



Master Services Agreement



PART A

MASTER SERVICES AGREEMENT

These terms will be entered into by all Customers and will govern the overarching relationship between ATSG and/or its Affiliates and the Customer. Subsequent Orders for either Products and/or Services will then be ordered using the Online Ordering Tool and specific terms may apply depending on the particular Product and/or Service ordered.

AGREED TERMS:

- 1. Agreement Start Date and Term** obligations in order to meet that Order; or
- 1.1 This Master Services Agreement ("**MSA**") shall commence on the Agreement Start Date or the date when it has been executed (either physically or electronically) by all the Parties whichever is the earlier date. (iii) propose an amendment to the Order for the Customer to approve or decline.
- 1.2 Unless terminated earlier in accordance with clause 13, this MSA shall continue in force for the Initial Term and shall automatically extend for the Renewal Term unless either party gives to the other party written notice to terminate, at least 90 days before the end of the Initial Term or any Renewal Term. 2.2 An Order is only completed once ATSG have confirmed to the Customer that it has agreed to meet the Order in writing by both parties electronically executing either of the following using the Online Ordering Form:
- 1.3 If there are uncompleted Orders for Services or Products as at the date which notice to terminate is served under clause 1.2, then this Agreement shall continue beyond the end date of the Initial Term or Renewal Term (as the case may be) in order to give effect to the Orders and shall expire on the completion of all Orders. (a) the MSA Order Form when it is agreed and completed; and/or (b) (for subsequent Orders) an Order when it is agreed and completed.
- 1.4 The Parties shall not enter into any further Orders after the date on which notice to terminate is served under clause 1.2. 2.3 Unless otherwise agreed, the Charges shall be as stipulated on the Order Form or a subsequent Order or calculated in accordance with the Rate Card.
- 1.5 ATSG and its Affiliates shall provide the Products and/or Services to the Customer and any of its Affiliates from the date(s) specified in the relevant Order. 2.4 Once an Order has been agreed and executed in accordance with this clause 2, no amendment shall be made to it except in accordance with clause 18 (Variation).
- 2 Product(s) or Service(s) Order(s)** 2.5 Each Order shall be part of this Agreement and shall not form a separate contract to it.
- 2.1 Each Order for Product(s) and/or Service(s) placed by the Customer under the Online Ordering Tool shall be agreed in the following manner: 2.6 Except as indicated in an Order Form or this Agreement, wherever there is a reference to ATSG or a term referring to ATSG, shall be interpreted to include any Affiliate of ATSG that may be used or engaged in the provision of the Product(s) and/or Service(s).
- (a) the Customer requests that ATSG provides any or all of the Product(s) and/or Service(s) set out on the MSA Order Form or in a subsequent Order using the Online Ordering Tool and provides ATSG with as much information as ATSG reasonably requests in order to review and agree to the Order; **3 ATSG's obligations**
- (b) following receipt of the information requested from the Customer, ATSG shall, as soon as reasonably practicable either: 3.1 ATSG shall use reasonable endeavours to provide the Products and/or Services and deliver the Deliverables to the Customer, in accordance with each relevant Order(s) in all material respects.
- (i) confirm to the Customer that it is unable to provide the requested Product and/or Service; or 3.2 ATSG shall use reasonable endeavours to meet any performance dates specified in an Order, but any such dates shall be estimates only and time for performance by ATSG shall not be of the essence of this Agreement.
- (ii) confirm acceptance of the Order and therefore carry out its 3.3 ATSG shall use reasonable endeavours to observe all lawful health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 4.1(e) provided that ATSG shall not be liable under this Agreement if, as a result of such observation, it is in

breach of any of its obligations under this Agreement or such activity would be illegal or contrary to any Applicable Law.

4 Customer's obligations

4.1 The Customer shall:

- (a) co-operate with ATSG (and/or its licensors, agents, subcontractors or employees) in good faith in all matters relating to the Products and/or Services;
- (b) appoint an authorised individual to be responsible for a respective Order and in respect of the receipt of the Products and/or Services under each Order, such person as identified in the MSA Order Form or subsequent Order or agreed by the parties from time to time. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Products and/or Services supplied under this Agreement;
- (c) provide ATSG (and/or its licensors, agents, subcontractors or employees) in a timely manner and at no charge, with access to the Customer's (or any of its agents, subcontractors or any other third party) premises, office accommodation, data (including Customer Data, security access and configuration information) and other facilities as required by ATSG in order for it to carry out its obligations under this Agreement or any Order;
- (d) provide to ATSG all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under an Order or otherwise which might be reasonably required by ATSG in connection with the provision of the Products and/or Services and ensure that they are accurate and complete in all material respects. ATSG shall in no way be liable for any delay, or failure in providing the Products or Services, or any increase in the Charges arising from the provision of any inaccurate, incomplete or corrupted documents, information, items or any other materials or a failure by the Customer to comply with its obligations under this Agreement or under any specific Order;
- (e) inform ATSG of all health and safety and security requirements that apply at any of the Customer's premises or at any locations where ATSG's agents, employees or subcontractors will be on site and/or where the Services are to be provided or Products delivered;
- (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Products and/or Services and conforms to Applicable Law as appropriate;

