

## **ATHERA PLATFORM TERMS AND CONDITIONS**

### **PART A - ACCESS TO AND USE OF ATERA**

#### **1. INTRODUCTION**

- 1.1 We operate the Athera Platform ("**Athera**"). We are The Foundry Visionmongers Ltd., a company registered in England and Wales under company number 04642027 and with our registered office at 5 Golden Square, Golden Square, London W1F 9HT ("**we**", "**our**", "**us**" or "**Foundry**").
- 1.2 These terms and conditions ("**Terms**"), together with our Privacy Policy (available [here](#)), tell you information about us and the legal terms and conditions on which you may access and purchase access to the software products available on the site ("**Products**").
- 1.3 References in these Terms to "you" are to: (a) the business that you have the authority to bind ("**Licensee**") where you (or Admins acting on your behalf) purchase access to Products via Athera; or (b) you in your capacity as an individual where you are acting as an Admin or User.
- 1.4 Please read these Terms carefully and make sure that you understand them, before accessing Athera or requesting access to any Products. Please note that by accessing Athera, you agree to be bound by these Terms and the other documents expressly referred to in them. You should print a copy of these Terms or save them to your computer systems for future reference.
- 1.5 We amend these Terms from time to time. Every time you wish to request access to any Products, please check these Terms to ensure you understand the terms which will apply at that time. These Terms were most recently updated in April 2018.
- 1.6 The Products on Athera are either made available to you by us (the "**Foundry Products**") or by Third Party Vendors (the "**Third Party Products**"), as indicated on the relevant Product page.
- 1.7 On acceptance of these Terms and provision of appropriate information, we will provide you with access to Athera. We will use reasonable skill and care in operating Athera but do not promise that Athera will always be available or uninterrupted.
- 1.8 A contract for the provision of access to Athera will arise between you and us on the basis of Parts A and E of these Terms. You will not be able to access Products unless and until you are authorised to do so by an Admin acting on behalf of a Licensee with valid entitlements.
- 1.9 Where you are acting as a Licensee, a contract for the provision of access to the relevant Products will arise between you and us on the basis of Parts A, B, C or D (as applicable) and E of these Terms.

### **PART B - USE OF ATERA AS A LICENSEE**

#### **2. USING ATERA AS A LICENSEE**

- 2.1 If you (or Admins acting on your behalf) purchase access to:

- (a) Foundry Products, you must comply with the terms set out in Parts A, B, C and E of these Terms and any additional terms identified on the relevant Products page (the "**Foundry EULA**"). A contract for the provision of access to the relevant Products will arise between you and us on the basis of Parts A, B, C and E of these Terms and any Foundry EULA. You are responsible for checking the Foundry EULA(s) for updates, and any use by you of the Foundry Products following a change to the relevant Foundry EULA(s) shall constitute acceptance of such change; and
- (b) Third Party Products, you must comply with the terms set out in Parts A, B, D and E of these Terms and any additional terms identified on the relevant Products page (the "**Third Party EULA**"). A contract for the provision of access to the relevant Products will arise between you and the relevant Third Party Vendor on the basis of Parts A, B, C and E of these Terms and any Third Party EULA. You are responsible for checking the Third Party EULA(s) for updates, and any use by you of the Third Party Products following a change to the relevant Third Party EULA(s) shall constitute acceptance of such change. In providing access to Third Party Products, we act as commercial agents on behalf of such Third Party Vendors.

2.2 Where you purchase access to Third Party Products:

- (a) subject to this section 2.2, we are not responsible for the provision, performance or any loss or damage caused by such Third Party Products, except where the issue with provision is a result of Athera in which case, as your sole remedy and our exclusive liability, we will use reasonable endeavours to resolve the issue; and
- (b) where you identify an issue with any Third Party Products, you may notify us in accordance with section 11 of these Terms but we do not promise to be able to resolve any such complaint nor do we accept any responsibility or liability for such issues.

