



# Managed Services Terms



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## PART C

### MANAGED SERVICES TERMS

Where, pursuant to the Agreement, the Customer requests or requires support and maintenance services to be provided by ATSG and ATSG is willing to provide Managed Services to the Customer, the terms of this Part C shall also apply.

#### AGREED TERMS:

##### 1 Interpretation

The definitions and rules of interpretation in the Master Services Agreement and in the terms set out in this Order shall apply.

##### 1.1 Definitions specific to this Part C

**ATSG's Account Team:** the individuals appointed by ATSG from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this Part C.

**ATSG's System:** means the information and communications technology system to be used by ATSG (or any of its sub-contractors) in performing the Managed Services, including the Hardware, the Software, the Customer-site Equipment and communications links between the Hardware and the Customer-site Equipment and the Customer's Operating Environment.

**Customer-site Equipment:** means any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively or managed by ATSG as part of the Managed Services, but excluding the Hardware.

**Customer's Operating System:** means the Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with ATSG's System in order for the Customer to receive the Managed Services, but excluding the Customer-site Equipment.

**Exit Plan:** has the meaning given in clause 10 of this Order, as such exit plan is updated and amended by the parties from time to time in writing.

**Good Industry Practice:** means the standards that fall within the upper quartile for the provision of business-critical managed services substantially similar or identical to the Managed Services, having regard to factors such as the nature and size of the parties, the Service Level Agreement, the term, the pricing structure and any other relevant factors.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by ATSG (or any of its sub-contractors) to deliver any of the Managed Services to the Customer.

**Incidents:** means any Vulnerability, Virus or security incident which:

(a) may affect ATSG's network and information systems such that it could potentially affect the Customer; or

(b) is reported to ATSG by the Customer.

**Maintenance Services:** means any error corrections, updates and upgrades that ATSG may provide or perform with respect to the Managed Services, as well as any other support or training services to be provided to the Customer under this Order, all as described in Annex 2 to this Order.

**Managed Services:** means the service(s) described on the Order to be performed by ATSG in accordance with this Order.

**Managed Services Term:** means the period set out on the Order and including any renewals as agreed pursuant to the terms set out in this Order.

**Mitigate:** means the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the Customer in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly.

**Replacement Supplier:** means the Customer or any entity with which the Customer contracts (or proposes to contract) to provide services similar to all or any of the Managed Services, Maintenance Services and Offboarding Services upon the expiry or termination of all or any part of this Agreement or this Order for any reason.

**Service Level Agreement or SLA:** means the service level commitments in respect of the Managed Services as more particularly described in Annex 1 to this Order.

**Onboarding Services:** means the due diligence, configuration and related work referred to in clause 2 of this Order to be performed by ATSG to set up the Managed Services.

**Software:** means any software used by ATSG (or any of its sub-contractors) to provide the Managed Services to the Customer whether owned by a third party (being "**Third Party Software**"), by the Customer (being "**Customer Software**") or by ATSG (being "**ATSG Software**")

**Offboarding Services:** the services to be provided by ATSG to implement the Exit Plan.

**User(s):** means any employee(s), agent(s), consultant(s), contractor(s), or vendor(s) authorised by Customer to access and use the Managed Services subject to the terms and conditions of this Agreement.

## 2 Onboarding Services

2.1 ATSG's Account Team shall consist of the personnel listed on the Order (or otherwise stipulated by ATSG. ATSG shall use reasonable endeavours to ensure continuity of its personnel assigned to the Managed Services for the duration of the Onboarding Services.

2.2 ATSG shall use reasonable endeavours to perform the Onboarding Services in accordance with the timetable set out in the Order and to meet the performance dates set out in the Order (if any), but any such timetable and dates shall be estimates only, and time shall not be of the essence in the terms set out in this Order.

2.3 When ATSG considers that the Managed Services are ready for activation it shall so notify the Customer. Within 5 Business Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the description of the Managed Services set out on the Order. If the Managed Services fail in any material respect to conform with the Managed Services Specification, the Customer shall give ATSG a detailed description of any such non-conformance ("**Error**") in writing, within such 5 Business Day review period.

2.4 ATSG shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, notify the Customer that the Managed Services are ready for activation. The provisions of clause 2.3 above and this clause 2.4 shall then apply again, up to 3 additional times. If ATSG is unable to correct the Error after 3 attempts, either party may terminate the Order in respect of the Managed Services set out in this Order with immediate effect by giving written notice to the other party, without further liability to the other in respect of the Error or failure to provide the Managed Services in accordance with this Order.