(g) carry out all other Customer responsibilities set out in this Agreement in a timely manner. In the event of any delays in the Customer's provision of such assistance, ATSG may adjust any agreed timetable or delivery schedule as reasonably necessary to accommodate such a delay;

(h) obtain and shall maintain all necessary licences, consents, and permissions necessary for ATSG to perform their obligations under this Agreement;

(i) ensure that its network and systems comply with the relevant specifications provided by ATSG from time to time or such individual requirements set out in any relevant Order; and

(j) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to ATSG's data centres or other systems, and remain solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

4.2

If ATSG's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees (including any failure to comply with the provisions set out in this clause 4), then, without prejudice to any other right or remedy it may have, ATSG shall be allowed an extension of time (and, if necessary in ATSG's reasonable opinion and upon providing reasonable evidence of any such increase, to increase the Charges) to perform its obligations at least equal to the delay caused by the Customer. ATSG shall in no way be liable for any delay, or failure or delay in providing either the Services or the Products or any increase in the Charges arising from any act or omission of the Customer, its agents, subcontractors, consultants or employees.

4.3

The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its receipt, use or exploitation of the Products and/or Services (whether to ATSG or any of its customers or suppliers) that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

	(e)	is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or			Agreement. For the avoidance of doubt the Customer shall not be permitted to sub-licence or permit access to the Services or Products unless otherwise agreed by ATSG in writing; or
	(f)	is otherwise illegal or causes damage or injury to any person or property.			
4.4		ATSG reserves the right, at any time without notice and without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause or suspend the provision of the Products and/or the Services until such material has been removed and/or erased and the Customer once again complies with the provisions of this clause.		(vi)	attempt to obtain, or assist third parties in obtaining, access to the Products and/or Services, Deliverables or any ATSG's IPRs(as applicable), other than asprovided under this clause 4.4 oras otherwise agreed by ATSG inwriting; or
4.5		The Customer shall not:		(vii)	introduce or permit the introduction of, any Virus or Vulnerability into ATSG's or its customers, suppliers or agents' networks and information systems.
	(a)	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 this Agreement:			
	(i)	attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Products and/or Services, Deliverables or any ATSG's IPRs (as applicable) in any form or media or by any means; or	4.6		The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Products and/or Services, Deliverables or any ATSG's IPRs (as applicable) and, in the event of any such unauthorised access or use, promptly notify ATSG.
	(ii)	attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Products and/or Services, Deliverables or any ATSG's IPRs (as applicable); or	4.7		Unless otherwise specified on Order or agreed in writing the rights provided under this Agreement are granted to the Customer only and shall not be considered granted to any Affiliate of the Customer or any other third party unless otherwise agreed in advance in writing by ATSG or as envisaged under this MSA.
	(iii)	access all or any part of the Products and/or Services, Deliverables or any ATSG's IPRs(as applicable) in order to build a product or service which competes with the Products and/or Services, Deliverables or ATSG's IPRs; or	4.8		This Agreement (and any Order(s) entered into hereunder) shall not prevent ATSG from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement or any of the Order(s).
	(iv)	use the Products and/or Services, Deliverables or any ATSG's IPRs (as applicable) to provide services to any third parties without ATSG's prior agreement in writing; or	5		Employment and personnel matters
	(v)	license, sell, rent, lease,transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Products and/or Services, Deliverables or any ATSG's IPRs (as applicable)available to any third party except as permitted under this	5.1		Each party shall not, without the prior written consent of the other party, at any time from the date on which any Products and/or Services commence to the expiry of 12 months after the delivery of such Productsand/or completion of such Services (whichever is later):
				(a)	solicit, or entice away from the other party (or ATSG's licensors); or
				(b)	employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of that party in the provision of such Products and/or Services.
			5.2		If TUPE is applicable in relation to the Products and/or Services provided under this Agreement and/or upon entry into this Agreement or any Order, the provisions of Appendix 2 to this MSA shall apply on commencement of either this MSA, an Order or the

provision of any Products and/or Services as applicable.

6 Third party providers

The Customer acknowledges that certain Services may enable or assist it to access the website or applications or content of, correspond with, and purchase products and services from, third parties via third-party websites or applications and that it does so solely at its own risk. ATSG makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into, and any transaction completed via any third-party website is between the Customer and the relevant third party, and not ATSG. ATSG recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. ATSG does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7 Data Protection

7.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

7.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against ATSG shall be for ATSG to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by ATSG in accordance with the Data Protection Policies. ATSG shall not be responsible for any loss, destruction, alteration 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 for which it shall remain fully liable).

