

## Terms and Conditions for the Supply of Managed Cloud Service

These Terms and Conditions including the Schedules ("**Conditions**") apply between the individual, firm or company named in the Order (the "**Customer**" or "**you**") and Atlas Cloud Limited, a company registered in England and Wales with company number 07297347 whose registered office is at the Mezzanine, 2 Collingwood Street, Newcastle upon Tyne, NE1 1JF (the "**Supplier**" or referred to as "**us/we/our**").

### 1. Interpretation

1.1. The following definitions and rules of interpretation apply in these Conditions:

**Acceptance Date:** has the meaning given in clause 3.4.

**Assets:** means any Software or other assets used by Supplier exclusively for the delivery of the Managed Service to the Customer.

**Assumed Contracts:** contracts which the Supplier identifies as part of the Set-up Service and which will be subject to the obligations of clause 3.5.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Change of Control:** the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all of the assets, of a party by another entity in a single transaction or a series of transactions.

**Cloud Commencement Date** is defined in clause 10.

**Cloud Services Conditions:** the conditions for the supply of Cloud Services set out in Schedule 1.

**Cloud Services Fees:** Fees for the use of the Cloud Services set out in clause 7 or set out in the Order.

**Cloud Services:** hosting within a cloud-based environment and any software applications for which the Customer holds valid licences, as well as the Customer Data.

**Commencement Date:** is defined in clause 2.1.

**Confidential Information:** information that is proprietary or confidential and 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.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer Data:** means, in relation to Managed Service, any information which is provided by Customer or the End User to the Supplier as part of Customer's or End User's use of the Managed Service, including any information derived from such information, and in relation to Cloud Services means the data inputted by the Customer or the Supplier on the Customer's or the End User's behalf for the purpose of using the Cloud Services or facilitating the Customer's or End User's use of the Cloud Services.

**End User:** means the End User (if any) named in the Order.

**Error:** non-conformance of the Managed Service to the Specification as set out in clause 3.2.

**Fees:** the fees payable to the Supplier, as described in clause 7.

**Initial Term:** means the period of the Contract out in the Order, or if no period is set out in the Order, the period starting on the Commencement Date and ending of 3 (three) year from the Acceptance Date.

**Intellectual Property:** means any and all intellectual property rights of any nature anywhere in the world, whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Managed Service:** means the Supplier's managed service described in the Specification.

**Normal Business Hours:** 8.30 am to 6.00 pm local UK time on a Business Day.

**Order:** means the Customer's written acceptance of the Proposal, these Terms and Conditions and any other terms expressly incorporated into the agreement between parties.

**Proposal:** means the Supplier's written outline of the Services provided to the Customer.

**Renewal Term:** means a renewal period of the Contract as set out in clause 16.1.

**Service Credit:** means any credits payable to the Customer in accordance with the Service Level Arrangement.

**Service Level Arrangement:** any service level arrangements for the Managed Service referred to or set out in the Order.

**Services:** the Set-up Service and the Managed Service and the Cloud Services.

**Set-up Service:** means any due diligence, configuration and related work to be performed by the Supplier to set up the Managed Service or the Cloud Services.

**Software:** means any software used by Supplier exclusively to provide the Services to the Customer and either provided by the Customer (whether third party software licensed to the Customer or software in which the Customer owns the Intellectual Property rights, or software provided by the End User) (**Customer Software**) or provided by the Supplier (**Supplier Software**).

**Specification:** means the specification for the Managed Service referred to the Order.

**Supplier Equipment:** any equipment made available to the Customer by the Supplier to enable the Customer to access the Cloud Services, including thin client computer terminals and laptops.

**Term:** the term of the Contract being the Initial Term and any Renewal Term(s) and any other renewal or extension of the Contract pursuant to clause 12.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions. A person includes a natural person, or corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns. Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.
- 1.3. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.4. A reference to **writing** or **written** includes faxes but not e-mail.
- 1.5. Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### 2. Basis of Contract

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions and the Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.2. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

### 3. End Users

- 3.1. This Contract constitutes an agreement between the Supplier and the Customer only and does not create any legal relationship, whether contractual or otherwise, between the Supplier and the End User. Where an End User is named in the Order, the Customer has a prime contract with the End User ("**Prime Contract**"), and the Supplier is providing the Services to the Customer as a sub-contractor, on the basis of this Contract.
- 3.2. The Customer shall procure that the End User complies with all the terms of this Contract, and shall be liable for the acts and omissions of the End User in respect of any failure to on the part of the End User to comply with the terms of this Contract, the Prime Contract or any third party software licences.

