



# Professional Services Terms



## PART D PROFESSIONAL SERVICES TERMS

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

### AGREED TERMS:

#### 1 Interpretation

Unless otherwise specified below or on any Order for the Professional Services, any capitalised terms used in this Schedule shall have the meaning ascribed to them in the Master Services Agreement. The rules of interpretation set out in the Master Services Agreement shall also apply equally to this Part D.

##### 1.1 Definitions specific to this Part D

**Acceptance** means that the Project Deliverables have passed the Acceptance Tests or have been accepted pursuant to paragraph 8 of this Part D.

**Acceptance Tests** means the agreed tests carried out on the Project Deliverables to confirm that they are capable of Acceptance.

**Penetration Testing Services** or **Pen Tests** means penetration testing assessments conducted by ATSG's, its Affiliates or its subcontractors' cyber security engineers, which are a form of cyber security assessment aimed to determine the real-world cyber security risks of an organisation (or a subset of its IT systems) utilising methods and tools used by real cyber criminals. Pen Tests involve manual discovery of a system's vulnerabilities, active exploitation of the discovered vulnerabilities, and attempts to combine multiple vulnerabilities in order to achieve the agreed end goal. The details of any Penetration Testing Services will be finalised in a Pen Test schedule after an Order is placed and following completion of the post-sales scoping process.

**Project** means the work to be carried out by ATSG as agreed between ATSG and the Customer as set out in an Order for the provision of Professional Services or any Project Deliverables.

**Project Deliverables** means any Deliverables, and all works of authorship and materials developed, written or prepared by ATSG, its employees, agents or sub-contractors in relation to the Project including any and all reports, studies, data, diagrams, charts, specifications, pre-contractual and contractual documents and all drafts of the same and working papers but excluding ATSG IPRs.

**Project Milestones** means the stages of the Project completion as described on an Order.

**Project Participants** means those employees, agents or sub-contractors of ATSG engaged from time to time in providing the Professional Services.

**Purpose** means sharing information to establish the scope, the Rules of Engagement and the time scales of Penetration

Testing Services requested by the Customer and once agreed, the provision of the Penetration Testing Services.

**Rules of Engagement** means the terms which govern the behaviour of ATSG's, its Affiliates or its subcontractors' cyber security engineers during the active phase of a Pen Test.

#### 2. Engagement

The Customer shall engage ATSG and ATSG shall, in consideration of the payment of the Charges under an Order, provide the Professional Services to the Customer in relation to the Project.

#### 3. Term

3.1 Any Order for Professional Services shall commence on the Order Start Date and shall continue until Completion of the Project, subject to any earlier termination pursuant to paragraph 10 of this Part D or clause 13 of the Master Services Agreement.

3.2 In addition to the termination rights in clause 10 of this Part D and as set out in the Master Services Agreement, the Customer shall be entitled to terminate any Order by notice in writing to ATSG at any time, provided that it pays ATSG for all the Professional Services provided up to the date of termination and for all reasonable costs and expenses incurred by ATSG by reason of such early termination including but not limited to:

- (a) any requisite number of days' fees for time spent up to the termination date working on the Professional Services at the time of such termination; and
- (b) (where the Professional Services) are cancelled by the Customer with less than one week before the Professional Services Start Date then 100% of the Charges set out on the Order shall remain payable by the Customer representing the cost to ATSG of reallocation of the resource allocated to the relevant Project;
- (c) any third party costs, charges or payments which cannot be avoided or mitigated by ATSG at the date of termination (including any reasonable breakage or third party costs such as termination costs; reallocation costs for resources and any unavoidable costs or expenses).

3.3 ATSG reserves the right to invoice for all costs incurred if the Customer delays the Project for longer than 3 months from the date the Order has been approved by the Customer.

#### 4. ATSG's obligations

4.1 ATSG shall:

- (a) devote to its obligations under an Order such of its time attention and skill as may be necessary for the proper performance of those obligations in order to carry out the Project; and
- (b) (while its method of work is its own) comply with the reasonable requests of the Customer in relation to the Project.

4.2 In the event that any change to the nature or scope of Project and/or the Professional Services is identified as being required by either ATSG or the Customer a request may be submitted to the other party requesting a change. Any request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change. No such change will become effective until agreed in writing between the parties. Any change so requested shall be processed in accordance with clause 20 of the Master Services Agreement.