2.5 If the Managed Services conform with the description set out in the Order or if the Customer does not provide any notification of Errors within the 5 Business Day review period described in clause 2.3 above, the Managed Services shall be deemed accepted by the Customer as from the date of the notification that the Managed Services conform or expiry of such 5 Business Day review

period without notification of any Errors (in each case the "**Acceptance Date**").

## 3 Managed Services

3.1 ATSG shall provide the Managed Services from the agreed start date of the Onboarding Services until expiry or termination of the Managed Service(s) Term.

3.2 The Service Level Agreement shall apply with effect from the start of the first complete calendar month occurring at least 30 days after the Acceptance Date.

3.3 The Customer shall not store, distribute or transmit through the Managed Services any material that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity; and/or
- (e) is otherwise illegal or causes damage or injury to any person or property

3.4 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

3.5 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by ATSG in writing. This includes informing ATSG promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, ATSG shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services in whole or in part).

3.6 Unless otherwise stipulated in the Order or between the parties in writing the Customer shall not provide the Managed Services directly or indirectly to third parties.

3.7 ATSG reserves the right, in its absolute discretion, to:

- (a) modify ATSG's System, its network, system configurations or routing configuration; or
- (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network,

provided and to the extent that this has no material adverse effect on ATSG's ability to perform its obligations under this Order and its provision of the Managed Services or the Service Level Agreement. If such changes will have a material adverse effect, ATSG shall notify the Customer and the parties shall implement any necessary changes to the Managed Services by agreement in writing with each other.

#### **4 ATSG's obligations**

- 4.1 ATSG undertakes that the Managed Services will be performed with all reasonable skill and care and the provisions of this Agreement and that the Managed Services will be provided substantially in accordance with the description of the Managed Services on the Order.
- 4.2 Clause 4.1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to ATSG's instructions, including as set out in this Agreement.
- 4.3 If the Managed Services do not conform with clause 4.1, ATSG shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 4.1 of this Part C.
- 4.4 Notwithstanding the foregoing, ATSG does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.

#### **5 Security**

- 5.1 ATSG shall: ensure at all times that appropriate safety and security systems, policies and procedures are maintained and enforced to prevent unauthorised access or damage to, and to ensure the business continuity of, any and all the Managed Services, ATSG's System and related networks or resources and the Customer Data, in accordance with Good Industry Practice, including an incident management process which shall enable ATSG, as a minimum, to discover and assess Incidents, and to prioritise those Incidents.

5.2 ATSG shall ensure that ATSG's System is designed, maintained and upgraded at all times so as to Mitigate against Incidents. The parties agree that if Incidents are detected or discovered, each of them shall co-operate with the other to Mitigate the Incident and, particularly if the Incident causes or threatens the loss of operational efficiency, loss or corruption of Customer Data, or the reduced management of risks posed to the security of ATSG's System, or the Customer's Operating Environment, the parties shall assist each other to mitigate any losses and restore the Managed Services to their original operating and security efficiency. The costs of complying with this clause 5.2 of this Order shall be apportioned between the parties on a pro rata basis according to fault.

5.3 The Customer shall promptly inform ATSG if it suspects or uncovers any Incident and, subject to the cost allocations in clause 5.2 of this Order, shall use all commercially reasonable endeavours to promptly mitigate such Incident.

5.4 ATSG shall:

- (a) notify the Customer immediately it becomes aware of any Incident and respond to all queries and requests for information from the Customer about any Incident, whether discovered by ATSG or the Customer, in particular bearing in mind the extent of any reporting obligations the Customer may have under applicable data protection or cybersecurity legislation and that the Customer may be required to comply with statutory or other regulatory timescales;
- (b) at the Customer's cost, promptly cooperate with any request for information made in respect of:
  - (i) any Incident;
  - (ii) any requests for information, or inspection, made by a regulator with competent jurisdiction over the Customer (including in connection with any applicable data protection or cybersecurity legislation).

5.5 ATSG shall follow its standard archiving and security procedures for Customer Data, as reported to the Customer from time to time.

5.6 ATSG shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage

to Customer Data, the Customer's sole and exclusive remedy shall be for ATSG to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data to be maintained by ATSG (or where ATSG is not responsible for backup the most recent backup made by the Customer where the Customer provides all such cooperation reasonably required by ATSG) in accordance with its standard archiving and security procedures as updated from time to time. ATSG shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by ATSG to perform services related to Customer Data maintenance and back-up) or where this is due to any act or omission of the Customer.

