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# Atlas Cloud Compute (ACC) Service Agreement

This Atlas Cloud Compute Services Agreement (“ACC Services Agreement”) is between Atlas Communications (NI) Ltd (“Atlas” or “we”) and the customer identified in a Service Order that incorporates this ACC Services Agreement (“Customer” or “you”).

## BACKGROUND

A. Customer has deployed or plans to deploy a cloud computing platform on Atlas provided hardware, hypervisor and management software.

B. Atlas provides various Support Services for the hardware, hypervisor and management software. Customer and Atlas agree that Atlas will provide services related to Customer’s use of hardware, hypervisor and management as defined in this ACC Services Agreement and subject to the limitations, terms, and conditions stated in this ACC Services Agreement.

## AGREEMENT

### 1. TERMS

Some words used in this ACC Services Agreement have particular meanings:

“Affiliate” means a subsidiary or holding company of either party to the Agreement and any subsidiary of such holding company (where “holding company” and “subsidiary” have the meanings set out in Section 1159 of the Companies Act 2006).

“Business Day” or “Business Hours” means 8:30a.m. – 5:00 p.m. Monday through Friday, excluding public holidays in the Northern Ireland.

“Confidential Information” means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including:

(i) for both of us, unpublished prices and other non-public terms of service, audit and security reports, product development plans, solution diagrams, data centre designs, other proprietary information or technology and information that is marked or otherwise conspicuously designated as confidential;

(ii) for each party, any Intellectual Property or proprietary information maintained in confidence (such as unpublished source code or inventions); and

(iii) for Atlas, the Atlas Configuration for Cloud Compute platform. Information that is independently developed by one of us, without reference to the other’s Confidential Information, or that becomes available to one of us other than through breach of the Agreement or applicable law, shall not be “Confidential Information” of the other party.

“Intellectual Property” or “IP” means legally protectable rights related to patents, copyrights, trademarks, trade secrets, and any other proprietary intellectual property.

“Atlas Configuration for Cloud Compute platform” means the materials provided to Customer by Atlas specifying hardware, networking, software configuration and other elements of a Cloud Compute platform cloud deployment required for ACC Support Services and which may include requirements regarding the hardware specifications, Operating System and other software versions, and configuration scripts. The then current minimum requirements for the Atlas Configuration for Cloud Compute platform are described in your Service Description or may otherwise be communicated to You by Atlas.

“Atlas Cloud Compute” or “ACC” means the cloud computing platform for which Atlas is providing under a Service Description, and which conforms to the Atlas Configuration for Cloud Compute platform.



“Atlas Cloud Compute Software” means the compilation of software (including Cloud Compute platform software distributed by Atlas) identified in the Atlas Configuration for Cloud Compute platform.

“Service Description” means a document signed by the parties or agreed to electronically for Services pursuant to this ACC Services Agreement and which describes a specific cloud computing platform for which Atlas is to provide Services under this ACC Services Agreement or the nature of the Support Services.

“Service”, “Services” or “Support Services” means the services provided by Atlas as identified on a specific Service Description and described in this ACC Services Agreement.

“Service Level Agreement” means a guarantee or guarantees identified in this ACC Services Agreement. The Service Level Agreement is separate document that the customer can request at any time.

“Software Support for Atlas Cloud Compute Storage” or “Atlas Cloud Compute Storage Support” shall have the meaning as described in Section 7.3.

“Supplementary Services” means those services you purchase from Atlas other than the Services.

## **2. Use of the Cloud Compute Service**

- 2.1 You may access the Services via the online Atlas Cloud control panel or via an Atlas -provided API. Atlas may modify its online control panel or API at any time, or may transition to a new API. You agree that we may establish new procedures for your use of the Services, including as we deem necessary for the optimal performance of the Services. Your use of any API, code or SDK (software development kit) provided by Atlas is governed by the terms and conditions included with the code in the file named “COPYING” or “LICENSE” or like caption and the terms of the Agreement. Your Service Description includes any Services which you provision through the cloud control panel or an Atlas provided API.
- 2.2 You agree that we may establish new procedures for your use of the Services as we deem necessary for the optimal performance of the Services. You agree that we may migrate the Customer Configuration or your Customer Data within or between data centres if we determine doing so is necessary to remediate service degradation or shared resource constraints or for the optimal performance of the Services. We will endeavour to provide you reasonable advance notice of at least thirty (30) days including details of where your service and data will be located unless we determine it is necessary to migrate the Customer Configuration or your Customer Data within or between data centres to remediate service degradation within a lesser timescale.
- 2.3 Your use of the Cloud Compute Services includes the ability to provision additional Services electronically, and you acknowledge that such provisioning constitutes your acceptance of the Agreement for each purchase or transaction you conduct. Atlas’ provisioning of the Services described in such transaction shall constitute Atlas’ acceptance of the Service Description. Unless you are using the Services subject to a free trial or pro bono account approved by Atlas, you may only use the Services for commercial purposes. The individual who submits an order for Services warrants and represents that they do so on behalf of a business, company or other legal entity and not as a consumer. If the individual placing the order is a consumer, and not otherwise subject to the Account Exceptions, Atlas may cancel the Service Description and terminate the Services and the Agreement at any time in its sole discretion.
- 2.4 The Customer and the Customers employees or any third parties who utilise the Service may only use the Service for lawful purposes. You shall not (nor authorise or permit any other party to) use the Service for the transmission of any material which is in violation of any law or regulation or which is defamatory, menacing, obscene, in breach of third party intellectual property rights (including copyright), adversely affects Atlas’ ability to provide services to its customers or is in breach of any trade secrets. Any breach of this clause shall be deemed to be a material breach of the Agreement and shall entitle Atlas to terminate the Agreement and for this purpose it shall be irrelevant whether you are aware of the content of any material so transmitted or not. Atlas may suspend the Service without notice with immediate effect if in Atlas’ reasonable opinion the customer is in breach of this clause.