7.3 Both parties will comply at all times with all applicable requirements of the Data Protection Legislation.

7.4 The Parties shall comply at all times with the Data Protection Policies. The Data Protection Policies may be amended by ATSG in its sole discretion from time to time. The Customer should refer to the webpage listed for the most current version of the Data Protection Policies.

7.5 The parties acknowledge that:

- (a) if ATSG processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and ATSG is the processor for the purposes of the Data Protection Legislation;
- (b) the Data Protection Policies set out the scope, nature and purpose of processing by ATSG; and

- (c) the personal data may be transferred or stored outside the UK and EEA or the country where the Customer is located in order to carry out the Services or provide the Products and ATSG's other obligations under this Agreement.

7.6 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer (and in accordance with Data Protection Legislation) of any personal data to ATSG for the duration and purposes of this Agreement (or any relevant Order) so that ATSG may lawfully use, process and transfer the personal data in accordance with this Agreement (or Order) on the Customer's behalf.

7.7 Without prejudice to the generality of clause 7.1, ATSG shall, in relation to any personal data processed in connection with the performance by ATSG of its obligations under this Agreement:

- (a) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (b) notify the Customer without undue delay on becoming aware of a personal data breach;
- (c) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement (or any Order as appropriate) unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and

7.8 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

7.9 The Customer provides its general authorisation in accordance with Article 26 of the UK GDPR to ATSG appointing and updating third-party processors of personal data on their behalf under this Agreement, in order to provide Products and Services. ATSG shall

maintain an updated list of its key third-party sub-processors as part of the Data Protection Policies. The Customer acknowledges and agrees that the authorisation granted in this clause 7.9 and the acknowledgment of the Customer in clause 7.5(c) of this Agreement, applies to all services (including the Services) provided by ATSG, its Affiliates, subsidiaries and group companies to the Customer (under this Agreement or otherwise).

8 Compliance with laws and policies

8.1 In performing their respective obligations under this Agreement, each party shall comply with all Applicable Laws.

8.2 Changes to the Services or provision of the Products required as a result of changes to the Applicable Laws shall be agreed in writing between the Parties.

9 Charges and payment

9.1 In consideration of the provision of the Products and/or Services by ATSG, the Customer shall pay the Charges as set out in the relevant Order.

9.2 Unless otherwise stated in the relevant Order, the Charges exclude the following, which shall be payable by the Customer either within 14 days of the relevant invoice date, or in accordance with the payment provisions set out in the relevant Order, following submission of an appropriate invoice (ATSG may be entitled to invoice separately for expenses charges):

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals who ATSG engages in connection with the Products and/or Services; and

(b) the cost to ATSG of any materials or services procured by ATSG from third parties for the provision of the Products and/or Services as such items and their cost are either set out in the Order or as may be approved by the Customer in writing from time to time.

9.3 Unless stated as being fixed for a specific period in a relevant Order, ATSG may increase the Charges by a percentage made up of i) the annual percentage increase in the Retail Prices Index ("RPI") announced in January each year plus (ii) 2.5% on or after 1st April each year.

9.4 ATSG may increase the Charges where the provision of Products and Services (and the cost of supplying the same) is affected by factors beyond its reasonable control, which shall include but shall not be limited to foreign exchange fluctuations, increases in taxes and duties, and increases (or shortages) in labour, materials (including oil and gas) and other manufacturing costs.

9.5 ATSG shall invoice the Customer for the Charges in accordance with the payment provisions set out in the relevant Order for the Products and/or Services being

provided. Payment for any recurring Charges shall be made by way of a direct debit.

9.6 Unless otherwise stated in the Order, for one-off professional services or project work, the Customer shall pay ATSG a deposit of 50% (fifty per cent) of the total Charges in advance. ATSG shall invoice the balance of the Charges either on the achievement of Milestones (up to a maximum of four) or on completion of the Services as indicated in the relevant Order.

9.7 ATSG reserves the right to invoice the Customer for all costs incurred by ATSG if the Customer delays the commencement of the Services for more than 3 months from the date the Order was approved by the Customer.

9.8 Unless agreed otherwise in the relevant Order the Customer shall pay each invoice submitted to it by ATSG within 14 days from the invoice date to a bank account nominated in writing by ATSG ("**Due Date**").

9.9 Without prejudice to any other right or remedy that it may have, if ATSG has not received payment within 7 days after the Due Date, and without prejudice to any other rights and remedies of ATSG:

(a) ATSG may, without liability to the Customer suspend provision of any or all of the Services or any further delivery of the Products while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.10 All amounts and fees stated or referred to in this Agreement (unless otherwise stated in an Order):

(a) shall be payable in pounds sterling;

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law);

(c) are, subject to clause 12.4, non-cancellable and non-refundable; and

(d) are exclusive of value added tax, which shall be added to ATSG's invoice(s) at the appropriate rate.

9.11 The Customer shall notify ATSG in writing of any disputes concerning any invoices received by the Customer within 6 months of the invoice date. If the Customer fails to provide notice of any disputed invoices within this period, all such invoices shall be deemed to be correct, and no adjustments shall be accepted by ATSG.

