



# ATVERO TERMS OF USE

These terms of use (the “agreement”) are between:

## PARTIES

ATVERO LIMITED incorporated and registered in England and Wales with company number 11841338 whose registered office is at 93 Tabernacle Street, London EC2A 4BA

(1) (“Atvero”, “we, or “us”)

(2) The company named in the relevant Order Confirmation (“Customer”)

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

<b>Effective Date</b>	means the start date in the Order Confirmation.
<b>Order Confirmation</b>	means Atvero’s confirmation of Customer’s purchase order, or the commercial terms agreed between the parties.
<b>Services</b>	means the products and/or Services as specified in the Order Confirmation and provided by Atvero to Customer under these terms.
<b>Fees</b>	means the fees payable by Customer to Atvero for the Services, as set out in the Order Confirmation.
<b>Product</b>	The product(s) set out in the Order Confirmation.
<b>Services’ Period</b>	means the period set out in the Order Confirmation (as may be extended by the parties).
<b>Customer Users</b>	means those employees, directors, principals, officers and temporary employees who are authorised by Customer to use the Product or Service.
<b>Support Policy</b>	<a href="http://www.atvero.com/supportpolicy">www.atvero.com/supportpolicy</a>
<b>User Accounts</b>	means the user accounts purchased by Customer under these terms which entitle Customer Users to access and use the Product or Service in accordance with these terms.

### 2. GRANT OF RIGHTS, DELIVERY AND CUSTOMER’S OBLIGATIONS

2.1 Subject to Customer purchasing the Product or Service in accordance with the Order Confirmation and the other terms and conditions of these terms, Atvero hereby grants from the Effective Date to

Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Customer's Subscribed Users to use the Product or Service during the Subscription Period in order to support Customer's business.

- 2.2 Delivery of the Product or Service shall be made by Atvero to Customer and shall be deemed as having been delivered when the customer has installed the application package into their SharePoint App catalogue from the Atvero package deployment website. If the customer is using the Outlook plugin or Revit plugin then the software is delivered when it is downloaded from the Atvero package deployment website.
- 2.3 Atvero may change the Product or Service (including without limitation its format or any feature thereon) and anything described in it without notice to Customer. Any change herein by Atvero will not reduce the functionality of the Product or Service. Customer's continued use of the Product or Service will be taken as Customer's consent and agreement to any such changes or updates Atvero may make
- 2.4 Customer shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these terms:
  - 2.4.1 attempt to copy, rebrand, resell, modify, duplicate, create derivative works from, frame, mirror, redistribute, republish, download, display, transmit, or distribute all or any portion of the Product or Service (as applicable) in any form or media or by any means;
  - 2.4.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product;
  - 2.4.3 build a Product or Service or service which competes with the Product or Service;
  - 2.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product or Service available to any third party except the Customer Users;
  - 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Product or Service, other than as provided under this Clause 2.
- 2.5 Customer shall provide Atvero with:
  - 2.5.1 all necessary co-operation in relation to these terms; and
  - 2.5.2 all necessary access to such information as may be required by Atvero;in order to provide the Product or Services.
- 2.6 Customer shall:
  - 2.6.1 comply with all applicable laws and regulations with respect to its activities under these terms;
  - 2.6.2 carry out all other Customer responsibilities set out in these terms in a timely and efficient manner; and