#### 5. Customer's obligations

5.1 In addition to its obligations set out elsewhere in this Agreement the Customer shall in respect of the Order:

- (a) make available to ATSG such office computer and secretarial services and parking at its premises free from restriction as may be necessary for its work to be carried out under any Order for Professional Services;
- (b) ensure that its employees, agents and sub-contractors co-operate fully with ATSG and the Project Participants in relation to the provision of the Professional Services and that such employees and any such sub-contractors will be qualified to carry out any tasks which they may be assigned in relation to the Project;
  - (i) promptly provide ATSG with such information and documents as it may reasonably request for the proper performance of its obligations under an Order for Professional Services (for example, which systems ATSG can or cannot access when providing the Penetration

Testing Services) and be responsible for ensuring that such information is true, accurate, complete and not misleading in any material respect;

- (ii) obtain all third-party consents, licences and rights reasonably required in order to allow ATSG and the Project Participants to perform the Professional Services; and

- (iii) put in place and maintain adequate security and Virus checking procedures in relation to any computer facilities to which it provides ATSG with access.

- (c) In relation to the Penetration Testing Services required under an Order, the Customer warrants that it has obtained and shall maintain all necessary licences, consents, and permissions necessary to allow the Penetration Testing Services to be carried out.

- (d) Should the Customer fail to perform any of its obligations under this Part D or the Agreement (as a whole) then ATSG will not be responsible for any delay, cost or Charges increase or other consequences arising from such failure, and the Customer shall reimburse ATSG for any costs or expenses incurred due to such failure.

#### 6. Confidentiality

6.1 The provisions of clause 11 of the Master Services Agreement shall also apply where Penetration Testing Services are being provided. In the event of any conflict between this paragraph 6 and clause 11 of the Master Services Agreement, the provisions of paragraph 6 shall take precedence.

6.2 In return for ATSG, its Affiliates and/or subcontractors making Confidential Information available to the Customer, the Customer undertakes to ATSG, its Affiliates and/or subcontractors that it shall:

- (a) not use or exploit the Confidential Information in any way except for the Purpose;

- (b) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance

with this paragraph 6 and clause 11 of the Master Services Agreement;

- (c) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of ATSG, its Affiliates and/or subcontractors;
- (d) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- (e) apply the same security measures and degree of care to the Confidential Information as the Customer applies to its own confidential information, which the Customer warrants as providing adequate protection from unauthorised disclosure, copying or use;
- (f) keep a written record of:
  - (i) any document or Confidential Information received from ATSG its Affiliates and/or sub-contractors in tangible form; and
  - (ii) any copies made of the Confidential Information; and
- (g) ensure that any document or other records containing Confidential Information shall be kept at its own premises and shall not remove or allow those documents and records to be removed from those premises.

6.3 The Customer shall establish and maintain adequate security measures (including any reasonable security measures proposed by ATSG from time to time) to safeguard the Confidential Information from unauthorised access or use.

6.4 ATSG, its Affiliates and/or subcontractors reserve all rights in its Confidential Information. The disclosure of Confidential Information by ATSG, its Affiliates and/or subcontractors to the Customer does not give the Customer or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out with this paragraph 6 and clause 11 of the Master Services Agreement.

6.5 Except as expressly stated in the Agreement, ATSG, its Affiliates and/or subcontractors make no express or implied warranty or representation concerning its

Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

6.6 The disclosure of Confidential Information by ATSG, its Affiliates and/or subcontractors shall not form any offer by, or representation or warranty on the part of, ATSG, its Affiliates and/or subcontractors to enter into any further agreement with the Customer in relation to the Purpose or the development or supply of any products or services to which the Confidential Information relates to.

6.7 The Customer shall indemnify ATSG and each of its Affiliates and/or subcontractors 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 by ATSG and each of its Affiliates and/or subcontractors arising out of or in connection with any breach of this paragraph 6, clause 11 and 14.1(c) of the Master Services Agreement by the Customer (including its employees, officers, agents, contractors or any other party otherwise in receipt of Confidential Information in accordance with this paragraph 6 and clause 11 of the Master Services Agreement) or its relation to the Confidential Information.

6.8 Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to paragraph 10.2, each party's obligations under this paragraph 6 and clause 11 of the Master Services Agreement shall continue in full force and effect from the first disclosure of any Confidential Information regarding Penetration Testing Services by ATSG to the Customer for a period of 2 years from the later of:

- (a) the date that the Penetration Testing Services have been completed; and
- (b) the date on which ATSG first disclosed any Confidential Information regarding Penetration Testing Services to the Customer.