3.3. The Supplier shall not be liable to the Customer for any failure or delay in performing any of its obligations under the Contract to the extent that such failure or delay is caused by the acts or omissions of the End User.

#### 4. **Services**

- 4.1. The Supplier shall perform the Set-up Services in accordance with any timetable set out in the Specification, provided that performance dates set out in the Order shall be estimates only, and time shall not be of the essence of the Contract.
- 4.2. When the Supplier considers that the Managed Service is ready for activation he shall notify the Customer who shall in turn notify the End User. Within 5 days of the Supplier notification to the Customer, the Customer shall review the operation of the Managed Service to confirm that it functions in material conformance with the Specification. If the Managed Service fails in any material respect to conform to the Specification, the Customer shall give the Supplier a detailed description of any such non-conformance ("**Error**") in writing, within the 5 day review period.
- 4.3. The Supplier shall use reasonable efforts to correct any Error within a reasonable time and, on completion, re-submit the Managed Service to the Customer. If the Supplier is unable to correct the Error within 30 Business Days, either party may terminate the Contract without further liability to the other.
- 4.4. If the Customer does not provide any written comments in the initial period described in clause 4.2 above, or if the Managed Service is found to conform with the Specification, then the Managed Service shall be deemed accepted as from the date of the notification ("**Acceptance Date**").
- 4.5. To the extent that the provision of Services requires the Customer to transfer Assets and/or Assumed Contracts to the Supplier, the parties will enter into a separate agreement in this regard, and for the avoidance of doubt the Supplier shall not take on any Assets or Assumed Contracts in the absence of such written agreement. The Customer will be responsible for procuring the transfer of any Assets and Assumed Contracts from the End User, and in the event that such assets or contracts are not obtained, the Supplier shall be entitled to terminate the Contract with immediate effect.
- 4.6. Subject to termination or expiry of the Contract in accordance with its terms, the Supplier shall provide the Managed Service as from the Acceptance Date. The Service Level Arrangements (if any) shall apply with effect from the start of the first complete calendar month occurring at least 30 days after the Acceptance Date.

#### 5. **Customer Data**

- 5.1. The following definitions apply in this clause 5: the terms "**Data Controller**", "**Data Processor**", "**Personal Data**" and "**Processing**" bear the respective meanings given them in the Data Protection Act 1998 and "**Personal Data**" means any Personal Data comprised in the Customer Data, whether belonging to the Customer or the End User.
- 5.2. The Customer acknowledges that the Supplier will be the Customer's Data Processor, rather than a separate Data Controller, in respect of Processing of Personal Data under the Contract, and that the Supplier is reliant on the Customer alone for direction as to the extent the Supplier is entitled to use and process the Personal Data. The Supplier shall only carry out processing of any Personal Data on the Customer's instructions; and shall implement appropriate technical and organisational measures to protect any Personal Data against unauthorised or unlawful processing and accidental loss or damage.
- 5.3. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest backup of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties subcontracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.4. The Customer warrants and represents to the Supplier that it has all necessary consents and permissions required from the End User to allow the Supplier to use the End User's Customer Data for the purposes of this Contract, and the Customer shall indemnify the Supplier in respect of any liabilities, costs, expenses, damages, fines 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 professional costs and expenses) suffered or incurred by the

Supplier arising out of or in connection with the processing of Personal Data of the End User by the Supplier, save to the extent caused by the Supplier's breach, non-performance or negligent performance of the Contract.

5.5.

#### 6. **Supplier's obligations**

- 6.1. The Supplier warrants that the Managed Service will be performed with all reasonable skill and care and that it will be provided substantially in accordance with the Specification. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Managed Service will be uninterrupted, secure or error free.
- 6.2. The warranty in clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Managed Service contrary to the Supplier's instructions.
- 6.3. If the Managed Service does not conform to the warranty in clause 6.1, the Supplier will, at its expense, use reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty in clause 6.1.
- 6.4. The Supplier may suspend the Services where it reasonably believes that the Services are being used (or will be used) in breach of the Contract, or where it reasonably believes the End User is using (or will use) the Services in breach of the terms of this Contract, or of any other terms agreed between the Customer and the End User, and where it believes such action is necessary to protect its network, other customers or reputation or to comply with any legal or regulatory requirement.