- 2.6.3 obtain and shall maintain all necessary licences, consents, and permissions necessary for Atvero, its contractors and agents to perform their obligations under these terms, including without limitation to the use of the Product or Services.
- 2.7 The rights provided under this Clause 2 are granted to Customer only, and shall not be considered granted to any subsidiary or holding company of Customer.
- 2.8 Atvero may provide other services to the Customer from time to time under the Order Confirmation and upon these terms.
3. **ADDITIONAL USER ACCOUNTS**
- 3.1 Customer may, from time to time during any Services' Period, purchase additional User Accounts in excess of the number agreed in the Order Confirmation and Atvero shall grant access to the Product to such additional Customer Users in accordance with the additional Order Confirmation and provisions of these terms.
- 3.2 The Customer shall advise Atvero of the number of Customer Users of the Product.
4. **PROVISION OF PRODUCT AND SERVICES**
- 4.1 Atvero shall, during the Subscription Period, provide the Product and Services to Customer on and subject to the terms of these terms.
- 4.2 Atvero will, as part of the Product and at no additional cost to Customer provide Customer with Atvero's standard customer support services in accordance with Atvero's Support Policy as set out in Schedule 1. Atvero may amend the Support Policy in its sole and absolute discretion from time to time.
- 4.3 Atvero reserves the right to monitor the use of the Product or Service by Customer for the purposes of providing a better service to Customer and to ensure adherence to these terms.
- 4.4 Atvero shall, in providing the Product or Service and monitoring the use of it, comply with its Privacy Policy available at [www.Atvero/gdpr-and-privacy/](http://www.Atvero/gdpr-and-privacy/) or such other website address as may be notified to Customer from time to time, as may be amended from time to time by Atvero in its sole discretion.
5. **MATERIAL CREATED**
- 5.1 Customer shall own all right, title and interest in and to all of the material created by the use of the Product or Service and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of this material. Atvero does not endorse any of the material.
- 5.2 Except as provided under these terms, Atvero shall not be responsible for any loss, destruction, alteration or disclosure of material howsoever caused.
6. **ATVERO'S OBLIGATIONS AND WARRANTIES**
- 6.1 Atvero undertakes that the Product and the Services will be performed substantially in accordance with the Order Confirmation and these terms and with reasonable skill and care.

- 6.2 The undertaking in 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Product or Service contrary to Atvero's instructions, or modification or alteration of the Product or Service by any party other than Atvero or Atvero's duly authorised contractors or agents. If the Product or Service does not conform with the foregoing undertaking, Atvero will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 6.1
- 6.3 Notwithstanding the foregoing in Clause 6.2, Atvero does not warrant that Customer's use of the Product or Service will be uninterrupted or error-free, fit for a particular purpose or able to achieve a particular result, or that the Product or Service will meet Customer's requirements; and
- 6.4 Atvero warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms.
- 6.5 Notwithstanding the above, Atvero does not warrant that the Product or Service will be free from any malware or other programme designed to gain authorised access to data files or to disrupt, damage, or adversely affect the operation of computer software, hardware or network.
- 6.6 Atvero shall not be responsible for any breach of Customer server or network security by any third parties and Atvero shall not be liable for any loss or damage resulting from any such breach.

## 7. CHARGES AND PAYMENT

- 7.1 Customer shall pay the Fees to Atvero for the Product or Service in accordance with the Order Confirmation.
- 7.2 The Fees may vary from time to time, but shall not change during the Services Period, and shall be payable on an annual basis in advance, unless otherwise agreed between Customer and Atvero.
- 7.3 Customer shall pay all invoices within 30 days from the invoice date (or as set out in the Order Confirmation).
- 7.4 In addition to the Fees may also be subject to valued added tax ("VAT").
- 7.5 If Atvero has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of Atvero:
- 7.5.1 Atvero may, without liability to Customer, disable access to all or part of the Product or Service and Atvero shall be under no obligation to provide any or all of the Product or Services while the invoice(s) concerned remain unpaid; and
- 7.5.2 charge interest on any amount unpaid, such interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% above the 1-month LIBOR for the applicable currency, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.6 All amounts and fees stated or referred to in these terms:

7.6.1 shall be payable in such currency as provided on the Order Confirmation; and

7.6.2 except where Atvero is unable to provide the Product or Service for 7 consecutive days or more without being caused by force majeure, are non-cancellable and only refundable for the unused term of the Product or Service.