## **6 Customer's obligations**

6.1 The Customer shall:

- (a) provide ATSG with:
  - (i) all necessary co-operation in relation to the provisions of this Order; and
  - (ii) all necessary access to such information as may be reasonably required by ATSG from time to time,
- in order to provide the Managed Services, including Customer Data, security access information, and (subject to providing any confidentiality undertakings reasonably required by the Customer) software interfaces to the Customer's other business applications;
- (b) provide such personnel assistance, including such Customer personnel, as may be reasonably requested by ATSG from time to time;
- (c) appoint the Customer's manager (as indicated on the Order), who shall have the authority to contractually bind the Customer on all matters relating to its obligations under this Order. The Customer shall use reasonable endeavours to ensure continuity of the Customer's manager, but has the right, in its absolute discretion, to replace them from time to time where reasonably necessary in the interests of the Customer's business;

- (d) comply with all applicable and regulations with respect to its activities under this Agreement; and
- (e) carry out all other Customer responsibilities and obligations set out in this Order (including in any Project Plan) in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties or performance of the Customer's responsibilities and obligations, ATSG may adjust any timetable or delivery schedule set out in this Agreement (including the Project Plan) as reasonably necessary and/or shall be entitled to an equitable adjustment to the date or dates in any time schedule or, if ATSG incurs additional costs to avoid or mitigate the effects of Customer's failure or delay in providing such assistance or performance of its responsibilities and obligations, ATSG shall be entitled to make an equitable adjustment to the Charges (or a combination of the two as appropriate). The starting basis for determining the equitable adjustment to the Charges for the purposes of this clause 6.1(e) shall be ATSG's reasonable increased costs to the extent the same cannot be Mitigated.

## **7 Payment**

- 7.1 The Customer shall pay the Charges for the Onboarding Services and the Managed Services, each as set out on the Order.
- 7.2 ATSG shall invoice the Customer in accordance with the provisions set out on the Order.
- 7.3 If the Managed Services are to be provided on a subscription payment model for each User and each Device the Customer shall pay the Subscription Fee for the subscriptions purchased in accordance with the following paragraphs:
  - (a) ATSG shall be entitled to increase the Subscription Fee and the fees payable in respect of any additional User subscriptions ordered or used by the Customer by a percentage made up of (i) the annual percentage increased in the Consumer Price Index announced in January each year plus (ii) 2.5% on or after 1st April each year;
  - (b) unless otherwise stated on the Order, the Customer shall pay all Subscription Fees and any other sums due from the

Customer to ATSG within 14 days of invoice date by direct debit (direct debit details are available on request);

- (c) if the Customer wishes to purchase additional subscriptions, the Customer shall notify ATSG in writing. ATSG shall evaluate such request for additional User subscriptions and respond to the Customer with approval or rejection of the request. Where ATSG approves the request, ATSG shall activate and begin charging the Customer for the additional User subscriptions. If the Customer begins to use more User subscriptions than ordered from ATSG, ATSG shall be entitled to charge for usage from the commencement of the date the subscription commences;
- (d) the Customer shall not be entitled (without ATSG's prior written consent) to reduce the number of Usersubscriptions below the original number purchased under this Order.

7.4 The parties will otherwise comply with the provisions set out in clause 8 of the Master Services Agreement.

## **8 Change control in respect of the Managed Services**

8.1 If either party wishes to change the scope of the Managed Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.

8.2 If either party requests a change to the scope or execution of the Managed Services, ATSG shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of this Order and the Agreement.

8.3 If ATSG requests a change to the scope of the Managed Services, the Customer shall not unreasonably withhold or delay consent to it.

8.4 If either party wishes the other party to proceed with the relevant change referred to in clause 8.2, ATSG

has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its Charges, the Project Plan and any other relevant terms of this Agreement to take account of the change.

## **9 Term and termination**

9.1 The Term for the provision of the Managed Services shall commence on the Managed Services Start Date. Unless terminated earlier in accordance with this clause 9 or the provisions of clause 13 of the Master Services Agreement, the terms set out in this Order shall continue in force for the Managed Services Term and shall automatically extend for the Renewal Term at the end of the Managed Services Term and at the end of each Renewal Term. Either party may give written notice to the other party, not later than 90 days before the end of the Managed Services Term or the relevant Renewal Term, to terminate this Order and the provision of the Managed Services at the end of the then current Managed Services Term or the relevant Renewal Term, as the case may be. The Term of any additional User subscriptions purchased at any time after the Managed Services Start Date shall align with the Managed Services Term and Renewal Term so that the Term of any additional User subscriptions and the Managed Services Term and Renewal Term shall be coterminous.

