



Atlas License Agreement

Please read this Agreement before accepting these Terms and Conditions, or installing and/or using Atlas. By installing and/or using Atlas, you, “Customer”, accept and agree to these Terms and Conditions, even if you do not click to accept the terms and conditions. DO NOT INSTALL OR ACCESS ATLAS IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS.

These Terms and Conditions, together with Purchase Order, Statement of Work or other document reflecting the products and/or services desired by Customer, are binding on Customer with Customer’s utilization of the click to accept process, signature, or the installation or use of Atlas. Installation and/or use of Atlas affirms the authority of the Customer’s agent or representative to act on Customer’s behalf and Customer’s intent to be bound by the terms contained herein. These terms are binding upon Customer with any installation or use of Atlas or Expertise on Demand.

Subscription Services. Provided that the Customer pays the fees in advance as set forth in the PO, SOW or other mutually executed document (the “Subscription Fees”) that describes the Atlas services being provided under this Agreement, KGI shall provide to Customer access to Atlas Services and Expertise on Demand, as set forth herein (the “Subscription Services” or “Services”) for the Term stated. Commencing on the Effective Date and subject to terms and conditions of this Agreement, KGI grants Customer the right and license to use and access the Subscription Services solely for Customer’s internal use. Upon expiration or earlier termination of this Agreement, Customer shall promptly cease using the Services, the KGI Materials, and the KGI IP. Customer’s right and license to use and access ends upon expiration and/or termination.

The foregoing authorization is non-exclusive and non-transferable. KGI retains all of its rights to exploit, commercialize, and otherwise use the Subscription Services and the KGI Materials for any other application or purpose, including the licensing of the Services and the KGI Materials to third parties. As used herein, “KGI Materials” means the Products, the Documentation, KGI’s systems, and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by KGI in connection with the Products or the Services or that otherwise comprise or relate to the Products or the Services. “KGI Materials” do not include Customer’s Data, information or documents. Customer acknowledges and agrees that KGI retains sole and exclusive ownership of all rights, title, and interest in and to KGI’s Confidential Information, KGI Materials, and any software or other technology, methods or processes used to provide the Subscription Services.

Customer acknowledges and agrees that KGI owns exclusively all right, title, and interest in and to the KGI Materials, the Services, and all underlying content, algorithms, code, architecture and associated intellectual property rights (the “KGI IP”) and any other intellectual property derived under, used in, generated, or otherwise created, conceived, or made by KGI, or its employees, agents, or representatives in connection with this Agreement, including any improvements or modifications to, or derivative works of, the KGI Materials, the Services, or the KGI IP developed by KGI.

Level of Service. Services and KGI Materials are available only during the Subscription Period up to the Level of Service purchased. Expertise on Demand is available only to the extent of the level of service purchased and for the hours that are properly scheduled during the Subscription Period. New products, tools, applications or services added to the KGI Materials or Services during the Term and accessed by or for Customer shall be covered by the terms of this Agreement without further modification or amendment of this Agreement. KGI may change the subscription Fee upon 60 days’ notice prior to renewal. Failure to timely pay the renewal fee will result in a loss of access to the renewal services with no liability to KGI. In addition to all other remedies it has available to it at law or in equity, KGI may suspend the provision of Subscription Services during any period when Customer has failed to timely pay KGI any amount due under this Agreement. Customer bears all responsibility for protecting Customer Data and ensuring that it is handled in compliance with all applicable laws. KGI has no responsibility whatsoever for Customer Data.

Service and System Control. KGI reserves the right, in its sole discretion, to make any changes to the Subscription Services and KGI Materials that it deems necessary or useful to: (a) maintain or enhance (1) the quality or delivery of KGI’s services to its customers, (2) the competitive strength of or market for KGI’s services or (3) the Services’ or KGI Materials’ cost efficiency or performance; or (b) to comply with applicable law.

No Deductions or Setoffs. All amounts payable to KGI under this Agreement shall be paid by Customer to KGI in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

Refunds. Subscription Services purchased hereunder are non-refundable upon a Customer termination. KGI will provide Customer with a refund of any unused portion of the Subscription Services only if (i) Customer terminates the Agreement for KGI’s failure to provide the Subscription Services as described, after providing KGI with notice of the alleged failure and KGI has failed to cure such breach within thirty (30) days; or (ii) KGI terminates the Subscription Services for convenience upon thirty (30) days’ written notice.



providing access to systems and connectivity. KGI will not be responsible for failure to meet service levels where Customer fails to provide adequate access and connectivity. Customer is responsible for obtaining and maintaining all telecommunications, broadband and computer equipment, software, licenses and other materials and services needed to access and use the Services and for paying all charges related thereto. Customer shall indemnify and hold harmless KGI from all costs, claims, expenses, damages, and/or liability that KGI incurs as a result of any failure or claimed failure by Customer to provide the rights referenced in this paragraph.