2.3 **Appointing Admins.** You may appoint administrative users ("**Admins**") on Athera. Admins are responsible for:

- (a) purchasing access to Products via Athera;
- (b) accepting these Terms (including any changes to these Terms), Foundry EULAs, Third Party EULAs and Third Party Materials Terms on your behalf; and
- (c) determining which employees, agents and/or independent contractors (the "**Users**") may have access to Athera and the purchased Products,

and you agree to be bound by (i) the decisions, purchases, agreements and representations made by your Admins using or in relation to Athera and any Products and/or Third Party Materials, and (ii) the Terms, Foundry EULAs, Third Party EULAs and Third Party Materials Terms (including any changes to those terms) accepted by your Admins on your behalf.

2.4 **Purchases by Admins.** Any purchases of access to Products made by Admins via Athera are binding on you.

2.5 **Use of Athera.** Admins and Users must use Athera and all Products in accordance with these Terms and the other documents expressly referred to in them (including the relevant Foundry EULA or Third Party EULA). You shall be liable for, and we shall have no

responsibility for, all or any acts or omissions of your Admins and/or your Users:

- (a) in respect of use of Athera, any Products and/or any Third Party Materials;
- (b) that constitute a breach of the Terms, Foundry EULAs, Third Party EULAs and/or Third Party Materials Terms;
- (c) that give rise to a purchase or payment in respect of Athera, any Products and/or any Third Party Materials; and
- (d) in respect of administration or management of your Athera and/or Product account(s), maintaining up-to-date contact and/or payment details, setting passwords, not sharing or making available passwords to any third party and otherwise keeping accounts and/or passwords secure.

2.6 **Authorising / De-authorising Users.** Admins will be responsible for authorising and de-authorising Users on your behalf in respect of Athera, Products, entitlements, access to your organisations ("**Orgs**"), projects within Orgs ("**Projects**") and all associated work product. We shall not be liable for any access or lack of access to Athera, Products, entitlements, Orgs, Projects and/or associated work product by Users who have not been properly authorised or de-authorised by your Admins.

2.7 **Charges for usage.** You will be charged for the Admins and Users use of the Products in accordance with section 5.

### 3. **THE PRODUCTS**

3.1 **Product descriptions.** We do not guarantee that any Product specifications provided on Athera or within any Product are accurate complete, reliable or error-free. The specifications for Third Party Products are provided to us by the relevant Third Party Vendor. The screen shots of the Products on Athera are for illustrative purposes only.

### 4. **USE OF THE PRODUCTS**

4.1 **Foundry Products.** You will use the Foundry Products in accordance with the relevant Foundry EULA.

4.2 **Third Party Products.** You will use the Third Party Products in accordance with the relevant Third Party EULA.

4.3 **Commercial use.** The Products supplied by us and the Third Party Vendors (as applicable) are supplied for your internal business use only. You agree that you will not:

- (a) use the Products for any personal, domestic or resale purposes; or
- (b) provide access to any Products to any individual or third party for use other than on your behalf.

### 5. **PURCHASING PROCESS AND PAYMENT**

5.1 **Requesting access to Products.** You can request access to one or more Products (irrespective of whether there are Foundry Products and/or Third Party Products in the same transaction) by way of a periodic or metered entitlement (as described on the relevant

Product page). By requesting an entitlement to a Product, you are offering to purchase such access from us and the Third Party Vendors (as applicable). Your request for any entitlement to the Products is subject to these Terms and successful conclusion of the relevant credit card payment.

- 5.2 **Payment for access to Products.** Payment for all entitlements shall be made via the credit card details you provide upfront and in full at the time of purchase.
- 5.3 **Accepting your request.** Our acceptance of your request for any entitlement to any Products will take place when we make the Products available for use by your Admins and Users, at which point a contract will come into existence between you and us (where you are ordering Foundry Products) and/or between you and the relevant Third Party Vendor (where you are ordering Third Party Products). We act as commercial agents on behalf of any Third Party Vendors when accepting requests to access their Products on their behalf.
- 5.4 **If we cannot accept your request.** If we are unable to accept your request for any entitlement (or any part thereof), we will inform you of this and we will not charge you for the relevant Products.

