

## END USER LICENSE AGREEMENT FOR FOUNDRY PRODUCTS VIA ATHERA

### 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 This end user license agreement ("**EULA**"), together with our Privacy Notice (available [here](#)), tell you information about us and the legal terms and conditions on which you may use Foundry software products available via Athera ("**Foundry Products**").
- 1.3 References in this EULA to "you" are to the business that you have authority to bind, whether you represent that business in a personal capacity or you are an Admin (as defined in the Platform Agreement) authorised to act on behalf of that business.
- 1.4 This EULA does not set out the legal terms and conditions on which you may: (a) access and use Athera; or (b) purchase access to Foundry Products and third party products via Athera. Those rights and your associated obligations are set out in the Athera Platform Terms and Conditions (available via Athera) ("**Platform Agreement**").
- 1.5 By entering into this EULA, you warrant and represent that (a) you have accepted the terms and conditions of the Platform Agreement; and (b) you are acting as, or as a duly authorised Admin on behalf of, the Licensee (as defined in the Platform Agreement).
- 1.6 In order to have access to, use and/or authorise your Admins and Users (as defined in the Platform Agreement) to use any Foundry Product, you must successfully purchase and hold a valid entitlement to the relevant Foundry Product(s) ("**Entitlement**").
- 1.7 Details regarding the different types of Entitlement and pricing options are available via Athera. Each Entitlement expires on the earlier of: (i) full consumption of that Entitlement; and (ii) one year from the date of purchase.
- 1.8 Please read this EULA carefully and make sure that you understand its terms, before purchasing the Entitlement, or using, any Foundry Product. Please note that by agreeing to purchase the Entitlement, using or authorising your Admins and/or Users to use the Entitlement, you agree to be bound by this EULA and the other documents expressly referred to in it. You should print a copy of this EULA or save it to your computer systems for future reference.
- 1.9 We amend this EULA from time to time. Every time you wish to purchase an Entitlement, please check this EULA to ensure you understand the terms which will apply at that time. This EULA was most recently updated in May 2018.
- 1.10 We reserve the right to refuse to access to the Services to anyone who has failed to pay any sum due to us whether in connection with the Entitlement, the use of Athera, under this EULA, the Platform Agreement or otherwise.
- 1.11 On acceptance of this EULA and your successful purchase of the Entitlement, we will provide you with access to the relevant Foundry Product(s).

### 2. SERVICES

- 2.1 Subject to your compliance with this EULA and the terms of the Platform Agreement, we grant to you a limited, non-exclusive, non-transferable license to: (a) access and use; and (b) authorise your Admins and Users to access and use, the relevant Foundry Product(s) under the Entitlement for your own business purposes ("**Services**").
- 2.2 **Duration.** The Services are limited to the amount of the Entitlement, whether that Entitlement is based on a time period, cost limit or combination thereof. When the Entitlement expires, the Services shall terminate immediately.

- 2.3 **Fair Usage.** We reserve the right to impose fair usage limits on the Services from time to time. These may consist of upper limits on the duration of usage and/or reasonable technical limits. Where fair usage limits apply, we will make details available via Athera and it is your responsibility to understand those fair usage limits before purchasing the Entitlement.
- 2.4 **Acceptable Use Policy.** You, your Admins and your Users must comply with the Acceptable Use Policy available via Athera at all times when using the Services.
- 2.5 **Acknowledgement.** You acknowledge and agree that:
- a. under the terms of the Platform Agreement, it is your responsibility to authorise and de-authorise: (i) the Admins that may act on your behalf; and (ii) Admins and Users that may access and use the Services;
  - b. once the Entitlement expires, you will need to purchase a further Entitlement to access the Services; and
  - c. it is your responsibility to save and back-up any content or work product created using the Services.
- 2.6 **Restrictions.** The Services comprise access to the Foundry Product in machine readable, object code form only. You shall not: (a) assign, sublicense, sell, distribute, transfer, pledge, lease, rent, lend or share the Foundry Products, or your rights under this EULA; (b) alter or circumvent the copy protection mechanisms in the Foundry Product or reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Foundry Product; (c) implement or use any method or mechanism designed to enable product functionality not available in the Foundry Product but available in (i) other Foundry products; or (ii) other Foundry releases of the same product (d) modify, adapt, translate or create derivative works based on the Foundry Product; (e) use, or allow the use of, the Foundry Product on any Project (as defined in the Platform Agreement) other than your Projects or resell the Services to any third party; (f) allow or permit anyone other your Admins and Users to use the Services; (g) copy or use the Foundry Software other than as expressly provided for in this EULA; or (h) take any action, or fail to take action, that could adversely affect our trademarks, service marks, patents, trade secrets, copyrights or our other intellectual property rights or those of third parties with intellectual property rights in the Foundry Software.
- 2.7 **Limited Services Warranty.** Subject to the terms of this EULA, we shall provide the Services with reasonable skill and care and substantially in accordance with this EULA and our associated documentation ("**Services Warranty**"). The Services Warranty shall not apply to the extent that any non-conformance is caused by you and/or your breach of this EULA and we do not warrant that: (a) use of the Services will be uninterrupted or error-free; (b) that the Services and/or Foundry Product will meet your requirements. We are not responsible for any delays, delivery failures or any other loss or damage arising from the transfer of data over the internet and you acknowledge and agree that the Services may be subject to limitations, delays and/or other problems inherent to the use of service delivery via the internet.
- 2.8 **Remedy.** 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.
3. **OWNERSHIP**
- 3.1 **Intellectual Property in Services and Foundry Products.** We shall at all times retain ownership of all intellectual property rights in the Services, Foundry Products and all associated documentation including all subsequent versions and modifications, adaptations, amendments and additions to the Services, Foundry Products and associated documentation.
- 3.2 You shall not remove, obscure, or allow the removal or obscuring of, any copyright or other proprietary rights notice included with the Services, Foundry Software or associated documentation or take any other action that could adversely affect our property rights or those of a third party licensor to Foundry.
- 3.3 Except as expressly set out in its terms, this EULA does grant you any rights in our trademarks, service marks, patents, trade secrets, confidential information, copyrights or other intellectual property rights or