10 Intellectual Property Rights

10.1 Unless otherwise stated in an Order, in respect of the Deliverables:

- (a) ATSG and its licensors shall retain ownership of all IPRs in the Deliverables, the Products and the Services;
- (b) ATSG grants the Customer, or shall procure the direct grant to the Customer of a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Agreement to copy and modify the Deliverables for the purpose of receiving and using the outputs of the Products and/or Services received during the term of the Agreement or the term of a specific Order (whichever is the shorter period) and the Deliverables for its own internal business purposes; and
- (c) the Customer shall not (unless it obtains ATSG's prior written consent) sub-license, assign or otherwise transfer the rights granted in clause 10.1(b) or under this Agreement to its Affiliates, customers and/or any third parties.

10.2 In relation to the Customer Materials and Customer IPRs, the Customer:

- (a) and its licensors shall retain ownership of all IPRs in the Customer Materials and Customer IPRs; and
- (b) grants to ATSG a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials and/or Customer IPRs for the term of this Agreement for the purpose of providing the Products and/or Services to the Customer.

10.3 In relation to the ATSG IPRs, ATSG:

- (a) and its licensors shall retain ownership of all the ATSG IPRs and any other proprietary material of ATSG; and
- (b) grants to the Customer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Products and/or Services purchased under an Order (including any relevant ATSG IPRs subsisting in those Products and/or Services) for the term of this Agreement or (as appropriate) the term of any Order for the purpose of receiving and using the Products and/or Services.

10.4 ATSG:

- (a) shall, subject to clause 11, and provided that the Customer is not in default of any of its payment obligations under this Agreement or any Order, indemnify the Customer against all liabilities, costs,

expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's UK Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use of the Products and/or Services;

(b) shall not be in breach of its obligations, and the Customer shall have no claim under the indemnity at clause 10.4(a) to the extent the infringement arises from:

- (i) the use of Customer Materials or Customer IPRs in the development of, or the inclusion of the Customer Materials or Customer IPRs or the Customer's customer IPRs in the Products, Services or any Deliverable;
- (ii) any modification of the Products, Services or any Deliverable, other than by or on behalf of ATSG; and
- (iii) compliance with the Customer's or any of its customers' specifications or instructions.

10.5

The Customer:

- (a) warrants that the receipt and use in the performance of this Agreement (or any Order) by ATSG, its agents, subcontractors or consultants of the Customer Materials or Customer IPRs or Customer Data shall not infringe the rights, including any IPRs, of any third party; and
- (b) shall indemnify ATSG and their respective successors and assigns against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by ATSG arising out of or in connection with:
 - (i) any claim brought against ATSG, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this Agreement

	or any Order of the Customer Materials or Customer IPRs or Customer Data; and		(ii)	(in circumstances where ATSG's provision of the Products, Services or Deliverables under this Agreement in its entirety are impacted) this Agreement in its entirety;
10.6	<p>If either party ("Indemnifying Party") is required to indemnify the other party ("Indemnified Party") under this clause 10.6, the Indemnified Party shall:</p> <p>(a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 10.4(a) or clause 10.5(b) (as applicable) ("IPRs Claim");</p> <p>(b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;</p> <p>(c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and</p> <p>(d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.</p>		(e)	by notice in writing to the Customer refund any of the Charges paid by the Customer as at the date of termination for which the Customer has not received the relevant Products, Services and/or Deliverables (less a reasonable sum in respect of the Customer's use of the Products, Services and/or Deliverables to the date of termination) on the cessation of the provision by ATSG of the Products, Services or Deliverables.
		10.8		ATSG may terminate this Agreement and/or any relevant Orders with immediate effect by serving notice to the Customer if use or possession of the Customer Materials and/or the Customer IPRs by ATSG gives rise to any IPRs Claims being made, or in ATSG's reasonable opinion is likely to be made, against ATSG. In these circumstances the Customer shall be responsible for any Charges or any other fees then due up to the date of termination and any Charges due up to the end of the then current term for provision of the Products, Services and/or Deliverables set out in the relevant Order.
		10.9		This clause 10.9 constitutes the Customer's exclusive remedy and ATSG's only liability in respect of the IPRs Claims and is subject to clause 11.
		11		Confidentiality
		11.1		Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
10.7	<p>If any IPRs Claim is made, or in ATSG's reasonable opinion is likely to be made, against the Customer, ATSG may at its sole option and expense:</p> <p>(a) procure for the Customer the right to continue to use the Products, Services and/or Deliverables (or any part thereof) in accordance with the terms of this Agreement;</p> <p>(b) modify the Products, Services and/or Deliverables so that they cease to be infringing;</p> <p>(c) replace the Products, Services and/or Deliverables with non-infringing alternatives (where possible);</p> <p>(d) terminate</p> <p>(i) any Order under which the impacted Products, Services and/or Deliverables are provided; or</p>		(a)	is or becomes publicly known other than through any act or omission of the receiving party;
			(b)	was known to the other party (without obligation to keep the same confidential) at the date of disclosure or acquisition of the Confidential Information;
			(c)	is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
			(d)	is independently developed by the receiving party, which independent development can be shown by written evidence.
		11.2		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 this Agreement.