## 7. Personnel

Each of the parties shall each appoint a manager who shall have full authority to take all necessary decisions regarding the Project and the provision of the Professional Services including any written variation of an Order for Professional Services.

## 8. Charges and expenses

8.1 Where the Order specifies that the Charges shall be on a time and materials basis:

- (a) the Customer shall pay ATSG for the time properly spent by the Project Participants in providing the Professional Services at the hourly / daily charge-out rates specified either on the Order or as identified in the Rate Card;
- (b) the hourly / daily charge-out rates of any new Project Participants which ATSG wishes to use from time to time shall be in accordance with the rates set out on the Order or at the Rate Card;
- (c) ATSG shall be entitled at any time and from time to time to vary any or all of such hourly/daily charge-out rates provided that no such variation shall have effect unless and until written notice thereof is given to the Customer;
- (d) where ATSG agrees to maintain full and accurate records of the time spent by the Project Participants in providing the Professional Services it shall produce such records to the Customer for inspection at all reasonable times on request;
- (e) if it shall be necessary for any of the Project Participants to visit the Customer's premises or make any other journeys in the course of providing the Professional Services then the Customer shall reimburse ATSG for all reasonable travelling and subsistence expenses properly incurred in so doing (and for the avoidance of doubt time spent travelling in this manner shall be included within the time spent by the Project Participants in providing the Professional Services). Apart from minor out-of-pocket expenses claims for reimbursement of expenses shall be paid by the Customer only if accompanied by the relevant receipts. ATSG may invoice for disbursements separately to any of the Charges as and when they are incurred; and
- (f) ATSG shall render monthly (save in respect of invoices for disbursements which may be submitted as they are incurred) itemised invoices to the Customer in respect of the said charges and expenses and shall show any Value Added Tax separately on such invoices. Each invoice shall be accompanied by a statement specifying the time spent by each of the Project Participants in providing the Professional Services during the period covered by the invoice.

## 8.2

Where the Order specifies that the Charges shall be on a fixed cost basis:

- (a) the Customer shall pay ATSG the Charges within 14 days of the achievement of each Project Milestone and/or as specified on an Order for Professional Services.
- (b) if it shall be necessary for any of the Project Participants to visit the Customer's premises or make any other journeys in the course of providing the Professional Services then the Customer shall reimburse ATSG for all reasonable travelling and subsistence expenses properly incurred in so doing (and for the avoidance of doubt time spent travelling in this manner shall be included within the time spent by the Project Participants in providing the Professional Services). Apart from minor out-of-pocket expenses claims for reimbursement of expenses shall be paid by the Customer only if accompanied by the relevant receipts. ATSG may invoice for disbursements separately to any of the Charges as and when they are incurred.

## 9. Acceptance

9.1 All Project Deliverables (which for the purposes of the Master Services Agreement shall be deemed to be Deliverables) shall be deemed to have been Accepted by the Customer if no issues concerning their quality or contents have been raised by the Customer within 3 Business Days of their delivery by ATSG. The Customer shall not in any event unreasonably withhold or delay its Acceptance.

9.2 Completion of the Project shall be deemed to have occurred when all Project Deliverables which are subject to Acceptance by the Customer have been so Accepted pursuant to this paragraph 9.

## 10. Termination

10.1 Without affecting any other right or remedy available to it, either party may terminate an Order for Professional Services with immediate effect by giving written notice to the other party in the circumstances set out in clause 13 of the Master Services Agreement to the extent that they apply to this Order.

10.2 Notwithstanding paragraph 10.1, if ATSG decides not to continue to be involved in the Purpose with the Customer, it shall notify the Customer in writing immediately.

## 11. Effect of termination

11.1 On the expiration or termination of any Order for Professional Services:

- (a) the provisions of clause 14 of the Master Services Agreement shall apply in respect of any Order for Professional Services (rather than the Agreement as a whole);
- (b) all rights and obligations of the parties under any Order for Professional Services shall automatically terminate except for such rights of action as shall have accrued prior thereto and any obligations which expressly or by implication are intended to come into or continue in force on or after such expiration or termination;
- (c) the Customer shall pay ATSG for all unpaid charges and reimbursable expenses accrued up to the date of expiration or termination; and
- (d) each party will return to the other any property of the other that it then has in its possession or control.