#### 7. **Customer's obligations**

- 7.1. The Customer shall:
  - 7.1.1. pay the Fees when due;
  - 7.1.2. comply, and procure that the End User complies, with any Supplier policies (including any acceptable use policy) that may be in place from time to time;
  - 7.1.3. provide the Supplier with, and procure that the End User provides to the Supplier, all information as may be required by the Supplier in order to provide the Managed Service, including Customer Data, security access information and interfaces to the Customer's and End User's other business applications, together with such personnel assistance as may be requested by the Supplier;
  - 7.1.4. comply with all applicable laws and regulatory requirements with respect to its activities under the Contract;
  - 7.1.5. take good care, and procure that the End User takes good care, of the Supplier's Equipment to prevent damage or loss to such equipment arising from misuse by Customer personnel or End User personnel in accordance with any applicable Supplier policy or instructions of the Supplier from time to time;
  - 7.1.6. maintain adequate policies of insurance which provide cover for the Supplier's Equipment when located at the Customer's or End User's premises against all risks;
  - 7.1.7. not, and shall procure that the End User shall not, store, distribute or transmit any material through the Managed Service that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
  - 7.1.8. take all reasonable precautions, and procure that the End User takes all reasonable precautions, against unauthorised access to and loss of data and ensure that its data is backed up;
  - 7.1.9. shall use all reasonable endeavours to procure that it, the End User, and any necessary third party shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract; and
  - 7.1.10. where applicable and appropriate, comply (and shall procure that the End User shall comply) at all times with the terms of any end user software licences as notified by the Supplier to the Customer from time to time, including the terms of the end user licence agreement set out in Schedule 2 to these Conditions. The Customer shall ensure that the End User agrees as a contractual obligation within the Prime Contract, to comply at all times with all end user licence agreements as notified by the Supplier to the Customer from time to time, including those in Schedule 2.