11.3	Subject to clause 11.4, 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, agents or sub-contractors in violation of the terms of this Agreement.	(g)	for breach of clause 28 (Anti-Bribery);
		(h)	any liability which may not otherwise be limited or excluded under applicable law.
11.4	A party may disclose Confidential Information to the extent such Confidential Information is:	12.2	Except as expressly and specifically provided in this Agreement or in an Order:
	(a) 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; and/or	(a)	the Customer assumes sole responsibility for results obtained from the use of the Products and/or Services by the Customer, and for conclusions drawn from such use. ATSG shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to ATSG by the Customer in connection with the Services or the Products, or any actions taken by ATSG at the Customer's direction;
	(b) disclosed to the directors, officers, employees, agents or consultants of the Customer and members of the Customer's Group together with any professional advisors to the Customer ("Representatives") who have a need to know that such Confidential Information for the purposes of this Agreement, provided that it shall inform each such Representative of the restrictions as to confidentiality, use and disclosure of such Confidential Information contained in this Agreement and impose upon each such Representative obligations of confidentiality at least equivalent to those set out in this Agreement.	(b)	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 this Agreement; and
		(c)	the Products and/or Services are provided to the Customer on an "as is" basis.
		12.3	Subject to clauses 7.2, 12.1 and 12.5, ATSG shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement (including under any Order).
11.5	The above provisions of this clause 11 shall survive termination of this Agreement (or any Order), however arising.	12.4	Subject to clauses 12.1 and 12.5, ATSG's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall not exceed of the total Charges paid or payable in respect of the Order to which the claim relates in the 12 months prior to the claim occurring.
12	Limitation of liability		
12.1	Nothing in this Agreement or any Order limits any liability which cannot legally be limited, including but not limited to liability for:	12.5	The terms implied by sections 3, 4 and 55 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
	(a) death or personal injury caused by negligence;	12.6	All references to "ATSG" in this clause 12 shall, for the purposes of this clause and clause 25 only, be treated as including all employees, subcontractors and suppliers of ATSG and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 25.
	(b) fraud or fraudulent misrepresentation;		
	(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);		
	(d) for breach of its obligations under section 12 of the Sale of Goods Act 1979;		
	(e) any indemnity given by the Customer under this Agreement;	13	Suspension and Termination
	(f) for breach of clause 11 (Confidentiality);	13.1	Without affecting any other right or remedy available to it, the Customer may terminate this Agreement or any Order (as applicable) with immediate effect by giving written notice to ATSG if:

14

Consequences of termination

14.1

On termination of this Agreement for any reason:

- (a) subject to clauses 1.1 and 1.2, all existing Order(s) shall terminate automatically;
- (b) the Customer shall immediately pay to ATSG all of ATSG's outstanding unpaid invoices, any outstanding Charges (including any Early Termination Charges and any Cancellation Charges due up to the end of the unexpired term of the relevant Order and any other additional third party charges where stipulated in the relevant Order) and interest and, in respect of any Products and/or Services supplied but for which no invoice has been submitted, ATSG may submit an invoice, which shall be payable immediately on receipt;
- (c) (where applicable) the Customer shall, promptly return all of ATSG's property (whether tangible or intangible and including without limitation any copies of the ATSG's IPRs and/or Deliverables to the extent that the Customer does not have a licence to continue to use the same from ATSG) in its possession at the date of termination or expiry. If the Customer fails to do so, then ATSG may enter the Customer's premises (or such other premises where the materials are held for which the Customer shall procure access on behalf of ATSG) and take possession of the same. Until ATSG's possessions have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (d) ATSG shall on request return any of the Customer Materials not used up in the provision of the Products and/or Services; and
- (e) the parties shall comply with any additional obligations set out in a particular Order with regard to termination of this Agreement or the Order in question.

14.2

Nothing in clause 14.1(c) shall require the Customer to return or destroy any documents and materials containing or based on the Confidential Information that the Customer is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of clause 11 shall continue to apply to any documents and materials retained by the Customer pursuant to this clause 14.2.

14.3

Any provision of this Agreement that expressly or by implication is intended to come into or continue in

- (a) ATSG is in material Default (which could constitute a single material Default, or a number of Defaults or repeated Defaults that, taken together, constitute a material Default) of this Agreement and such Default is either:

- (i) irremediable; or
- (ii) capable of being remedied but has not been remedied within 60 days;

- (b) ATSG is subject to an Insolvency Event.