## 8. PROPRIETARY RIGHTS

8.1 Customer acknowledges and agrees that Atvero and/or its licensors own all intellectual property rights in the Product and Services. Except as expressly stated herein, these terms do not grant Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Product or Services

## 9. DATA PROTECTION

9.1 Each party agrees that it shall adhere to the terms of any relevant data protection laws in relation to any personal data that the parties may exchange under this Agreement.

## 10. CONFIDENTIALITY

10.1 Each party may be given access to information from the other party that is proprietary or confidential, either clearly labelled as such or identified as such in this clause ("Confidential Information"), in order to perform its obligations under these terms. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

10.1.4 is independently developed by the receiving party, where that independent development can be shown by written evidence.

10.2 Subject to Clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these terms.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these terms.

10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 Customer acknowledges that details of the Product or Services constitute Atvero's Confidential Information.
- 10.7 Atvero acknowledges that the Customer materials are the Confidential Information of Customer.
- 10.8 Neither party shall make, or permit any person to make, any public announcement concerning these terms without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this Clause 10 shall survive termination of these terms, however arising.

## 11. INDEMNITY

- 11.1 Customer shall defend, indemnify and hold harmless Atvero against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Customer's use of the Product or Services.
- 11.2 Atvero shall defend Customer, its officers, directors and employees against any claim that the Product or Services infringe any intellectual property rights effective as of the Effective Date, and shall indemnify Customer for any amounts awarded against Customer in judgment or settlement of such claims, provided that:
- 11.2.1 Atvero is given prompt notice of any such claim;
- 11.2.2 Customer provides reasonable co-operation to Atvero in the defence and settlement of such claim, at Atvero's expense;
- 11.2.3 Atvero is given sole authority to defend or settle such claim; and
- subject to a total limit of £2,000,000 in respect of the aggregate of all claims under this clause 12.2.
- 11.3 In the defence or settlement of any claim, Atvero may procure the right for Customer to continue using the Product or Service, replace or modify the Product or Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate these terms on 2 UK business days' notice to Customer without any additional liability or obligation to pay liquidated damages or other additional costs to Customer.
- 11.4 In no event shall Atvero, its employees, agents and sub-contractors be liable to Customer to the extent that the alleged infringement is based on:
- 11.4.1 a modification of the Product or Service by anyone other than Atvero;
- 11.4.2 Customer's use of the Product or Service in a manner contrary to the instructions given to Customer by Atvero; or

- 11.4.3 Customer's use of the Product or Service after notice of the alleged or actual infringement from Atvero or any appropriate authority.
- 11.5 This clause 11 states Customer's sole and exclusive rights and remedies, and Atvero's (including Atvero's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any intellectual property right.
- 12. **LIMITATION OF LIABILITY**
- 12.1 Except as expressly and specifically provided in these terms:
  - 12.1.1 Customer assumes sole responsibility for results obtained from the use of the Product or Service by Customer, and for material created from such use. Atvero shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Atvero by Customer in connection with the Product or Service, or any actions taken by Atvero at Customer's direction;
  - 12.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these terms; and
  - 12.1.3 the Product is provided to Customer on an "as is" basis.
- 12.2 The extent of the parties' liability under or in connection with these terms (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.
- 12.3 Subject to clauses 11.2 and 12.5, Atvero's total liability under or in connection with these terms shall not exceed:
  - 12.3.1 an amount equal to the Fees paid to Atvero in the 12-month period immediately preceding the first incident giving rise to the loss; or
  - 12.3.2 for incidents occurring in the first 12 months of these terms, an amount equal to the paid and projected Fees for that period.
- 12.4 Subject to clauses 11.2 and 12.5, Atvero shall not be liable for any of the following (whether direct or indirect):
  - 12.4.1 loss of profit;
  - 12.4.2 loss of data;
  - 12.4.3 loss of use;
  - 12.4.4 loss of production;
  - 12.4.5 loss of contract;
  - 12.4.6 loss of opportunity;