8. **Fees**
- 8.1. The Fees for the provision of the Services will be as set out or referred to in the Order, provided that if no Fees are set out there, then the Fees for the Services shall be the Supplier's list prices as in force at the time of the Contract.
- 8.2. Unless otherwise set out in the Order or agreed in writing, the Customer shall reimburse the Supplier for all actual, reasonable travel expenses including, airfares, hotels and meals incurred by the Supplier in performance of the Services.
- 8.3. All amounts and Fees stated or referred to in this Contract are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.4. Save where otherwise set out in the Order, the Supplier shall invoice the Customer quarterly in advance for all Services to be performed by the Supplier during that quarter.
- 8.5. Save as set out in the Order, or where the payment is made quarterly in advance, each invoice is due and payable 30 days after the invoice date. Interest shall accrue on any overdue amounts at the rate of 6% over the base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment.
- 8.6. The Supplier's right to be paid pursuant to this clause 8 is not conditional on the Customer having been paid by the End User.
9. **Software**
- 9.1. The Customer warrants that licence terms of each application within the Customer Software permit the Supplier to use the Customer Software to provide the Managed Service and that the use of the Supplier of the Customer Software, the Customer Data and any other materials or assets provided by the Customer or the End User to the Supplier will not infringe third party Intellectual Property rights.
- 9.2. The Customer grants the Supplier a royalty-free licence or sub-licence (as appropriate) to use the Customer Software for the purpose of providing the Managed Service to the Customer for the Term.
- 9.3. The Customer shall fully indemnify and hold harmless the Supplier from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Supplier as a result of, or in connection with, the breach by the Customer of clause 9.1.
10. **Change control**
- 10.1. If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing. The Supplier shall, within a reasonable time of such request, provide a written estimate to the Customer of the likely time required to implement the change, any variations to the Fees arising from the change, the likely effect of the change on the Order, and any other impact of the change on the terms of the Contract and whether a variation need be recorded in writing. If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. The Supplier is under no obligation to proceed with a change proposed by the Customer.
11. **Cloud Services**
- If the Customer wishes to subscribe to the Supplier's Cloud Services, and if the parties shall agree in writing, to the provision of the Cloud Services with effect from an agreed date ("**Cloud Commencement Date**"), then the Cloud Services Conditions shall apply to such provision. In the event of any discrepancy or difference between the provisions of this Contract and the Cloud Services Conditions, the Cloud Services Conditions shall prevail.
12. **TUPE**
- 12.1. In this clause, TUPE means the Transfer of Undertaking (Protection of Employment) Regulations 2006 as may be amended from time to time. If the contract of employment of any employee of the Customer or the End User is found, or alleged, to have effect after the Commencement Date as if originally made with the Supplier pursuant to TUPE, the Supplier will be entitled to terminate the employment of the individual concerned within one month of the date of such finding or allegation and the Customer will indemnify and keep the Supplier indemnified against all claims, demands, costs, liabilities and losses (including all interest, penalties and legal and other professional costs and expenses) arising or connected with such finding or allegation and/or termination.
13. **Intellectual Property**
- 13.1. The Customer acknowledges and agrees that, as between the parties, the Supplier and/or its licensors own all Intellectual Property in all materials connected with the Services and in any material developed or produced in connection with the Contract by the Supplier, its officers, employees, subcontractors or agents. Except as expressly stated in clause 13.2, these Conditions do not grant the Customer any rights to such Intellectual Property.
- 13.2. Subject to clause 3.1, the Supplier hereby grants the Customer a non-exclusive, non-transferrable, not sub-licensable, revocable licence to use its Intellectual Property rights for the sole purpose of receiving and using the Services during the Term.
14. **Confidentiality**
- 14.1. Each party undertakes that it shall not disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party save that each party may disclose the other party's Confidential Information to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract and as may be required by law, court order or any governmental or regulatory authority. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 14.1.
- 14.2. No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Contract and each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is secure. This clause 14 shall survive termination of the Contract, however arising.
15. **Limitation of liability**
- 15.1. Except as expressly and specifically provided in these Conditions:
- 15.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by any acts, omissions or delays of the Customer or the End User, or the Customer's breach or negligent performance of the Contract, or any actions taken by the Supplier at the Customer's or End User's direction; and
- 15.1.2. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract; and
- 15.1.3. the Cloud Services are provided to the Customer on an "as is" basis.
- 15.2. Nothing in these Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence; fraud or fraudulent misrepresentation; or any other liability which cannot lawfully be excluded or limited.
- 15.3. The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Managed Service, or its non-performance and non-availability.
- 15.4. Subject to clause 15.2 and clause 15.3:
- 15.4.1. the Supplier shall not be liable for any loss of profits, loss of business, loss of data, depletion of goodwill or similar losses, whether direct or indirect, or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 15.4.2. the Supplier'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 the Contract shall, in respect of damage to tangible property be limited to the sum of £500,000 per incident, and shall in all other respects be limited to the price paid for the Services during the 3 months preceding the date on which the claim arose.
- 15.5. The Customer shall indemnify and hold the Supplier harmless 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 professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- 15.5.1. any breach, non-performance or negligent performance by the Customer or the End User of the terms and conditions of this Contract;