13.2 Without affecting any other right or remedy available to it, ATSG may terminate this MSA or any Order with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the Due Date and remains in default not less than 7 days after being notified in writing to make such payment; or
- (b) the Customer is in breach of clauses 7 (Data Protection), 8 (Compliance with laws and policies), 10.5(a) (Intellectual Property Rights Warranty), 10.5(b) (Intellectual Property Rights Indemnity) and 11 (Confidentiality);
- (c) the Customer commits a material Default (other than a default under clause 13.2(a) to 13.2(b) of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (d) the Customer repeatedly breaches any of the terms of this Agreement or any Order 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 this Agreement or an Order; or
- (e) there is a change of Control of the Customer (unless ATSG consents to such change of Control under clause 15); or
- (f) the Customer is subject to an Insolvency Event; or
- (g) an application is made to strike the Customer off the register of Companies for England and Wales.

13.3 Either party may terminate any Order either in the event of any of the circumstances set out above in clauses 13.1 and/or 13.2 to the extent that they relate to a particular Order or in accordance with any additional termination provisions within that Order (if any).

	force on or after termination or expiry of this Agreement shall remain in full force and effect.	16.2	Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement or any Order by a Force Majeure Event (" Affected Party "), the Affected Party shall not be in breach of this Agreement or the relevant Order or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
14.4	Termination or expiry of this Agreement or an Order shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement or Order which existed at or before the date of termination or expiry.		
15	Change of Control	16.3	The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
15.1	The Customer shall provide ATSG with prior written notice of any change of Control of the Customer. ATSG's consent to any such change of Control shall not be unreasonably withheld.	16.4	The Affected Party shall:
16	Force majeure		
16.1	Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:		
	(a) acts of God, flood, drought, earthquake or other natural disaster including an extreme weather event or extreme meteorological conditions;		(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement or Order; and
	(b) epidemic or pandemic or global health emergency and shall include any subsequent action taken by any Government or regulatory authority including travel restrictions or embargoes;	16.5	If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 14 days' written notice to the Affected Party.
	(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;	17	Dispute resolution
	(d) nuclear, chemical or biological contamination or sonic boom;	17.1	If a dispute arises out of or in connection with this Agreement or any Order or the performance, validity or enforceability of it/them (" Dispute ") then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
	(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition or failing to grant a necessary licence or consent;		(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (" Dispute Notice "), together with relevant supporting documents. On service of the Dispute Notice, the requisite manager of the Customer and Customer Relationship Manager of ATSG shall attempt in good faith to resolve the Dispute;
	(f) collapse of buildings, fire, explosion or accident;		(b) if the requisite manager of the Customer and Customer Relationship manager of ATSG are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director of the Customer and Director of ATSG who shall attempt in good faith to resolve it; and
	(g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);		(c) if the Director of the Customer and Director of ATSG are for any reason unable to resolve the Dispute within 30 days of it
	(h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and		
	(i) interruption or failure of utility service.		

being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice or such time as agreed in writing between the parties.

20

Rights and remedies

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

21

Severance

21.1

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.2

If any provision or part-provision of this Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22

Entire agreement

22.1

This Agreement, together with the Data Protection Policies, constitutes 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.

22.2

Each party acknowledges that in entering into this Agreement 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 this Agreement.

22.3

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

23

Assignment

23.1

The Customer shall not, without the prior written consent of ATSG, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23.2

ATSG may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24

No partnership or agency

Nothing in this Agreement 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

17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 30 which shall apply at all times.

17.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England in accordance with clause 30.

18 Variation

18.1 Unless otherwise stipulated in this Agreement no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.2 Notwithstanding clause 18.1, ATSG shall have the right at any time to:

- (a) change or vary the Charges for the Services and/or the Products from time to time on not less than 30 days' written notice;
- (b) make amendments or variations to this Agreement of a minor nature which are reasonable and appropriate for the provision of the Services.
- (c) make changes when such changes are considered by ATSG to be necessary by virtue of any provision of legislation (or any changes to any of them);
- (d) make changes to the Data Protection Policies, such changes being made available at www.ATSG.com/clients/policies;
- (e) change any usage guidelines issued by ATSG and/or its licensors in respect of the Services.

19 Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall

any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25 Third party rights

25.1 ATSG and any of its Affiliates may enforce the terms of this Agreement to the fullest extent permitted by law as if they were a party to this Agreement, subject to and in accordance with this clause 25.1, this Agreement and the Contracts (Rights of Third Parties) Act 1999.

25.2 Except as provided in clause 25.1, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

25.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

26 Counterparts

26.1 This Agreement (including any Order executed under it) may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) or an Order by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

27 Notices

27.1 Any notice required to be given under this Agreement 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 this Agreement, or such other address as may have been notified by that party for such purposes or sent by email to the other party's email address as set out in the Order Form.

27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first 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. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

28 Anti-Bribery

28.1 Each party shall during the Term:

(a) comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including to the Bribery Act 2010 ("**Relevant Requirements**");

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) establish, maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;

(d) notify the other party (in writing) if it becomes aware of any breach of clause 28.1(a) or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of this Agreement; and

(e) immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of the party notifying or acquires a direct or indirect interest in the party notifying and that party warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement.