9.2 On expiry or termination of this Order for any reason:

- (a) ATSG shall immediately cease provision of the Onboarding Services, Managed Services and any Maintenance Services but may provide Offboarding Services for a further period in accordance with clause 10 of these terms;
- (b) (subject to clause 9.3) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party and the Customer shall cease to use any IP address licensed to the Customer by ATSG (if any); and
- (c) if ATSG receives, no later than 10 days after the effective date of the expiry or termination of this Order for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data, ATSG shall use commercially reasonable endeavours to deliver the backup to the Customer as soon as reasonably possible after its

receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer, provided that the Customer has at that time paid all Charges and expenses outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). Once such 10-day period has expired or ATSG has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), ATSG shall (subject to clause 9.3) promptly expunge from ATSG's System and otherwise destroy or dispose of all of the Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by ATSG in returning and disposing of Customer Data and expunging it from ATSG's System.

- 9.3 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 9.2, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. All confidentiality obligations under this Agreement shall continue to apply to any such retained documents and materials for as long as

any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

## 10 Offboarding Services

- 10.1 ATSG shall, on request from the Customer and at the Customer's cost at any time after the expiry of 6 months from the Acceptance Date, prepare or update a plan for the orderly transition of the Managed Services from ATSG to the Customer's nominated Replacement Supplier ("**Exit Plan**").
- 10.2 The Customer may, at any time before expiry or termination of all or any part of this Order for any reason request ATSG to provide the Offboarding Services or otherwise to offer reasonable assistance in transitioning the Managed Services to a Replacement Supplier (by providing the Offboarding Services). ATSG shall (at the Customer's cost and at ATSG's then standard charges for such services) provide such Offboarding Services for a maximum period of 3 months or such other period reasonably stipulated by ATSG, or until expiry or termination of all or any part of this Order for any reason.
- 10.3 On expiry or termination of all or any part of this Agreement or this Order for any reason ATSG shall promptly produce a list of the Customer-site Equipment and any other materials of the Customer which it has been using to provide the Managed Services.

**Annex 1**  
**Service Level Agreement**

- 1** The Managed Services shall be considered as unavailable only:
- (a) during periods of Priority 1 or Priority 2 incidents in accordance with paragraph 4.4 of Annex 2; and
  - (b) during periods of unplanned Maintenance in accordance with paragraph 3.1 of Annex 2.
- 1.1 For the avoidance of doubt, the Managed Services shall not be considered as "unavailable" during Maintenance Events as described in paragraph 3.1 of Annex 2, Customer-caused outages or disruptions, or outages or disruptions attributable in whole or in part to Force Majeure Events within the meaning of clause 18.1 of the Master Services Agreement.



## **Annex 2**

### **Maintenance Services**

#### **2 Training**

- 2.1 If the Customer requests training ATSG may provide training subject to its agreement to such number of employees of the Customer as is specified in, and is otherwise in accordance with, the Project Plan at ATSG's then current rates for provision of training.

#### **3 Maintenance Events**

- 3.1 Maintenance work that may require interruption of the Managed Services ("**Maintenance Events**") shall not normally be performed during Normal Business Hours. ATSG may interrupt the Managed Services outside Normal Business Hours for maintenance provided that it shall use reasonable endeavours to give the Customer at least 3 days' advance written notice.
- 3.2 Any Maintenance Events that occur during Normal Business Hours, or that occur with less notice than required by paragraph 3.1, and which were not requested by the Customer, shall be considered downtime and ATSG shall not be liable to the Customer for any such downtime.

#### **4 Managed Support Services**

- 4.1 Should the Customer determine that the Managed Services include a defect, the Customer may file error reports or support requests. ATSG shall provide technical support services only to designated and agreed members of the Customer's team.
- 4.2 ATSG shall accept voicemail, e-mail and web form-based incident submittals 24 hours a day, 7 days a week but unless otherwise agreed by ATSG in writing Response and Target resolution times shall only be enacted during Normal Business Hours. ATSG shall accept telephone calls for English language telephone support during Normal Business Hours. ATSG shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Customer. ATSG shall use reasonable endeavours to respond to and resolve all support requests within the time periods specified below, according to priority.
- 4.3 ATSG shall determine the priority of any incident in accordance with its then current Service Level Agreement as set out here: <https://www.ATSGltd.com/client-information/service-level-agreements> or as amended or updated from time to time.
- 4.4 If a Priority 1 or Priority 2 incident has not been "Respond Within" the target set out in the SLA, the incident shall be escalated to Service Management. If the incident is not resolved, then after each successive increment of the "Respond Within" target the incident shall be dealt with in accordance with clause 19 of the Master Services Agreement.
- 4.5 The Customer shall provide front-line support to Managed Services users who are not the designated and agreed referrers to ATSG. The Customer's designated individuals may contact ATSG technical support in order to report problems that the Customer's designated individuals cannot resolve themselves after they have performed a reasonable level of diagnosis.