## 6. **PRICING**

- 6.1 **Where to find the price for the Products.** The prices for the usage by you, Admins and Users (together "**Usage**") of the Products will be set out on the relevant Product pages. Whilst we try to ensure that the prices of the Products that appear on Athera are accurate, there may be cases where errors occur. Please see section 6.6 for what happens if we discover an error in the price of the Products you request access to.
- 6.2 **Taxes and Duties.** All prices are exclusive of VAT, sales tax and any other taxes or levies arising from the purchase. You agree to pay, and indemnify us against, any claims for VAT, sales tax or any other local, state or national (exclusive of taxes based on net income) duty, tariff or other impost related to or arising from the purchase.
- 6.3 **Non-Cancellable.** All payments are non-cancellable and non-refundable.
- 6.4 **Changing the prices of the Products.** We and the Third Party Vendors may change the prices of the Products from time to time. Any change to the price of Products shall not affect an entitlement which you have already purchased.
- 6.5 **What happens if we got the price wrong.** If we discover an error in the price of any Products that you have purchased access to, we will inform you of this as soon as possible and we will give you the option of reconfirming your purchase at the correct price or cancelling it. If we are unable to contact you, your purchase will be treated as cancelled. If you choose to cancel and you have already paid for the Products, you will receive a full refund. Where you or your Users have Used any Product prior to our identifying and notifying you of the error in the price, we will charge the incorrect price if lower in respect of such Usage.
- 6.6 **Using discount codes.** We may provide you with discount codes that may be applied against specific Products or generally against any Products to reduce the balance payable. All such discount codes shall be non-transferable, cannot be withdrawn as cash unless required by law, and are subject to any terms (including expiration dates) we specify in respect of such discount codes.

- 6.7 **Usage Reports.** We will provide you with a report on or around the 25<sup>th</sup> day of each month setting out (i) the Usage for that month for each Product; and (ii) the total amount charged.
- 6.8 **Failing to make payment.** If you fail to make payment in accordance with section 5, then:
- 6.8.1 we shall be entitled to suspend access to all Products until we receive payment in full; and
- 6.8.2 we shall be entitled to charge interest on the overdue amount at a rate of 4% per annum above the base rate of the Bank of England from time to time in force, from the date on which such amount fell due until payment, whether before or after judgment.

## **PART C - PURCHASING ACCESS TO FOUNDRY PRODUCTS**

### **7. PROVISIONS APPLICABLE TO DIFFERENT PURCHASES OF FOUNDRY PRODUCTS**

- 7.1 A range of Foundry Products are available for purchase through Athera. Your rights and responsibilities in relation to each Foundry Product is set out in the relevant Foundry EULA.

### **8. PROVISION OF THE FOUNDRY PRODUCTS**

- 8.1 **Our obligation to provide.** We shall use reasonable endeavours to make Foundry Products available for use promptly following the acceptance of a relevant purchase, but we cannot guarantee that Athera will be available or the Products usable at any given time so time shall not be of the essence of any purchase.
- 8.2 **We are not responsible for delays outside our control.** If our provision of the Foundry Products is delayed by an event outside our control then we will contact you as soon as possible to let you know. We will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to cancel the purchase.

### **9. ACCESS TO FOUNDRY PRODUCTS**

- 9.1 **Access to Foundry Products.** We do not guarantee that any Foundry Products, or any content therein, will always be available or be uninterrupted. Access to the Foundry Products is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of the Foundry Products without notice and we may from time to time carry out routine and emergency maintenance of the Foundry Products, during which time you may be unable to access the Foundry Products. We will not be liable to you if for any reason the Foundry Products are unavailable at any time or for any period.
- 9.2 **Responsibility for equipment.** You are responsible for making all arrangements necessary (including configuring information technology, computer programmes and platform, and using your own virus products) in order for it to access and/or use the Foundry Products.
- 9.3 **Intellectual Property in Foundry Products.** We shall at all times retain ownership of all intellectual property rights in the Foundry Products, including all subsequent copies of and modifications, adaptations, amendments and additions to the Foundry Products and all associated documentation.
- 9.4 **Freedom to use know-how.** Subject to section 17, you hereby acknowledge that we may

use any knowledge or knowhow gained from working with you in respect of any Foundry Products and/or Athera (including ideas provided by you) including to enhance, update, upgrade, correct add to or amend the Foundry Products.

## 10. **IF THERE IS A PROBLEM WITH THE FOUNDRY PRODUCTS**

- 10.1 **How to tell us about your problems.** If you have any questions or complaints about the Foundry Products, please contact us. You can submit a support request at: <https://support.foundry.com/hc/en-us>. Remedies and support in respect of Foundry Products shall be provided in accordance with the relevant Foundry EULA.