any third party licensor to of ours. You are strictly prohibited from using our name, trademarks or service marks in any promotion or publicity without our prior express written approval.

#### 4. **IP INDEMNITY.**

4.1 **Undertaking.** Subject to the terms of this EULA, we undertake (the “Undertaking”) to defend you or, at our option, settle any claim brought against you alleging that your use of Foundry Products in accordance with this EULA infringes the intellectual property rights of a third party in the same country as you (“Claim”) and shall reimburse all reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against you in connection with any such Claim, provided that the Undertaking shall not apply where the Claim in question is attributable to possession or use of Foundry Products other than in accordance with this EULA, or in combination with any hardware, software or service not supplied or specified by us.

4.2 The Undertaking is conditional on you giving us written notice of the Claim as soon as reasonably possible, cooperating in the defence of the Claim and not making any admission of liability or taking any step prejudicial to the defence of the Claim.

4.3 If any Claim is made, or in our reasonable opinion is likely to be made, against you, we may at our sole option and expense (a) procure for you the right to continue using the Foundry Product, (b) modify the Foundry Product so that it ceases to be infringing, (c) replace the Foundry Product with non-infringing software, or (d) terminate this EULA and the Services immediately by notice in writing to you and refund the fee paid for the Entitlement (less a reasonable sum in respect of your use of the Foundry Product to the date of termination).

4.4 You acknowledge and agree that the Undertaking constitutes our sole liability and your sole and exclusive remedy in respect of any Claim.

#### 5. **FEES**

5.1 Your access to and use of the Services is subject to payment of the fee for the Entitlement in accordance with the Platform Agreement.

#### 6. **MAINTENANCE AND SUPPORT**

6.1 Your access to and use of the Services includes access to Foundry’s support portal via <https://support.foundry.com/hc/en-us>.

6.2 If you report an issue with the Services then we will use our reasonable endeavours to respond to you in accordance with our standard Athera customer support policy in effect at the time.

#### 7. **INDEMNIFICATION**

7.1 You agree to indemnify, hold harmless and defend Foundry, our licensors and our affiliates, officers, directors, shareholders, employees, agents and other representatives from all claims, defence costs (including, but not limited to, legal fees), judgments, settlements and other expenses arising from or connected with any: (a) breach of this EULA by you or any person connected with you; and/or (b) claim that any modification of the Services or Foundry Products by you or any person connected with you infringes the intellectual property rights or other proprietary rights of any third party.

#### 8. **LIMITATION OF LIABILITY**

8.1 Where required by law, nothing in this EULA 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.

8.2 **Subject to section 8.1, 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 this EULA, the Services and the use of Foundry Products shall be limited to the total amount paid by you for the Entitlement.**

8.3 **Subject to section 8.1, 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 this EULA, the Services or the use of 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).**

8.4 **Except as expressly set out in this EULA and to the extent permitted by law, we (a) do not warrant, represent, undertake or agree that (i) the Services and/or any Foundry Products will meet your requirements nor that the Services and/or the Foundry Products will deliver any particular benefits; (ii) that the operation of the Services and/or the Foundry Products will be uninterrupted or error-free; (iii) that defects in the Services and/or the Foundry Products will be corrected; (iv) that the Services and/or the Foundry Products will be secure or free from bugs or viruses; or (v) that the functions of the Services and/or the Foundry 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 the Services and/or the Foundry Products, or be implied or incorporated into this EULA, 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.**

## 9. **TERM; TERMINATION**

9.1 This EULA is effective upon your purchase of the Entitlement and shall remain in effect until termination or expiry. If you breach this EULA or the Platform Agreement, Foundry may terminate the License immediately by notice to you.