- 15.5.2. any claims brought against the Supplier by third parties arising out of or in connection with the provision of the Services, save to the extent caused by the Supplier's breach, non-performance or negligent performance of the Contract;
- any claim made against the Supplier by the End User, howsoever arising (including but not limited to any and all claims in negligence).
16. **The indemnity at clause 15 applies whether or not the Supplier has been negligent or is at fault. Term and termination**
- 16.1. Subject to the rights of termination set out in this Contract, the Contract shall continue, unless otherwise terminated as provided in these Conditions, until expiry of the Initial Term. Thereafter the Contract shall automatically renew for successive yearly periods (each a "**Renewal Term**"), unless either party terminates by notice in writing to the other, such notice to be given at least 120 days before the end of the then-current term, and to be effective only at the end of that term.
- 16.2. If at any time within the Initial Term or any Renewal Term under clause 16.1 above the Customer agrees to the supply of Cloud Services in accordance with clause 11, the Term of the Contract shall be extended by a period of 3 years from the Cloud Commencement Date, and thereafter any renewals shall be in accordance with clause 16.1 above.
- 16.3. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- 16.3.1. the other party commits a material breach of any of the terms of these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- 16.3.2. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
- 16.3.3. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- 16.3.4. a receiver is appointed of any of the other party's assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of, or sells, the other party's assets;
- 16.3.5. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
- 16.3.6. the other party ceases, or threatens to cease, to trade, or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 16.3.7. The Supplier may terminate the Contract with immediate effect in the event that the Prime Contract is terminated or expires for whatever reason.
- 16.4. On termination of the Contract for any reason:
- 16.4.1. the Supplier shall immediately cease provision of the Managed Service but may provide transitional services for a further period subject to commercial terms being agreed between the parties for the provision of such services;
- 16.4.2. any Supplier Equipment located at the Customer's or End User's premises or within the Customer's or End User's possession at expiry or termination of the Contract shall be promptly returned by the Customer to the Supplier, and the parties shall cooperate to make appropriate arrangements for the Supplier to uplift the Supplier Equipment, at the Supplier's cost;
- 16.4.3. each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- 16.4.4. the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination or expiry of the Contract, a written request for the delivery to the Customer of the most recent backup of the Customer Data. The Supplier shall use reasonable commercial efforts to deliver the backup to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- 16.4.5. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
17. **General**
- 17.1. **Force majeure.** The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of part of the power grid, utility service or transport network, significant failure of the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.
- 17.2. **Waiver** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.3. **Severance** If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.4. **Assignment** Subject to clause 3.1, the Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under the Contract without the consent of the Customer.
- 17.5. **No Partnership or Agency** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership, joint venture or agency between any of the parties. No party shall be authorised to enter into any commitments for or on behalf of any other party except as expressly provided in the Contract.
- 17.6. **Third-Party Rights** The Contract is made for the benefit of the Supplier and the Customer as the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.
- 17.7. **Notices** Any notice required to be given under the Contract 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 registered address, or such other address as may have been notified by that party for such purposes. 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.
- 17.8. **Governing Law and Jurisdiction** This Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.

## Schedule 1: Cloud Services Conditions

1. Interpretation
 

The definitions and rules of interpretation in this paragraph apply in these conditions in addition to those defined terms as set out in the Terms and Conditions for the Supply of Managed Service, which shall apply equally in these conditions:

**Authorised Users:** those employees, agents and independent contractors of the Customer or the End User who are authorised by the Customer to use the Cloud Services and the Documentation, as further described in paragraph 2.2.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Cloud Services:** the subscription services provided by the Supplier to the Customer via the AtlasIM portal or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation[including the Support Services.

**Documentation:** the Supplier's documentation with instructions for its customers as to how to use the Cloud Services.

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order or if not set out in the Order, at the Supplier's list prices from time to time.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to paragraph 3 which entitle Authorised Users to access and use the Cloud Services in accordance with these terms.
2. User Subscriptions
  - 2.1. Subject to the Customer purchasing the User Subscriptions in accordance with paragraph 3, the restrictions set out in this paragraph 2 and the other terms and conditions of the Contract, the Supplier grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Cloud Services during the Term solely for the Customer's and End User's internal business operations.
  - 2.2. In relation to the Authorised Users, the Customer undertakes that:
    - 2.2.1. the maximum number of Authorised Users that it authorises to access and use the Cloud Services shall not exceed the number of User Subscriptions it has purchased from time to time;
    - 2.2.2. it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Cloud Services;
    - 2.2.3. each Authorised User shall keep a secure password for his use of the Cloud Services that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
    - 2.2.4. it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
    - 2.2.5. it shall permit the Supplier to audit the Cloud Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business. The Customer shall procure that the End User gives the Supplier all access and assistance requested by the Supplier for the purpose of conducting these audits;
    - 2.2.6. if any of the audits referred to in paragraph 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
    - 2.2.7. if any of the audits referred to in paragraph 2.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, the Customer shall pay to the Supplier an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.
  - 2.3. The Customer shall not, and shall procure that its Authorised Users shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Cloud Services that:
    - 2.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
    - 2.3.2. facilitates illegal activity;
    - 2.3.3. depicts sexually explicit images;
    - 2.3.4. promotes unlawful violence;
    - 2.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or causes damage or injury to any person or property;
    - 2.3.6. and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph.
  - 2.4. The Customer shall not, and shall procure that its Authorised Users shall not:
    - 2.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under these terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
    - 2.4.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
    - 2.4.3. access all or any part of the Cloud Services in order to build a product or service which competes with the Cloud Services; or
    - 2.4.4. use the Cloud Services to provide services to third parties; or
    - 2.4.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Cloud Services available to any third party except the Authorised Users, or
    - 2.4.6. attempt to obtain, or assist third parties in obtaining, access to the Cloud Services and/or Documentation, other than as provided under this paragraph 2; and
  - 2.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Cloud Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
  - 2.6. The rights provided under this paragraph 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
3. Additional User Subscriptions
  - 3.1. Subject to paragraph 3.2 and paragraph 3.3, the Customer may, from time to time during any Subscription Term, request additional User Subscriptions in excess of the original number, by giving the Supplier written notice. The Customer is not entitled to buy additional User Subscriptions in excess of 25% of the original number of User Subscriptions save where expressly agreed by the Supplier in writing.
  - 3.2. The Supplier shall evaluate the Customer's request for additional User Subscriptions and grant or refuse the request (in its sole discretion).
  - 3.3. If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Term, such fees shall be pro-rated for the remainder of the Term.
4. Cloud Services
  - 4.1. The Supplier shall provide the Cloud Services to the Customer on and subject to these terms.
  - 4.2. The Supplier shall use commercially reasonable endeavours to make the Cloud Services available 24 hours a day, seven days a week, except for:
    - 4.2.1. planned maintenance carried out during the maintenance window as published performed outside Normal Business Hours; and
    - 4.2.2. unscheduled maintenance performed during Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer as much notice as is reasonable practicable in the circumstances.
  - 4.3. The Supplier shall be entitled to increase the Cloud Services Fees at the start of any renewal period for the Cloud Services upon 90 days' prior written notice to the Customer.
  - 4.4. The Supplier shall further be entitled to increase the Cloud Services Fees at any time during the Term upon 30 days' prior