Confidentiality. In connection with this Agreement each Party (as the “Disclosing Party”) may disclose or make available Confidential Information to the other party (as the “Receiving Party”). The Receiving Party may use the Confidential Information only as expressly permitted by the terms of this Agreement in exercising its rights or performing its obligations under this Agreement. The Receiving Party may not disclose or permit access to Confidential Information other than to its employees, agents, and representatives who: (1) need to know such Confidential Information in order for the Receiving Party to exercise its rights or perform its obligations hereunder, and (2) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations hereunder. The Receiving Party shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its own confidential information and in no event less than a reasonable degree of care, and shall be responsible and liable for any of its employees’, agents’, and representatives’ non-compliance with these terms.

“Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers as confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing, the KGI IP is the Confidential Information of KGI and the Customer Data is the Confidential Information of Customer. Confidential Information does not include information that: (1) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (2) was or becomes generally known by the public other than by the Receiving Party’s or any of its employees’, agents’, or representatives’ breach of this Agreement; (3) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (4) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

KGI Representations, Warranties and Covenants. KGI represents, warrants, and covenants to Customer as follows:

The Services provided under this Agreement:

(1) conform substantively to the Products’ manuals, training materials, and product descriptions (collectively, the “Documentation”) provided to Customer when used by Customer in accordance with the terms of this Agreement and the Documentation; (2) are free of viruses, Trojan horses, worms, spyware, or other such malicious code (“Malicious Code”), except for any Malicious Code contained in Customer Data uploaded to the Products from Customer; and (3) do not infringe any U.S. patents, copyrights, or trademarks when used by Customer in accordance with the terms of this Agreement and the Documentation.

(b) KGI (1) owns all right, title and interest in and to the Products or has rights in the Products sufficient to license the use of the Products and services to Customer in accordance with the terms of this Agreement, and (2) shall comply with all applicable laws in connection with delivering the Services required of KGI under this Agreement and providing Customer access to the Products.

Disclaimer of Warranties. Except for the express warranties set forth elsewhere in this Agreement, KGI is providing the KGI Materials and Services “as is” and hereby disclaims all warranties, whether express, implied, statutory or other, and KGI specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and all warranties arising from course of dealing, usage or trade practice. Without limiting the foregoing, KGI makes no warranty of any kind that the KGI Materials and Services, or results of the use thereof, will meet Customer’s or any other person’s or entity’s requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system or other services (except if and to the extent expressly set forth in the Documentation), or be secure, accurate, complete, or error free. Any representation or warranty of or concerning any Third-Party Offerings is strictly between Customer and the Third-Party Provider of the Third-Party Materials.

Indemnity by Customer. Customer shall indemnify and defend KGI, its affiliates, and each of their respective shareholders, members, managers, directors, officers, employees, agents, and representatives (collectively, the “KGI Indemnified Parties”) against, and hold all of them harmless from any liability, expense, loss, cost, deficiency, fine, penalty, or damage of any kind or nature (including reasonable attorneys’ fees and including from any suits, claims or demands) arising out of: (a) any negligence or intentional misconduct on the part of Customer or its employees, agents, or representatives; (b) any claim that attempted Improvements by customer infringe upon the copyright, trademark, patent, or other intellectual property or proprietary rights of any third party; (c) the breach by Customer of any of its representations, warranties, covenants, or other obligations in this Agreement; and (d) the violation of any laws by Customer or any of its employees, agents, or representatives.



intentional misconduct on the part of KGI or its employees, agents, or representatives; (b) any claim that the Services, the then-current version of the Products, or the KGI IP infringe upon the copyright, trademark, patent, or other intellectual property or proprietary rights of any third party; (c) the breach by KGI of any of its representations, warranties, covenants, or other obligations in this Agreement; and (d) the violation of any law by KGI or any of its employees, agents, or representatives.

Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement to the contrary, the total liability, in the aggregate of KGI, its affiliates, and their respective officers, directors, shareholders, members, managers, and employees for any and all claims, losses, costs and damages, including attorneys' fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to this Agreement, from any cause or causes shall not exceed the total compensation actually received for subscription services by KGI hereunder in the 3-month period immediately preceding the date of the alleged liability. In no event will the Parties, or their respective officers, directors, partners and employees be liable for consequential, incidental, indirect, punitive or special damages, or loss of profits, data, business or goodwill, regardless of whether the liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose, or otherwise, and even if a Party is advised of the likelihood of such damages.

Customer acknowledges and agrees that the fees established for Atlas Services do not account for the risks associated with Customer's business, and Customer, not KGI, shall be responsible for assuring that the Services are suitable for the purpose intended by Customer, and that all products and other services and operations of Customer are not adversely affected by the Services, even if performed in a negligent or non-compliant manner. KGI will not be liable for any loss or damage, including loss of data, arising directly or indirectly from Customer's failure to maintain backups, the security of Customer's account and passwords; or, for unauthorized access to Customer's account.

Customer Content. Customer is solely responsible for: (a) Customer's users' compliance with this Agreement, (b) taking steps to maintain appropriate security, protection, and backup of Customer's data or stored content ("Customer Content"), (which may include the use of encryption technology to protect Customer Content from unauthorized access), and (c) routine archiving of Customer Content. Customer is responsible for securing, protecting and maintaining the confidentiality of Customer's account usernames, passwords and access tokens.

Assignment. Customer may not assign, transfer, or delegate any of its rights, duties or obligations hereunder, in whole or in part, without the prior written consent of KGI. Any assignment, transfer, or delegation made by Customer without complying with this section shall be null and void and permit KGI to terminate this Agreement immediately upon providing written notice to Customer. Any change of ownership of Customer, whether by way of asset purchase, stock purchase, merger or other operation of law, shall be considered an assignment of this Agreement. This Agreement shall bind the parties, their permitted successors, heirs, and assigns.

Compliance with Laws. Each party will be responsible for compliance with all applicable legal requirements, including all export control laws, related to its performance of its obligations hereunder and in the operation of its business.

Force Majeure. Except for Customer's payment obligations hereunder, neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war, riots, embargoes, fires, floods, pandemics, earthquakes, or strikes (each a "Force Majeure Event") provided that such party gives prompt written notice to the other party of the Force Majeure Event. The time for performance will be extended for a period equal to the duration of the Force Majeure Event.

Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the state of Indiana without regard to conflict of law principles. All disputes arising out of or related to this Agreement shall be exclusively brought and exclusively maintained in the State courts located in Marion County, Indiana, or the United States District Court for the Southern District of Indiana, Indianapolis Division (or upon appeal, to the appellate courts of corresponding jurisdiction to such State or Federal court). Each party consents to and waives any objection to the exclusive personal jurisdiction and venue of such State and Federal courts. Each of the Parties hereby waives trial by jury in any Proceeding or counterclaim brought by any Party against another Party on any matter arising out of or in any way connected with this Agreement

Independent Contractor. In all matters relating to this Agreement, Customer and KGI shall act as independent contractors. Neither party shall represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity.

Taxes. To the extent that the Atlas Subscription Service provided hereunder is subject to any sales, use or other tax or fees related to this transaction, however designated (except taxes based on KGI's net income) and regardless of the jurisdiction that charges such taxes, payment of such taxes, if any, is Customer's responsibility. If the taxing authority seeks collection from KGI of any taxes in connection with this Agreement (except taxes based on KGI's net income), then Customer shall indemnify and reimburse KGI upon receipt of notice from KGI that KGI has paid such tax.

Entire Agreement, Modifications, Severability, Waiver, Survival. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements with respect to such subject matter, whether express or implied, written or oral. Any purchase orders issued by Customer shall be deemed to be for Customer's convenience only and notwithstanding acceptance of such orders by KGI, shall in no way change, modify, or add to the terms and conditions of this Agreement.



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against any Party by reason of its preparation. Section headings used in this Agreement are for reference purposes only and shall not be used in the interpretation hereof. If one or more of the provisions contained in the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. In this event, the Parties may replace the unenforceable provision with a mutually agreeable enforceable provision that preserves the original intent and position of the Parties. Any other provisions that survive by their nature shall survive the expiration or termination of the Agreement for any reason. No term or provision of the Agreement shall be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by any Party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach or default. Sections that by their nature should survive the Agreement shall all survive expiration or termination of this Agreement, including but not limited to the sections on indemnification and limitations of liability.

Atlas T&C 5-10803

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