATION

Each Party acknowledges that it may receive from the other Party confidential information relating to the Disclosing Party and such confidential information includes, but is not limited to, technical, business, marketing and financial information, and any other information that could reasonably be considered confidential or proprietary. The terms of this Agreement and any Order Form, the Akitra Technology, and all technical information relating thereto shall be considered Confidential Information of Akitra. Confidential Information does not include information that: is or becomes generally available to the public other than through a wrongful act of the Receiving Party; is or becomes available to the Receiving Party on a non-confidential basis from a source that is entitled to disclose it to the Receiving Party; or is independently developed by the Receiving Party, its employees or third-party contractors without access to or use of the Disclosing Party's Confidential Information. During and after the term of this Agreement, the Receiving Party shall: (i) not use except for performance of this Agreement or disclose Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party; and (ii) take no less than the same measures that it takes with its own Confidential Information, and in any case no less than reasonable measures, to maintain the Confidential Information of the Disclosing Party in confidence. Either Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party gives the Disclosing Party reasonable advance notice of such required disclosure and cooperates with the Disclosing Party so that the Disclosing Party has the opportunity to obtain appropriate confidential treatment for such Confidential Information. All Confidential Information disclosed by Disclosing Party shall remain the property of the Disclosing Party. The Disclosing Party reserves all rights in its Confidential Information. Nothing in this Agreement or the disclosures envisaged by this Agreement shall except for the limited use right above operate to transfer, or operate as a grant of any Intellectual Property Rights in the Confidential Information.

5. WARRANTIES AND REPRESENTATIONS

Each party warrants and represents to the other party that it has the full corporate power and authority required to enter into this Agreement and to carry out its undertakings and obligations hereunder. Akitra warrants and represents that it has, and will continue to have throughout the term, all licenses and permits that are required for the conduct of its business.

6. INDEMNIFICATION

6.1 INDEMNIFICATION BY AKITRA

Akitra will defend customer against any claim, demand, suit, or proceeding made or brought against customer by a third party alleging that the use of the Services as permitted hereunder infringes a United States patent or copyright or misappropriates a trade secret and will indemnify customer for any damages finally awarded against or (any settlement approved by Akitra) customer in connection with any such claim; provided that (a) customer will promptly notify Akitra of such claim, (b) Akitra will have the sole and exclusive authority to defend and/or settle any such claim provided that Akitra may not settle any Claim without customer's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases customer of all related liability and (c) customer reasonably cooperates with Akitra in connection therewith. If the use of the services by customer has become, or in Akitra's opinion is likely to become, the subject of any claim of infringement, Akitra may at its option and expense (i) procure for customer the right to continue using and receiving the services as set forth hereunder; (ii) replace or modify the Services to make it non-infringing with comparable functionality; or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate this Agreement and provide a pro rata refund of any prepaid fees corresponding to the terminated portion of the applicable subscription term. Akitra will have no liability or obligation with respect to any claim if such claim is caused in whole or in part by (a) compliance with designs, guidelines, plans or specifications provided by customer; (b) use of the services by customer not in accordance with this Agreement; (c) modification of the Services by any party other than Akitra without Akitra's express consent; (d) customer confidential information or (e) the combination, operation or use of the services with other applications, portions of applications, product(s) or services where the services would not by itself be infringing (clauses (a) through (e)). This Section states Akitra's sole and exclusive liability and obligation, and customer's exclusive remedy, for any claim of any nature related to infringement or misappropriation of intellectual property.

6.2 INDEMNIFICATION BY CUSTOMER

Customer will defend Akitra against any claim made or brought against Akitra by a third party arising out of the (i) customer breach of any laws or regulations including with respect to privacy; (ii) customer's or any user's use of the services; (iii) customer's violation of any agreements it has with any user; or (iv) excluded Claims as above mentioned, and customer will indemnify Akitra for any damages finally awarded against (or any settlement approved by customer) Akitra in connection with any such claim; provided that (a) Akitra will promptly notify customer of such claim, (b) customer will have the sole and exclusive authority to defend and/or settle any such claim (provided that customer may not settle any claim without Akitra prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Akitra of all liability) and (c) Akitra reasonably cooperates with customer in connection therewith.

