

Kerika Terms of Use

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This Terms of Use Agreement (“Terms of Use”, “Terms”) is a legal agreement between you (either an individual or, if purchased or otherwise acquired by or for an entity, an entity) and Kerika, Inc.

Please read it carefully before using any of Kerika’s products or services. It provides you with a license to use our products and software and contains warranty information and liability disclaimers.

By using any of our products or services, on a free, trial or paid subscriber basis, you are confirming your acceptance of these Terms and agreeing to become bound by the terms of this agreement. If you do not agree to be bound by these terms, then do not Kerika’s products or services.

You may not use any of Kerika’s products and services, and may not accept the Terms if (a) you are not of legal age to form a binding contract with Kerika, or (b) you are a person barred from receiving Kerika’s products and services under the laws of the United States or other countries including the country in which you are resident or from which you use Kerika’s products and services.

I. Definitions

- a. "Kerika" means Kerika, Inc. and its licensors, if any, and also referred to as “we”, “us”, and “our” as the context may require.
- b. "Software" means only the Kerika software program(s), supplied by Kerika herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation, and all updates or upgrades of the above that are provided to you.
- c. “Services” includes any associated subscription services, consulting services, or other services supplied by Kerika herewith.

II. License Grant from Kerika to You

- a. Kerika gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the Software provided to you by Kerika as part of the Services as provided to you by Kerika. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Kerika, in the manner permitted by the Terms.
- b. This Agreement gives you limited license to use the Software. Kerika and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software and all copies thereof. All rights not specifically granted in this Agreement, including Federal and International Copyrights, are reserved by Kerika and its suppliers.
- c. You agree that Kerika may audit your use of the Software and Services for compliance with these Terms at any time, and that Kerika is not required to provide you with any advance notice of such audit. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse Kerika for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such non-compliance.

III. Use of the License Granted to You

- a. You may access Kerika’s Software and Services using any computing device, including mobile devices, that support the technical requirements, including hardware, operating system, browser type and version, and related plug-ins or other third-party software.

- b. You may use your license to use Kerika's Software and Services from several computing devices, including mobile devices, provided that each of these devices is under your personal ownership or control. You may not share your license with any other person or entity.
- c. You may not (and you may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software or any part thereof, unless this is expressly permitted or required by law, or unless you have been specifically told that you may do so by Kerika, in writing.
- d. You may not assign (or grant a sub-license of) your rights to use the Software, grant a security interest in or over your rights to use the Software, or otherwise transfer any part of your rights to use the Software without prior approval from Kerika.
- e. You may not sell, rent, lease, or sublicense the Software.
- f. You may not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services). You are explicitly prohibited from creating or using any automated scripts to query data from Kerika's servers or computers, from generating excessive queries, or otherwise engaging in any conduct that degrades the quality of the Services for any other user.
- g. You may not use the Software to develop any software or other technology having the same primary function as the Software, including but not limited to using the Software in any development or test procedure that seeks to develop like software or other technology, or to determine if such software or other technology performs in a similar manner as the Software.

IV. License Grant from You to Kerika

- a. When you first set up an account to use Kerika, you do using either your Google or Box ID; the name and description of the account are created automatically based upon information provided to us by Google or Box.
- b. You may at any time change the name and description of your account, or upload a new image that is used to represent your identity or your account's identity or brand. You grant Kerika a perpetual, non-exclusive license to use these images or descriptions in the context of the Software and Services provided by Kerika. Among other circumstances, these images and descriptions are made available to other Kerika users who perform searches using the Software.
- c. In providing any image or description that is used to identify you or your account, you agree and affirm that you are not misappropriating any person or entity's brand, identity, or intellectual property, and that you will not, at any time, attempt to create any impression to Kerika or any of Kerika's other users and customers that you represent any person or entity that you are not authorized to represent.
- d. When you create a project within your account, you have the option of making the project, and all of its contents, visible to all other users of Kerika's Software and Services. If you choose to make any product visible to the general public, the contents of that project will be indexed by the Software's search engine and the project pages will be presented to other users and customers of Kerika.