## **PART D - PURCHASING ACCESS TO THIRD PARTY PRODUCTS**

### 11. **THIRD PARTY PURCHASING PROCESS AND OUR CONTRACT WITH YOU**

- 11.1 When you purchase access to any Third Party Products on Athera, you are purchasing such access from the Third Party Vendors named on Athera or in the relevant Third Party EULA. It is important that you understand that the contract for the access to the Third Party Products is between you and the relevant Third Party Vendors on these Terms and the terms of the relevant Third Party EULA. We are authorised by the relevant Third Party Vendors to conclude the contract as commercial agents on their behalf but we are not a party to that contract and you are not purchasing access to the Third Party Products from us. These Terms shall not apply to any purchase by you of Third Party Products directly via the Third Party Vendor or otherwise than through Athera. We will not be liable to you if for any reason the Third Party Products are unavailable at any time or for any period or for any defects or issues in respect of such Third Party Products. You are responsible for making all arrangements necessary (including configuring information technology, computer programmes and platform, and using your own virus products) in order for it to access and/or use the Third Party Products.
- 11.2 **Third Party Products descriptions.** We attempt to be as accurate as possible in the description and details of the Third Party Products. However, as the descriptions and details are based on information provided to us by the Third Party Vendors, we cannot guarantee that any descriptions are totally accurate, complete, reliable or error-free. If Third Party Products that you have ordered are not as described, flawed or of a lower quality than the corresponding market standards, you can contact us via a support request (<https://support.foundry.com/hc/en-us>) and we shall share that support request and your contact details with the relevant Third Party Vendor to allow them to pursue your support request directly with the Third Party Vendor. Remedies and support in respect of Third Party Products shall be provided in accordance with the relevant Third Party EULA. Should the Third Party Vendor agree to refund you any sums paid for the Products, we will facilitate such refund through the site as applicable.
- 11.3 **Third Party Vendor complaints.** We are not responsible for the performance or operation of any Third Party Products nor the conduct of any Third Party Vendor. However, if you are unhappy with the conduct or service of a Third Party Vendor, you may contact us via support request (<https://support.foundry.com/hc/en-us>) and we will liaise with the relevant Third Party Vendor on your behalf to try and resolve the issue.
- 11.4 **Identity of Third Party Vendor.** The identity of the Third Party Vendor is shown on a webpage for each of the Third Party Products or in the relevant Third Party EULA.

12. **OBLIGATIONS ON YOU WHEN ACCESSING AND USING THIRD PARTY PRODUCTS**

12.1 You shall comply with any requirements set out in the applicable Third Party EULA.

13. **PROVISION OF THE THIRD PARTY PRODUCTS**

13.1 We shall use reasonable endeavours to make the Third Party Products available for use via Athera following the acceptance of a relevant Order but we cannot guarantee that the Third Party Products will be available at any given time.

**PART E – USE OF ATHERA**

14. **GENERAL**

14.1 **Hosting Supplier.** We may use a third party hosting supplier to provide hosting services for Athera and some or all of the Products ("**Hosting Services**"). Without prejudice to the additional limitations and exclusions of our liability in section 15, our liability to you (howsoever arising, including in negligence) in connection with Hosting Services (or any failure of the Hosting Services) shall not exceed the amounts recovered by us from the third party hosting supplier in respect of your loss in such circumstances. You acknowledge and agree that:

- (a) we do not control the hosting services and as such the third party hosting supplier may discontinue, update or change the hosting services from time to time;
- (b) we shall not be liable to you for any impact arising from any suspension, discontinuation, deprecation, update or change made to the Hosting Services by the third party hosting supplier from time to time; and
- (c) you shall provide us with such assistance and information as we may reasonably require in order to fulfil our obligations and/or exercise our rights in respect of the Hosting Services used for the Products you use.