28.2 Each party shall ensure that each of its agents, consultants, contractors, subcontractors or other persons engaged in performance of its obligations under this Agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed in this clause 28 ("**Relevant Terms**"). Each party shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the other party for any breach by such persons of any of the Relevant Terms.

28.3 Breach of this clause 28 shall be deemed a material breach.

29 Governing law

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.

30 Jurisdiction

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

Appendix 1

Definitions and Interpretation

1 Definitions and Interpretation

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Statements of Work and Schedules and Appendices referred to in this Agreement and form part of the MSA and shall have effect as if set out in full in the body of this MSA.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that Party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes email but not fax.
- 1.11 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 In this Agreement the following capitalised terms shall have the following meanings:

"ATSG"	means ATSG Limited, a company registered in England and Wales with company number 05543898 having its registered office at Unit 7 Interchange 25 Business Park, Bostocks Lane, Nottingham, United Kingdom, NG10 5QG.
"Affiliate"	means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
"Agreement"	has the meaning ascribed to it in the Order Form.
"Agreement Start Date"	has the meaning ascribed to it in the Order Form.
"Applicable Law"	means all applicable laws, statutes, regulation from time to time in force.
"Applicable Data Protection Laws"	means the Data Protection Legislation and any other relevant data protection legislation which impacts the performance and receipt of the Products and Services.

"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Cancellation Charge"	The Charges levied against the Customer for cancelling an Order prior to the date when ATSG notifies the Customer or end user that a Service is ready for use by the Customer or end user as set out in this Agreement.
"Charges"	means the sums payable for the relevant Product(s) and/or Service(s) as set out in an Order Form or a subsequent Order.
"Confidential Information"	all confidential information (however recorded or preserved) disclosed by a party and its Affiliates or their employees, officers, representatives, advisers or sub-contractors involved in the provision or receipt of the Services or Products who need to know the confidential information in question (Representatives) to the other party and its Affiliates and that party's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.
"Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expressions controls, controlled, and change of Control shall be construed accordingly.
"Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures"	as defined in the definition of Data Protection Legislation.
"Customer"	means the customer more particularly described in the Order Form.
"Customer Data"	means any data (including personal data) which is proprietary to or developed exclusively by the Customer, its agents, subcontractors or consultants and which is provided to ATSG under this Agreement.
"Customer's Equipment"	any equipment, including tools, systems, cabling or facilities, including any access to the Internet provided by the Customer and/or any of the Customer's customers, its/their agents, subcontractors or consultants which is used directly or indirectly in the supply of or access to the Products and/or Services including any such items specified in an Order.
"Customer IPRs"	means the Customer Data; and any other proprietary materials developed by the Customer prior to the date of the Agreement and/or independently to this Agreement.
"Customer Materials"	means all documents, information, items and materials in any form including Customer Data, whether owned by the Customer or a third party, which are provided by the Customer to ATSG in connection with the Services or Products.
"Data Protection Legislation"	means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
"Data Protection Policies"	ATSG's standard data protection policies set out at www.ATSG.com/clients/policies as amended by ATSG in its sole discretion from time to time.
"Default"	means any default by either party in comply with its obligations under this Agreement.

"Deliverables"	means any output of the Products and/or Services to be provided by ATSG to the Customer as specified in an Order and any other documents, products and materials provided by ATSG to the Customer in relation to the Products and/or Services but excluding the Customer Materials, Customer IPRs and the ATSG's IPRs.
"Early Termination Charge"	The termination charge payable by the Customer in the event that a Service is terminated after the date when ATSG notifies the Customer or end user that a Service is ready for use by the Customer or end user but prior to the end of the applicable Term set out in the Order, as set out in this Agreement.
"Effective Date"	the date of this Agreement.
"Insolvency Event"	<p>any of the following in relation to a party:</p> <ul style="list-style-type: none"> a) the party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986; b) the party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the party; c) the party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; d) 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 the party (being a company); e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the party (being a company, partnership or limited liability partnership); f) the holder of a qualifying floating charge over the assets of the party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; g) a person becomes entitled to appoint a receiver over all or any of the assets of the party or a receiver is appointed over all or any of the assets of the party; h) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the party's assets and such attachment or process is not discharged within 14 days; i) any event occurs, or proceeding is taken, with respect to the party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in a) to h) of this definition.
"Initial Term"	means the initial term of the Master Services Agreement as set out on the Order Form.
"Intellectual Property Rights" or "IPRs"	mean any patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms

	of protection which subsist or will subsist now or in the future in any part of the world.
"IPRs Claims"	has the meaning ascribed to it in clause 10.6(a) .
"Master Services Agreement" or "MSA"	means the Master Agreement term set out in Part A of this Agreement.
"Normal Business Hours"	unless otherwise specified in an Order or Product or Service specific terms, 9.00 am to 5.00 pm local UK time, each Business Day.
"Order"	means an order for Products or Services made pursuant to this Master Services Agreement using ATSG's Online Ordering Tool. This may include the details on the Order Form or on a subsequent Order agreed by the Parties.
"Online Ordering Tool"	means ATSG's online ordering tool at a URL as notified to the Customer from time to time.
"Order Form"	means an order form or any proposal issued by ATSG either in respect of this MSA and/or any subsequent order placed and agreed using the Online Ordering Tool.
"Price"	means the individual price payable for the Products and/or Services as set out in the Order Form and shall be invoiced to the Customer as the Charges for such Products and/or Services.
"Products"	means the products(s) as set out on the Order Form and subsequently provided by ATSG under an Order to the Customer.
"Rate Card"	means the rate card which may be applied for time and materials-based Orders or where additional Services or support is required.
"Renewal Term"	means a successive period of time equal to the Initial Term commencing on the day following expiry of the Initial Term.
"Services"	means the services set out on the Order Form and subsequently provided by ATSG under an Order to the Customer.
"UK Data Protection Legislation"	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679) as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2020 (the "UK GDPR"); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
"Virus"	means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
"Vulnerability"	means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the

	confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.
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Appendix 2

TUPE

1 TUPE on entry

1.1 In this Appendix 2 the following definitions apply:

- (a) **Effective Date:** the date on which this Agreement is entered into or the date on which an Order commences or when Products and/or Services start to be provided (as applicable).
- (b) **Employees:** those employees whose contract of employment transfer to ATSG from the Customer as at the Effective Date, being those employees who are listed in the applicable Order or otherwise identified by the Parties.
- (c) **Employee Liability Information:** in respect of each of the Employees:
 - 1. the identity and age of the Employee;
 - 2. those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
 - 3. information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
 - 4. information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against ATSG arising out of the Employee's employment with the Customer; and
 - 5. information about any collective agreement which will have effect after the Effective Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.
- (d) **Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

1.2 The Customer and ATSG believe that, pursuant to the Employment Regulations, at the Effective Date, ATSG will become the employer of the Employees.

1.3 The Customer represents, warrants and undertakes to ATSG that:

- (a) no persons are employed or engaged in the provision of the products and services the same as or similar to the Products and/or Services other than the Employees;
- (b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Agreement;
- (c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees) are set out in the relevant Order;
- (d) there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Products or Services or anything the same or similar to the Products and Services which cannot be terminated by 3 months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
- (e) in relation to each of the Employees (and so far, as relevant to each of its former employees who were employed or engaged in the provision of the Products or Services or anything the same or similar to the Products and Services) the Customer has:
 - 6. complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;

7. maintained adequate and suitable records regarding the service of each of its employees;
 8. calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
 9. complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
 10. complied with all relevant orders and awards made under any statute affecting their conditions of service;
- (f) the Customer has not been involved in any industrial or trade disputes in the last three (3) years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of ATSG is likely to lead to any industrial dispute;
 - (g) there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
 - (h) the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
 - (i) the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
 - (j) there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
 - (k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
 - (l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
 - (m) the Customer has provided the Employee Liability Information to ATSG regarding each of the Employees either in writing or by making it available to ATSG in a readily accessible form;
 - (n) the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to ATSG;
 - (o) the Customer has notified ATSG in writing of any change in the Employee Liability Information since the date on which it was provided;
 - (p) the Employee Liability Information was provided not less than 28 days before the Effective Date; and
 - (q) the Customer has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992, if required.

1.4 The Customer shall indemnify ATSG in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by ATSG including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the termination by the Customer of the employment of any of the Employees;
- (b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by ATSG by virtue of the Employment Regulations; and

- (c) any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against ATSG by virtue of the Employment Regulations ("**Claims**"),

provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of ATSG.

1.5 ATSG shall procure that its employees, agents and successors in title shall promptly:

- (a) take such action in connection with the Claims as the Customer shall from time to time reasonably request;
- (b) provide free of charge all such assistance and information as the Customer may reasonably request relating to the Claims to enable the Claims to be pursued;
- (c) subject to any restriction imposed by law, provide the Customer, its legal and other advisers with access to all documents, records or other information held by ATSG relating to the Claims;
- (d) provide the Customer and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Customer with the preparation of its cases in relation to the Claims;
- (e) permit and require such employees as the Customer and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Customer and/or its legal or other professional advisers may reasonably require;
- (f) provide such other assistance as the Customer may reasonably request (at the Customer's sole cost) in order to ensure the due and timely prosecution of the Claims;
- (g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Customer and obtaining its agreement to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Customer's consent to such waiver, such consent not to be unreasonably withheld.

1.6 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Effective Date and by ATSG with effect from the Effective Date.

1.7 ATSG shall indemnify the Customer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) any failure by ATSG to comply with its obligations pursuant to the Employment Regulations; and
- (b) anything done or omitted to be done by ATSG in respect of any of the Employees whether before or after the Effective Date.

1.8 During the term of the relevant Order, ATSG shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Products and/or Services under that Order (subject to Applicable Data Protection Laws).