7. DISCLAIMER

EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER AKITRA NOR ANY OF ITS THIRD PARTY LICENSORS OR SUPPLIERS MAKE ANY WARRANTIES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. AKITRA DOES NOT WARRANT THAT THE OPERATION OF THE OFFERING WILL BE ERROR-FREE OR UNINTERRUPTED. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, THE SOLUTION, INCLUDING ANY DATA THEREIN OR RESULTING THEREFROM AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS. THE PARTIES ADDITIONALLY AGREE THAT AKITRA WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR CUSTOMER'S VARIOUS COMPLIANCE PROGRAMS, AND THAT THE SERVICES, TO THE EXTENT APPLICABLE, ARE ONLY TOOLS FOR ASSISTING CLIENT IN MEETING THE VARIOUS COMPLIANCE OBLIGATIONS FOR WHICH IT SOLELY IS RESPONSIBLE.

8. LIMITATION OF LIABILITY

EXCEPT FOR BREACH OF CONFIDENTIALITY OR MISAPPROPRIATION OF AKITRA' INTELLECTUAL PROPERTY RIGHTS, UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS AFFILIATES, SHAREHOLDERS, DIRECTORS, AGENTS, EMPLOYEES, LICENSORS OR SUPPLIERS BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS OR ANY LOSS OF REVENUE OR BUSINESS OR LOSS OF GOODWILL OR REPUTATION OR LOSS OF DAMAGE TO DATA OR MANAGEMENT TIME OR ANY DAMAGE IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOLUTION EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AKITRA'S AND ITS AFFILIATES' AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOLUTION OR OTHERWISE SHALL NOT EXCEED THE PAYMENTS MADE TO AKITRA BY LICENSEE DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO SUCH CLAIM.

9. BETA PRODUCTS

FROM TIME TO TIME, CUSTOMER MAY HAVE THE OPTION TO PARTICIPATE IN A PROGRAM WITH AKITRA WHERE CUSTOMER GETS TO USE ALPHA OR BETA PRODUCTS, FEATURES OR DOCUMENTATION. THE BETA PRODUCTS ARE NOT GENERALLY AVAILABLE AND ARE PROVIDED "AS IS". AKITRA DOES NOT PROVIDE ANY INDEMNITIES, SERVICE LEVEL COMMITMENTS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, IN RELATION THERETO. CUSTOMER OR AKITRA MAY TERMINATE CUSTOMER'S ACCESS TO THE BETA PRODUCTS AT ANY TIME.

10. TERM AND TERMINATION

10.1 Unless earlier terminated pursuant to Section 10.2 below, this Agreement will begin on the effective date of the first Order Form between the Parties and will continue in full force and effect for as long as any Order Form remains in effect, unless earlier terminated in accordance with the Agreement (the "Term"). Unless otherwise stated in the applicable Order Form, the term of an Order Form will begin on the effective date of the Order Form and continue in full force and effect for one (1) Year, unless earlier terminated in accordance with the Agreement. Thereafter, the Order Form will automatically renew for additional terms of one (1) Year unless either Party gives written notice of non-renewal to the other Party at least forty-five (45) days prior to the expiration of the then-current term.

10.2 Either party may terminate this Agreement by notice to the other: (i) upon the breach by the other party of any of its obligations hereunder and such other party's failure to cure such breach within thirty (30) days of such written notice; (ii) by delivering written notice to the other party upon the occurrence of any of the following events: (a) a receiver is appointed for either party or its property; (b) either party makes a general assignment for the benefit of its creditors; (c) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (d) either party is liquidated or dissolved.