14.2 **Third Party Services.** You may be able to access third party services (other than Products) providing data storage, production management tools or other services via Athera and/or link such third party services to your Athera account(s) or those of your Admins and Users ("**Third Party Services**"). Your access to and use of Third Party Services shall be under a contract between you and the provider of the Third Party Services. We will not be liable to you if for any reason the Third Party Services are unavailable at any time or for any period or for any defects or issues in respect of such Third Party Services. You are responsible for making all arrangements necessary (including configuring information technology, computer programmes and platform, and using your own virus products) in order for it to access and/or use the Third Party Services.

14.3 **Third Party Materials.** Athera and/or the Products may incorporate or provide access to certain software programs, information, data, plug-ins and materials received from third parties ("**Third Party Materials**"). Such Third Party Materials may only be used in conjunction with Athera and/or the relevant Products (as applicable) and your use of the Third Party Materials shall be subject to (and you agree to be bound by) any license terms or other terms of use required by the third party content provider and the third party terms and

conditions brought to your attention, as they may be modified from time to time by the applicable third party (collectively, the "**Third Party Materials Terms**"). You are responsible for checking the Third Party Materials Terms for their suitability to you and your intended use of the Third Party Materials and for any updates, and any use by you of the Products following a change to the Third Party Materials Terms shall constitute acceptance of such change.

- 14.4 **Provision of Athera.** We shall provide access to Athera substantially in accordance with these Terms and our associated documentation ("**Services Warranty**"). The Services Warranty is subject to these Terms and shall not apply to the extent that any non-conformance is caused by Third Party Products, Third Party Services, Third Party Materials, the Hosting Services and/or your breach of these Terms or relevant EULA. If we are in breach of the Services Warranty, we shall use our reasonable endeavours to correct the non-conformance promptly or provide a suitable workaround. Such correction or the provision of a workaround shall constitute our sole liability and your sole and exclusive remedy for any breach of the Services Warranty.
- 14.5 **Intellectual Property in Athera.** We shall at all times retain ownership of all intellectual property rights in Athera, including all subsequent versions and modifications, adaptations, amendments and additions to Athera and all associated documentation.
- 14.6 **Acceptable Use Policy.** You shall, and ensure that your Admins and your Users shall, comply with the Acceptable Use Policy available on [www.athera.io](http://www.athera.io) in relation to any access to or use of Athera and/or any Products.
- 14.7 **Responsibility for content.** To the extent that any part of the Athera and/or any Products allows you (or Admins or Users, as the case may be) to upload, share, store or create content, or to make contact with other users, you (and your Admins or Users (as the case may be)) must not create, upload, share, store, distribute or transmit any virus, or any material, information or data using Athera or the Products that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- 14.8 **Content warranty.** You warrant that any such contribution made by yourself (or your Admins or Users) complies with those standards, and you will be liable to us and indemnify us for any losses, damages, costs or expenses arising as a result of any breach of this warranty.
- 14.9 You shall defend, indemnify and hold us harmless against any and all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Products in breach of these Terms, the Acceptable Use Policy available on [www.athera.io](http://www.athera.io) and/or any relevant Foundry EULA, Third Party EULA and/or Third Party Materials Terms.
15. **LIMITATION OF LIABILITY**
- 15.1 When you order any Third Party Products on Athera, the contract for the Purchase of Third Party Products is between you and the relevant Third Party Vendors. We are not responsible for any loss or damage you suffer that is a result of a Third Party Vendor breaching that contract or your use of any Third Party Product.