- 12.4.7 loss of savings, discount or rebate (whether actual or anticipated); or
  - 12.4.8 harm to reputation or loss of goodwill.
- 12.5 Notwithstanding any other provision of these terms, the liability of the parties shall not be limited in any way in respect of the following:
- 12.5.1 death or personal injury caused by negligence;
  - 12.5.2 fraud or fraudulent misrepresentation; or
  - 12.5.3 any other losses which cannot be excluded or limited by applicable law.
- 12.6 If an agreement under an Order Confirmation a Product or Service is terminated, the following will apply:
- 12.6.1 Customer shall no longer have any right to receive access to the Product or Service, but despite that termination, Customer will continue to be liable for any unpaid fees for the Product or Service for the remaining part of a Services' Period as set out in the Order Confirmation.

13. **TERM AND TERMINATION**

- 13.1 This agreement shall, unless otherwise terminated as provided in this Clause 13, commence on the Effective Date and shall continue for the period set out in the Order Confirmation unless otherwise terminated in accordance with the provisions of these terms;
- 13.2 Without affecting any other right or remedy available to it, Atvero may terminate these terms with immediate effect by giving written notice to the Customer if:
- 13.2.1 Customer fails to pay any amount due under these terms on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - 13.2.2 Customer commits a material breach of any other term of these terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 13.2.3 Customer repeatedly breaches any of the terms of these terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these terms;
  - 13.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Customer;
  - 13.2.5 any event occurs, or proceeding is taken, with respect to Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause;
  - 13.2.6 there is a change of control of Customer.

- 13.3 On termination of these terms for any reason:
- 13.3.1 all licences granted under these terms shall immediately terminate and Customer shall immediately cease all use of the Product or Service;
  - 13.3.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
  - 13.3.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. **FORCE MAJEURE**

Atvero shall have no liability to Customer under these terms if it is prevented from or delayed in performing its obligations under these terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Atvero or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Atvero or its sub-contractors, provided that Customer is notified of such an event and its expected duration.

15. **CONFLICT**

If there is an inconsistency between any of the provisions in the main body of these terms and a Schedule to it, the provisions in the main body of these terms shall prevail.

16. **VARIATION**

Atvero may change these terms of use from time to time with immediate effect and shall post any updated terms on [www.atvero.com](http://www.atvero.com).

Notwithstanding the above, Atvero shall not make changes to these terms without Customer's consent that materially changes the provisioning or use of the Product or Service, Atvero or Customer's obligations, indemnities, liabilities, confidentiality or governing law.

17. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. **RIGHTS AND REMEDIES**

Except as expressly provided in these terms, the rights and remedies provided under these terms are in addition to, and not exclusive of, any rights or remedies provided by law.

19. **SEVERANCE**

19.1 If any provision (or part of a provision) of these terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. **ENTIRE AGREEMENT**

20.1 This agreement together with the Order Confirmation constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into these terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms or the Order Confirmation.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.

21. **ASSIGNMENT**

21.1 Customer shall not, without the prior written consent of Atvero, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms.

21.2 Atvero may assign this agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this agreement or to any entity controlled by, that controls, or is under common control with Atvero.

21.3 Atvero shall have the right to assign, transfer or sub-contract its support obligations under this agreement to a subsidiary, affiliated or associated company to Atvero or to a third party that in Atvero's reasonable opinion has the qualifications and know-how to provide the support under the Support Policy as set out in this agreement.

22. **NO PARTNERSHIP OR AGENCY**

Nothing in these terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. **THIRD PARTY RIGHTS**

This agreement does not confer any rights on any person or party (other than the parties to these terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. **NOTICES**

24.1 Any notice required to be given under these terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order Confirmation, or such other address as may have been notified by that party for such purposes.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9:00 am on the first UK business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

25. **GOVERNING LAW AND JURISDICTION**

25.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1 – SUPPORT POLICY