

## Kolo - Terms of Service

Last updated July 2024.

These terms of service (“**Terms**”) are a legal agreement that you (the “**Licensee**”) enter into with Kolo Technologies Ltd, a company registered in England and Wales under company number 15794357 with its registered office at 20 Wenlock Road, London, England, N1 7GU if you are a user located in the United Kingdom or Europe, or with Kolo Inc, a Delaware corporation with its registered office at 31 Continental Dr, Suite 305, Newark, New Castle, Delaware, 19713 if you are located anywhere else, including the United States, (together, the “**Licensor**”).

These Terms cover the Kolo Application, available at <https://kolo.app/> and the associated electronic Documentation. These Terms grant a licence to use the Application and the Documentation only. The Licensor does not sell or assign the Application or the Documentation to you.

### 1. Definitions and Interpretation

In these Terms, unless the context otherwise requires, the following expressions have the following meanings:

“ <b>Application</b> ”	means the Licensor’s Kolo application software including the open-source test automation framework and its commercial extensions, in machine-readable object code form, including any error corrections, updates, upgrades, modifications and enhancements provided to the Licensee under these Terms;
“ <b>Documentation</b> ”	means the documentation which accompanies the Application;
“ <b>you</b> ”, “ <b>your</b> ”	means the Licensee.

### 2. Accepting or Rejecting these Terms

- 2.1 By clicking the “Accept” button, you indicate your acceptance of these Terms and the terms and conditions set out herein, which will become binding on you and your Authorised Users upon your acceptance.
- 2.2 By clicking the “Reject” button, you indicate your rejection of these Terms and the terms and conditions set out herein. If you do not accept the terms and conditions of these Terms, you must not install or use the Application.

### 3. Ownership of the Application and Documentation

- 3.1 The Application and the Documentation and all intellectual property rights therein (including, but not limited to, copyright) belong to the Licensor. These Terms do not grant to you (or sell to you) any rights of ownership in the Application or the Documentation. These Terms grant you a licence to use the Application and the Documentation in accordance with the terms and conditions of these Terms only.
- 3.2 The Licensor also retains ownership of any and all copies of the Application or the Documentation and all intellectual property rights therein, regardless of the form in which the copies may exist.

#### 4. Grant and Scope of Licence

- 4.1 In consideration of your acceptance of these Terms, the Licensor hereby grants to you a limited, non-exclusive, non-transferable licence to:
- a) download and use the Application, in accordance with the terms and conditions of these Terms, for business purposes only; and
  - b) use the Documentation in accordance with the terms and conditions of these Terms, for business purposes only.
- 4.2 The licence granted hereunder also extends to any and all free updates, patches, fixes and similar that the Licensor may provide.
- 4.3 There is no fee payable for the grant of the licence hereunder, but the Licensor reserves the right to introduce a licence fee in future. In this event, you will be notified by email and will have the option to terminate the licence pursuant to clause 11.1 should you not wish to pay for the licence.

#### 5. Licence Restrictions

- 5.1 You may not make copies of the Application or Documentation or any part thereof.
- 5.2 You may not translate, reverse-engineer, decompile, disassemble, modify, or create derivative works based on the Application (or any part thereof) except as expressly permitted by law or these Terms. Sections 50B and 296A of the Copyright Designs and Patents Act 1988 permit such actions only where they are necessary to obtain information necessary to create an independent software program which can be operated with the Application or with another software program (the “**permitted objective**”). The information obtained from such actions must not be used for any other purpose.
- 5.3 The actions described in clause 5.2 will not be permitted if you:
- a) already have readily available to you the information necessary to achieve the permitted objective;
  - b) do not confine the decompiling to such acts as are necessary to achieve the permitted objective;
  - c) supply the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or
  - d) use the information to create a software program which is substantially similar in its expression to the Application or to do any other act restricted by copyright.
- 5.4 You may not modify, adapt, alter, translate, or otherwise change the Application or Documentation or any part thereof or combine, incorporate in, or merge the Application with any other software.
- 5.5 You may not alter, delete, or otherwise obscure any notices of proprietary rights (including, but not limited to, copyright) or any product identification or restrictions on or in the Application or the Documentation. Any and all such notices must be included in full on all copies made of the Application or the Documentation, whether full or partial.

- 5.6 You may not make the Application or Documentation available to a third party other than your Authorised Users in any form or for any reason without the prior written consent of the Licensor.

## **6. Transfer**

The Application and Documentation are licensed only to you, the Licensee. You may not rent, lease, sub-licence, sell, assign, pledge, transfer, or otherwise dispose of the Application or Documentation, on a temporary or permanent basis, without the prior written consent of the Licensor.

## **7. Licensee's Undertakings**

You hereby undertake and agree that:

- 7.1 you will use and permit the use of the Application only in accordance with the bounds of the terms and conditions of these Terms;
- 7.2 you will supervise and control any use of the Application by Authorised Users and ensure that they are notified of the terms and conditions of these Terms, understand them, and comply with them; and
- 7.3 you will comply with all applicable laws, rules, and regulations governing technology control and export.