- 15.2 When you use any Third Party Services via Athera, the contract for those services is between you and the provider of the Third Party Services. We are not responsible for any loss or damage you suffer that is a result of a provider of Third Party Services breaching that contract or your use of any Third Party Services.
- 15.3 When you use any Third Party Materials via Athera, the contract for those materials is between you and the provider of the Third Party Materials. We are not responsible for any loss or damage you suffer that is a result of a provider of Third Party Materials breaching that contract or your use of any Third Party Materials.
- 15.4 You shall bring any claims in respect of Third Party Products against the relevant Third Party Vendor and not us.
- 15.5 You shall bring any claims in respect of Third Party Services against the provider of the relevant Third Party Services and not us.
- 15.6 You shall bring any claims in respect of Third Party Materials against the provider of the relevant Third Party Materials and not us.
- 15.7 Where required by law, nothing in these Terms shall limit or exclude our liability for: (i) death or personal injury resulting from negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any liability which cannot be limited or excluded by applicable law.
- 15.8 **Subject to section 15.7, our total aggregate liability (whether in contract, misrepresentation (whether tortious or statutory), tort (including negligence), restitution, breach of statutory duty or otherwise) arising out of or in connection with any loss or damage suffered by you in connection with: (i) access to, your use of and the availability (or unavailability) of Athera; and (ii) access to and the availability (or unavailability) of any Products, shall be limited to USD\$500. Liability arising from the use of any Products shall be governed in accordance with the relevant Foundry EULA or Third Party EULA, as applicable.**
- 15.9 **Subject to section 15.7, we shall have no liability (whether in contract, misrepresentation (whether tortious or statutory), tort (including negligence), restitution, breach of statutory duty or otherwise) under or in connection with these Terms, your use of Athera or in connection with the supply of any Foundry Products in respect of any: (i) indirect or consequential losses, damages, costs or expenses; (ii) loss of actual or anticipated profits; (iii) loss of contracts, loss of business or loss of opportunity; (iv) loss of use of money; (v) loss of anticipated savings; (vi) loss of revenue or ex gratia payments; (vii) loss of goodwill or reputation; (viii) loss of operation time; or (ix) loss of, damage to or corruption of, data including during the process of rendering (in each case, except (i), whether such losses are direct, indirect, consequential, incidental, punitive, special, or otherwise, and, in each case, including (i), regardless of whether or not the party has been notified of the possibility of such loss, damage, cost or expense).**
- 15.10 **Except as expressly set out in these Terms and to the extent permitted by law, we (a) do not warrant, represent, undertake or agree that (i) Athera and/or any Products will meet your requirements nor that Athera and/or the Products will deliver any particular benefits; (ii) that the operation of Athera and/or the Products will be uninterrupted or error-free; (iii) that defects in Athera and/or the Products will be corrected; (iv) that Athera and/or the Products will be secure or free from bugs or viruses; or (v) that the**

**functions of Athera and/or the Products will operate in the combinations which you select for use; and (b) disclaim all other conditions, warranties or other terms which might have effect between the parties with respect to Athera and/or the Products, or be implied or incorporated into these Terms or any contract for supply of the Products, whether by statute, common law or otherwise, including any implied conditions, warranties, or other terms relating to merchantability, satisfactory quality, reasonable skill and care, fitness for any particular purpose or ability to achieve a particular result, non-infringement, or those arising from a course of dealing or usage of trade.**

16. **DATA PROTECTION**

16.1 If we process any personal data on your behalf when performing our obligations under these Terms or pursuant to any contract to supply Foundry Products, we shall process such personal data in accordance with our Privacy Policy (available [here](#)).

17. **CONFIDENTIALITY**

17.1 **"Confidential Information"** means any information received or obtained from the other party if it is either designated as confidential or a reasonable person would reasonably consider it to be confidential. It does not include information which the recipient can show to the other party's satisfaction was independently developed or discovered by it without access to the other party's Confidential Information, or was legitimately in the public domain or received from a third party (in each case) other than by breach of any confidentiality obligation.

17.2 We and you shall each: (i) use the Confidential Information of the other party only as permitted under these Terms and will use the same standards as it applies to its own Confidential Information, but in no event less than reasonable measures, to prevent the disclosure of such Confidential Information to any third party without the other party's prior written consent; and (ii) procure that its Admins, Users, employees and any other personnel are bound to the standard of confidentiality required under these Terms. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable them to contest such order or requirement.

18. **FORCE MAJEURE**

18.1 **"Force Majeure"** means circumstances beyond our reasonable control including strikes, lock-outs or other industrial disputes (whether involving our workforce or the workforce of any other party), act of god, war, riot, civil commotion, act of terrorism, malicious damage, breakdown of plant or machinery, changes in law or regulation, fire, flood, storm, earthquake, explosion, or default of suppliers or sub-contractors.

18.2 We shall be under no liability to you in any way whatsoever for any breach of our obligations under these Terms or for a delay in performing them to the extent that such breach or delay results from Force Majeure. Subject to us promptly notifying you in writing of the reasons for the breach or delay (and the likely duration of any delay), the performance of our obligations shall be suspended during the period that the Force Majeure circumstances subsist and we shall be granted an extension of time equal to the period of the delay.