10.3 Upon expiration or termination of this Agreement for any reason: (i) all of Customer's rights and licenses hereunder shall immediately terminate and Customer shall immediately cease using the Solution (and delete it from all media); (ii) Customer shall promptly erase/delete or return to Akitra, at Akitra's election, all of Akitra's confidential information and Akitra IP held or controlled by it in any form or media. The following Sections 1, 2.3, 2.9, 3-8, 10.3 and 11 shall survive termination/expiration hereof and termination of this Agreement will not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor will termination relieve Customer of its obligation to pay all Fees that accrued prior to such termination.

11. GENERAL PROVISIONS

11.1 NOTICES

All notices and other communications required or desired to be communicated by one party to the other shall be in writing and shall be deemed delivered immediately when sent by email (with written confirmation of receipt), or delivered by hand or five (5) days after mailing by registered mail to the respective addresses set forth at the head of the Agreement. Provided, however, that any notice of change of address shall be effective only upon receipt.

11.2 ASSIGNMENT

Other than in the framework of a merger, a transaction for the sale of all and/or material part of either party's assets and/or any other similar transaction, neither party may assign or transfer any of its rights or obligations hereunder, whether by contract or by operation of law, except with the other party's prior written consent not being unreasonably withheld.

11.3 RELATIONSHIP BETWEEN THE PARTIES

The relationship established between the parties by this Agreement is solely that of independent contractors. Neither party shall be deemed to be an agent or legal representative of the other party and no employee of either party shall be considered to be an employee of the other party for any purposes whatsoever. Neither party shall be liable for any expenses incurred by the other party which arise out of or in connection with the Agreement.

11.4 WAIVER; REMEDIES

Failure of a party to insist upon the performance by the other party of any term hereof shall not be deemed a waiver of the rights of the first-mentioned party with respect thereto. All waivers must be in writing.

11.5 SEVERABILITY

Any provision of this Agreement prohibited by, or unenforceable under, applicable law shall be ineffective to the extent of such prohibition and shall be replaced by an enforceable provision to the same or the nearest possible equivalent effect. Notwithstanding the foregoing, the other provisions hereof shall continue in effect unless the ineffectiveness of any provision shall substantially affect the consideration received by either party hereunder.

11.6 GOVERNING LAW

This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of California, USA without regard to the conflict of law provisions thereof.

11.7 FORCE MAJEURE

With the exception of payment obligations, neither party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties.

11.8 NO THIRD-PARTY BENEFICIARIES

No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Akitra and Akitra any rights, remedies or other benefits under or by reason of this Agreement.

11.9 EXPORT RESTRICTITONS

The Offering is for Customer's use and not for further commercialization. Customer acknowledges that the Offering may be classified and controlled as items under the United States' Export Regulations and other national regulations. Each Party will comply with all applicable laws regarding export-controlled items, and will not export, re-export or import, directly or indirectly, any export-controlled items, or any direct product of them, nor undertake any transaction hereunder in violation of any applicable export laws; provided that it will be for the disclosing Party's account to provide to the other Party all the necessary information regarding any export restrictions imposed on such information and identify such data using appropriate restrictive legends.

11.10 PUBLICITY

Akitra may use Customer's name, logo, and trademarks solely to identify Customer as a client of Akitra on its website and other marketing materials and in accordance with Customer's trademark usage guidelines. If Customer provides same to Akitra, Akitra may share aggregated and/or anonymized information regarding use of the Services with third parties for marketing purposes to develop and promote Services. Akitra never will disclose aggregated and/or anonymized information to a third party in a manner that would identify Customer as the source of the information or Authorized Users or others personally.

11.11 ENTIRE AGREEMENT; MODIFICATION

This Agreement and any applicable order form constitute the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior discussions, agreements, written or oral, representations and understandings between them. Akitra may amend this agreement from time to time, in which case the new agreement will supersede prior versions. Neither this Agreement nor an Order Form may be modified or amended except in writing signed by a duly authorized representative of each Party; no other act, document, usage, or custom will be deemed to amend or modify this Agreement or an Order Form.