## **8. Limitation of Liability**

- 8.1 The Application and Documentation are provided for internal business use by you, the Licensee.
- 8.2 The Licensor shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of or in connection with these Terms for:
- a) loss of profits;
  - b) loss of sales or business;
  - c) loss of revenue;
  - d) loss of agreements or contracts;
  - e) loss of anticipated savings;
  - f) loss of use or corruption of software or data;
  - g) business interruption;
  - h) loss of business opportunity, reputation, or goodwill; or
  - i) special, indirect, or consequential loss, damage, charges, or expenses.
- 8.3 Subject to clause 8.2, above (losses for which the Licensor is not liable), and clause 8.4, below (liability which is not excluded or limited), the Licensor's maximum aggregate liability, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of or in connection with these Terms shall be limited to £1,000 (or the equivalent sum in the Licensee's local currency).
- 8.4 Nothing in this clause 8 shall exclude or limit the Licensor's liability for death or

personal injury resulting from the Licensor's negligence; for fraud or fraudulent misrepresentation; or for any other form of liability which cannot be limited or excluded by law.

**9. No Other Warranties or Liability**

- 9.1 These Terms set out the full extent of the Licensor's liabilities and obligations with respect to the Application and Documentation. Except as expressly set out in these Terms, the Licensor is bound by no other conditions, warranties, representations, guarantees, or other terms, whether express or implied.
- 9.2 To the fullest extent permitted by law, any warranties, representations, guarantees, or other terms which may be implied or otherwise incorporated into these Terms whether by statute, common law, or otherwise, are hereby excluded.
- 9.3 In particular, the Licensor does not warrant that the Application or the Documentation will meet your particular requirements or that the operation of the Application will be uninterrupted or error-free. It is your responsibility to ensure that the Application as described in the Documentation (and the Documentation itself, where appropriate) meets your requirements.

**10. Changes to these Terms**

- 10.1 The Licensor reserves the right to amend the terms and conditions of these Terms at any time on written notice to you. You will be notified of such changes by email.
- 10.2 By continuing to use the Application and Documentation following receipt and service of notice of such changes as described above, you shall be deemed to have accepted the changes to these Terms.
- 10.3 If you do not accept the changes to these Terms, you must immediately stop all actions permitted under these Terms including, but not limited to, using the Application and Documentation.

**11. Term and Termination of these Terms**

- 11.1 These Terms are effective until terminated. You may terminate it at any time by fully uninstalling, deleting, or otherwise removing the Application from any and all computers or devices in your possession or control and deleting or destroying all copies of the Application and Documentation in your possession or control.
- 11.2 The Licensor reserves the right to terminate these Terms immediately on written notice to you in the event that you commit a material or persistent breach of these Terms and (if the breach is capable of remedy) fail to remedy the breach within 14 calendar days after the service of a written notice from the Licensor requiring you to do so.
- 11.3 In the event that these Terms are terminated for any reason:
  - a) All rights granted to you by these Terms shall discontinue;
  - b) You must immediately stop all actions permitted under these Terms including, but not limited to, using the Application and Documentation;
  - c) You must immediately and fully uninstall, delete, or otherwise remove the Application from any and all computers or devices in your possession; and

- d) You must immediately delete, destroy, or return to the Licensor (at the Licensor's option) all copies of the Application and Documentation in your possession or control.

## **12. Privacy and Data Protection**

- 12.1 All personal data that the Licensor may use will be collected, processed, and held in accordance with the provisions of data protection legislation and your rights and the rights of Authorised Users thereunder.
- 12.2 For complete details of the Licensor's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, personal data sharing (where applicable), details of your rights and the rights of Authorised Users and how to exercise those rights please refer to the Licensor's privacy and cookies policy available at [kolo.app/privacy](https://kolo.app/privacy).

## **13. Notices**

All notices under these Terms shall be in writing and served by email. Delivery by email will be regarded as completed at the time of transmission. This arrangement does not apply to the service of any documents in legal proceedings, which cannot be served by email.

## **14. Assignment**

- 14.1 The Licensor may transfer its rights and obligations under these Terms to another party at any time. Your rights as the Licensee under these Terms will not be affected by such a transfer.
- 14.2 These Terms and the licence granted to you under it are personal to you. Except where expressly permitted under these Terms, you may not transfer your rights and obligations under these Terms to another party without the Licensor's prior written consent.

## **15. No Waiver**

No failure or delay by either party to these Terms in exercising any of its rights under these Terms shall be deemed to be a waiver of that right, and no waiver by either party to these Terms of a breach of any provision of these Terms shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## **16. Entire Agreement**

- 16.1 These Terms contain the entire agreement between the Licensor and Licensee with respect to its subject matter.
- 16.2 These Terms supersedes and extinguishes any and all previous agreements, representations, warranties, promises, assurances, and understandings between the Licensor and Licensee relating to its subject matter.

**17. Severance**

In the event that one or more of the provisions of these Terms are or are found to be unlawful, invalid, or otherwise unenforceable, that or those provision(s) shall be deemed severed from the remainder of these Terms. The remainder of these Terms shall be valid and enforceable.

**18. Law and Jurisdiction**

18.1 Where the Licensee is located in the United Kingdom or the European Union, these Terms (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales. Any dispute, controversy, proceedings or claim between the Parties relating to these Terms (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

18.2 Where the Licensee is located outside the United Kingdom or the European Union, including in the United States, these Terms shall be governed by and construed in accordance with the laws of the State of Delaware and the federal laws of the United States of America, excluding those laws relating to conflicts of law. Neither the U.N. Convention of Contracts for the International Sale of Goods nor UCITA will apply. Any dispute arising out of or relating to these Terms shall be brought in the state or federal courts located in New Castle County, Delaware. Each party hereby consents to the exclusive jurisdiction of such courts. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of competent jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.