19. **COMPLIANCE WITH LAW; ANTI-BRIBERY AND CORRUPTION**

- 19.1 You hereby represent that you shall (and shall ensure that your affiliates, representatives, agents, sub-contractors, suppliers and employees shall) comply with all applicable laws and regulations, including anti-bribery laws and regulations, which include the UK Bribery Act 2010.
- 19.2 You warrant that you shall not (and shall ensure that your affiliates, representatives, agents, sub-contractors, suppliers and employees shall not) give, offer or make (either directly or through a third party) the payment of any financial or other advantage to any third parties, which would cause us or any group companies or agents to be in violation of any applicable anti-corruption laws, including the UK Bribery Act 2010.
- 19.3 You shall disclose to us all payments you (and/or your affiliates, representatives, agents, sub-contractors, suppliers and employees) have made, are obligated to make or intend to make to any agents, brokers, intermediaries or other third parties in connection with the awarding of or maintenance of any Order(s) under the relevant legislation.
- 19.4 If you breach the relevant provisions of this section 19, or otherwise act in contravention of anti-corruption legislation or human rights law, then we shall have the right to terminate your access to the site and any contract(s) to supply Foundry Products without notice and with immediate effect.

## 20. **ENTIRE AGREEMENT**

- 20.1 These Terms together with our Privacy Policy (available [here](#)), the Acceptable Use Policy available on [www.athera.io](http://www.athera.io) and any relevant Foundry EULA for purchases of access to Foundry Products, shall constitute the entire agreement between the parties in relation to your access to Athera and any Foundry Products, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter.
- 20.2 Each party acknowledges that at the point of agreeing to each order, it is not relying on, and shall have no rights or remedies (whether in tort (including negligence), under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other party in relation to the subject matter of such order, except for those rights and remedies available under these Terms.
- 20.3 Nothing in this section 20 shall exclude or restrict the liability of either party arising out of fraud, fraudulent misrepresentation or fraudulent concealment.

## 21. **GENERAL**

- 21.1 You shall not assign or transfer or subcontract any of your rights, benefits or obligations under these Terms without our prior written consent (not to be unreasonably withheld or delayed).
- 21.2 We may assign or transfer (by operation of law or otherwise) our rights and obligations under these Terms to a group company. We may sub-contract any of our rights or obligations under these Terms to a third party (including any group company).
- 21.3 Other than you and us, no third party has any right to enforce any provision of these Terms, including under any applicable legislation otherwise entitling them to do so.

- 21.4 The rights, powers and remedies provided in these Terms to us are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by applicable law, or otherwise.
- 21.5 Nothing in these Terms shall be deemed to constitute a partnership, or create a relationship of principal and agent for any purpose between the parties.
- 21.6 The failure to exercise, or delay in exercising, a right, power or remedy provided by these Terms, any applicable Foundry EULA, or by applicable law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of these Terms, any applicable Foundry EULA, or applicable law it shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision. Any waiver must be given in writing and signed by an authorised representative of the party providing the waiver.
- 21.7 If any provision, or part of a provision, of these Terms or any Foundry EULA, is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of the agreement between you and us and the legality, validity or enforceability of the remainder of the provisions of these Terms and the contract(s) for the supply of Foundry Products shall not be affected, unless otherwise stipulated under applicable law.

## 22. **LAW AND JURISDICTION**

- 22.1 These Terms and any disputes or claims arising out of or in connection with either these Terms, any Foundry EULA or their subject matter or formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 22.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms, any Foundry EULA or their subject matter or formation (including non-contractual disputes or claims) save that we may bring proceedings for injunctive or interim relief in any alternate jurisdiction at our sole option in the case of breach or anticipated breach by you of your obligations relating to confidentiality and intellectual property rights as set out in these Terms or an applicable Foundry EULA.

## 23. **EMAIL ADDRESS FOR NOTICES**

- 23.1 You acknowledge and agree that we may use the email address associated with your user account on Athera for the provision of any notices and correspondence in connection with these Terms. You agree to notify us via Athera or on [licenses@foundry.com](mailto:licenses@foundry.com) of any change(s) to that email address. It is your responsibility to provide and maintain an up to date email address.

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