written notice to the Customer in the event of annual increases in excess of 10% in respect of the energy prices charged to the Supplier by its energy suppliers, such increase being limited to the amount which reflects the increased cost of energy to the Supplier

## 5. Third party providers

The Customer acknowledges that the Cloud Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation 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 the Supplier. The Supplier 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. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Cloud Services.

## 6. Supplier's obligations

- 6.1. The Supplier will perform the Cloud Services with reasonable skill and care.
- 6.2. The Supplier:
  - 6.2.1. does not warrant that the Customer's or End User's use of the Cloud Services will be uninterrupted or error-free; nor that the Cloud Services, and/or the information obtained by the Customer or the End User through the Cloud Services will meet the Customer's requirements; and
  - 6.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that it, and not the Supplier, is responsible for the Customer's internet and other network connections to the Cloud Services and that the Cloud Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms.

## 7. Customer's obligations

- 7.1. The Customer shall:
  - 7.1.1. ensure that the Authorised Users use the Cloud Services in accordance with these terms and shall be responsible for any Authorised User's breach of these terms;
  - 7.1.2. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these terms;
  - 7.1.3. ensure that its network, data communication lines and systems comply with the relevant specifications provided by the Supplier from time to time; and
  - 7.1.4. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and 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.

## 8. Indemnity

- 8.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Cloud Services provided that:
  - 8.1.1. the Customer is given prompt notice of any such claim;
  - 8.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 8.1.3. the Customer is given sole authority to defend or settle the claim.
- 8.2. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- 8.2.1. a modification of the Cloud Services by anyone other than the Supplier; or
  - 8.2.2. the Customer's or Authorised User's use of the Cloud Services in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 8.2.3. the Customer's or Authorised User's use of the Cloud Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 8.3. The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## Schedule 2: End User Licence

### END USER LICENSE TERMS

#### **TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE**

This document governs the use of Microsoft software, which may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “Products”) provided by Atlas Cloud Limited (hereinafter referred to as “Customer”). Customer does not own the Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

#### **1. DEFINITIONS.**

“Client Software” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.

“Server Software” means software that provides services or functionality on a computer acting as a server.

“Software Documentation” means any end user document included with server software.

“Redistribution Software” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

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**7. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Customer.

**8. TERMINATION.** Without prejudice to any other rights, Customer may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer’s agreement with Microsoft under which the Products are licensed, you must stop using and/or accessing the Products, and destroy all copies of the Products and all of their component parts.

**9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY CUSTOMER AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.**

**10. PRODUCT SUPPORT.** Any support for the Products is provided to you by Customer and is not provided by Microsoft, its affiliates or subsidiaries.

**11. NOT FAULT TOLERANT.** THE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

**12. EXPORT RESTRICTIONS.** The Products are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

**13. LIABILITY FOR BREACH.** In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.