9.2 When this EULA expires or is terminated, the Services will terminate immediately.

9.3 We reserve the right to terminate and/or suspend the Services by notice to you if you fail (or have previously failed) to pay any sum due either to us in connection with the Entitlement, the use of Athera, under this EULA, the Platform Agreement or otherwise or if you are otherwise in breach of or fail to comply with any term of this EULA.

9.4 We may also terminate this EULA if you become subject to bankruptcy proceedings, become insolvent, or make an arrangement with your creditors. This EULA will terminate automatically without further notice or action by us if you go into liquidation.

## 10. **CONFIDENTIALITY**

10.1 **“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.

10.2 We and you shall each: (i) use the Confidential Information of the other party only as permitted under this EULA 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 this EULA. 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.

## 11. DATA AND DATA PROTECTION

- 11.1 The Software may include mechanisms to collect limited information and transmit it to us. Such information (the “**Information**”) may include the profile and extent of use of the different elements of the Foundry Software. We may use the Information to (a) model the profiles of usage, hardware and operating systems in use collectively across its customer base in order to focus development and support, (b) to provide targeted support to individual customers, (c) to ensure that your usage of the Services is in accordance with this EULA, and (d) to advise you about service issues.
- 11.2 To the extent that any Information constitutes personal data for the purposes of the General Data Protection Regulation (“GDPR”) we shall process it in accordance with the GDPR and with our Privacy Notice as updated from time to time (see [here](#)).
- 11.3 You undertake to make all of users of the Services aware of the uses which we will make of the Information and of the terms of our Privacy Notice.

## 12. FORCE MAJEURE

- 12.1 “**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.
- 12.2 We shall be under no liability to you in any way whatsoever for any breach of our obligations under this EULA 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.

## 13. SURVIVAL

- 13.1 Sections 1, 3, 7, 8, 9, 10, 13, 14, 15, 16 and 17 shall survive expiry or termination of this EULA.

## 14. IMPORT/EXPORT CONTROLS

- 14.1 To the extent that any Services or Foundry Software made available under this EULA is subject to restrictions upon export and/or re-export from the United States, you agree to comply with, and not act or fail to act in any way that would violate, applicable international, national, state, regional or local laws and regulations, including, without limitation, the U.S. Export Administration Act and the Export Administration Regulations, the regulations of the U.S. Department of Treasury Office of Foreign Assets Control, and the International Traffic in Arms regulations (collectively, “**U.S. Export Laws**”), and the United States Foreign Corrupt Practices Act, as those laws may be amended or otherwise modified from time to time, and neither party shall be required under the Agreement to act or fail to act in any way which it believes in good faith will violate any such laws or regulations. Without limiting the foregoing, you agrees that you will not export or re-export, directly or indirectly, the Services, Foundry Software or related products and services, or any commodity, technology, technical data, software or service that incorporates, contains or is a direct product of the Services, Foundry Software, products and/or services, (i) in violation of the U.S. Export Laws; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary export licenses or other approvals; (iii) to any country, or national or resident of a country, to which trade is embargoed by the United States; (iv) to any person or firm on any government agency’s list of blocked, denied or barred persons or entities, including but not limited to the U.S. Department of Commerce’s Denied Persons List and Entities List, and the U.S Treasury Department’s Specially Designated Nationals List; or (v) for use in any nuclear, chemical or biological weapons, or missile technology end-use unless authorized by the U.S. Government by regulation or specific license.

## 15. GENERAL

- 15.1 You shall not assign or transfer or subcontract any of your rights, benefits or obligations under this EULA without our prior written consent (not to be unreasonably withheld or delayed).
- 15.2 We may assign or transfer (by operation of law or otherwise) our rights and obligations under this EULA to a group company. We may sub-contract any of our rights or obligations under this EULA to a third party (including any group company).
- 15.3 Other than you and us, no third party has any right to enforce any provision of this EULA, including under any applicable legislation otherwise entitling them to do so.
- 15.4 The rights, powers and remedies provided in this EULA to us are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by applicable law, or otherwise.
- 15.5 Nothing in this EULA shall be deemed to constitute a partnership, or create a relationship of principal and agent for any purpose between the parties.
- 15.6 The failure to exercise, or delay in exercising, a right, power or remedy provided by this 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 this 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.
- 15.7 If any provision, or part of a provision, of these this 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 this EULA shall not be affected, unless otherwise stipulated under applicable law.

## 16. LAW AND JURISDICTION

- 16.1 This EULA and any disputes or claims arising out of or in connection with this EULA or its 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.
- 16.2 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 this EULA, or its 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 this EULA.

## 17. EMAIL ADDRESS FOR NOTICES

- 17.1 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 this EULA. 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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