V. Purchases and Refunds

- a. Payment is required before use of any Services that are provided on a subscription basis.
- b. Refunds for cancelling a paid subscription level, and charges for changing from one service level to another are handled as follows:

- i. All purchases are for annual subscriptions, and each year is assumed to consist of 365 days. This is used to calculate an Effective Daily Rate for your subscription. If we offer a free service level, for example, the Effective Daily Rate would be zero dollars.
 - ii. The Effective Daily Rate is calculated at the time you make your purchase and does not alter during the duration of the annual subscription. We may change our subscription fees at any time after you have made your purchase, such that the service level you purchased becomes cheaper or more expensive; such actions will not alter your Effective Daily Rate.
 - iii. If you cancel a subscription, you will be issued a refund that is calculated based upon the number of days you have already used the service, by applying your Effective Daily Rate. The day you request a cancellation is counted as one of the days you used your existing subscription.
 - iv. If you change your subscription from one level to another, you will be issued a refund based upon the Effective Daily Rate in effect for your old subscription, and we will simultaneously initiate a purchase of the new paid subscription level.
 - v. Once the purchase of the new subscription level is completed, a new Effective Daily Rate will apply for your account, and this will be used for any future requests for cancellations, downgrades or upgrades of your service level.
 - vi. When changing your subscription from one level to another, the new subscription level goes into effect the day after you initiate the request.
- b. All transactions are conducted using United States Dollars as the currency.

VI. Confidentiality of Customer Data

- a. "Confidential Information" means information identified by you as confidential at the time of disclosure or that a reasonable person would consider confidential due to its nature and any confidential, proprietary, or privileged information disclosed while creating or modifying the Kerika boards.
- b. Kerika shall preserve the confidentiality of your Confidential Information and treat such Confidential Information with at least the same degree of care that Kerika uses to protect its own Confidential Information, but not less than a reasonable standard of care.
- c. Kerika will use your Confidential Information only to exercise its rights and perform obligations under these Terms. Confidential Information will be disclosed only to those employees of Kerika with a need to know such information in connection with Kerika's use of the Confidential Information in accordance with these Terms.
- d. Kerika shall not be liable to you for the release of Confidential Information if such information is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, Kerika will notify you promptly of such required disclosure. Kerika agrees to promptly notify you of any unauthorized access to or disclosure of the Confidential Information."

VII. Warranty Disclaimer

- a. Kerika and its suppliers disclaim all warranties and representations, whether express, implied, or otherwise, including the warranties of merchantability or fitness for a particular purpose. Also, there is no warranty of non-infringement and title or quiet enjoyment. Kerika does not warrant that the Software or Services are error-free or will operate without interruption. No rights or remedies referred to in article 2a of the UCC will be conferred on you unless expressly granted

herein. The Software and Services are not designed, intended or licensed for use in hazardous environments requiring fail-safe controls, including without limitation, the design, construction, maintenance or operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems. Kerika specifically disclaims any express or implied warranty of fitness for such purposes.

- b. If applicable law requires any warranties with respect to the Software and Services, all such warranties are limited in duration to ninety (90) days from the date of delivery.
- c. No oral or written information or advice given by Kerika, its dealers, distributors, agents or employees shall create a warranty or in any way increase the scope of any warranty provided herein.
- d. (USA only) Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other legal rights that vary from state to state.

VIII. Limitation of Liability

- a. Neither Kerika nor its suppliers shall be liable to you or any third party for any indirect, special, incidental, punitive, cover or consequential damages (including, but not limited to, damages for the inability to use equipment or access data, loss of business, loss of profits, business interruption or the like), arising out of the use of, or inability to use, the Software or Services and based on any theory of liability including breach of contract, breach of warranty, tort (including negligence), product liability or otherwise, even if Kerika or its representatives have been advised of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose.
- b. Kerika's total liability to you for actual damages for any cause whatsoever will be limited to the greater of \$50 or the amount paid by you for the Software or Services that caused such damage.
- c. (USA only) Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you and you may also have other legal rights that vary from state to state.
- d. The foregoing limitations on liability are intended to apply to all aspects of this Agreement.

IX. Basis of Bargain

The Warranty Disclaimer and Limited Liability set forth above are fundamental elements of the basis of the agreement between Kerika and you. Kerika would not be able to provide the Software on an economic basis without such limitations. Such Warranty Disclaimer and Limited Liability inure to the benefit of Kerika's licensors.

X. (Outside of the USA) Consumer End Users Only

The limitations or exclusions of warranties and liability contained in this Terms of Use do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business.

The limitations or exclusions of warranties, remedies or liability contained in this Terms of Use shall apply to you only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where you are located.

XI. General

This Agreement shall be governed by the internal laws of the State of Washington, without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in King County, Washington or the federal courts in the State of Washington to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Software or Services licensed hereunder shall be of no effect. The failure or delay of Kerika to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach.

No Kerika dealer, agent or employee is authorized to make any amendment to this Agreement.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

All questions concerning this Agreement shall be directed to: Kerika, Inc., 25736 SE 40th Street, Issaquah, WA 98029, U.S.A., Attention: President.

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