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- 2.5 You acknowledge that Atlas is unable to exercise control over the content of the information passing over the Atlas connection and/or the Atlas network and/or the Service, and Atlas hereby exclude all liability of any kind for the transmission or reception of infringing information of whatever nature.
  - 2.6 You hereby agree to indemnify and hold Atlas harmless from any claim brought by a third party against Atlas resulting from the use of the Service by the Customer, including but not limited to infringement of any
  - 2.7 intellectual property right of any kind, legislation or regulation. The Customer shall pay all reasonable costs, damages, awards, fees (including reasonable legal fees) and judgments finally awarded against Atlas arising from such claims, and shall provide Atlas with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Customer's sole expense. Such actions will be taken in consultation with the Customer.
  - 2.8 The Service may be used by the Customer to link into other networks world-wide and the Customer agrees to conform to the acceptable use policies of such networks.
  - 2.9 Atlas is not required to provide any support (including Support Services) directly to Customer's end users. You agree that you will not refer your End Users to Atlas for direct support without Atlas's prior written consent. Atlas's engineering and development personnel are not required to interact with Customer personnel other than the skilled engineering and technical personnel designated by Customer as provided in Section 3 (Customer Obligations) below. Unless specified in a given Service Description, Atlas is not required to support any element of Customer's ACC other than those running the Atlas Cloud Compute inclusive hardware & software as identified in the Atlas Configuration for Cloud Compute platform. Examples of specifically included or excluded services may be detailed in a given Service Description
  - 2.10 Atlas Configuration for Cloud Compute platform. To receive Support Services, Customers must be running the Atlas Cloud Compute Hardware & Software as built by Atlas. Atlas may from time to time update the Atlas Configuration for Cloud Compute platform, including in cases where a change to the hardware or architecture requirements is necessary to support new versions of Cloud Compute platform or the Atlas Cloud Compute Software. Following such changes, the Customer shall use reasonable efforts to update their own provided software to the current standards provided by Atlas at appropriate times in the lifecycle of the hardware, networking and software elements that comprise the ACC. Notwithstanding the preceding, in order to receive support for the ACC it must at all times adhere to the supported versions as provided to the Customer by Atlas (even if a hardware or configuration change is required to update to a supported version). Customer shall make its design and other documentation available to Atlas for review at all times during the term of a given Service Description. Atlas may terminate any Service Description without liability if the customer configuration covered by the Service Description does not conform to the applicable Atlas Configuration for Cloud Compute platform and Customer fails to cure the non-conformity within twenty-one (21) days of Atlas's notice describing the non-conformity in reasonable detail. Customer acknowledges that customer provided software and architecture requirements may change due to changes of hardware and software that constitute Atlas Cloud Compute platform. The Customer acknowledges that the hardware and architecture requirements may change between versions of the Atlas Cloud Compute, and changes to the customer provided software and services may be required in order to update the Atlas Cloud Compute platform.
  - 2.11 Data Backup. Customer shall maintain backups of all information stored on the ACC on an environment separate from the ACC. Atlas accepts no responsibility for the integrity of data on the ACC.
  - 2.12 You may not attempt to probe, scan, penetrate or test the vulnerability of an Atlas system or network or to breach our security or authentication measures, whether by passive or intrusive techniques without our prior written consent.
  - 2.13 You may not copy any software we provide for your use, unless expressly permitted by this Agreement. You may not remove, modify or obscure any copyright, trade mark, or other proprietary rights notices that appear on any software we provide for your use. Unless permitted by the terms of an open source software licence, you may not reverse engineer, decompile or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to Atlas.

### 3. SERVICE LEVEL AGREEMENTS

3.1 Cloud Compute SLA's. The Service Level Agreement(s) set out in the Cloud Compute SLA are part of the Agreement, as applicable to the Services specified in your Service Description

3.2 Managed CloudCompute SLA. If you purchase the Managed Infrastructure or Security Services, then separate SLAs will apply

3.3 Limitations on Credits. The following limitations apply to all CloudCompute SLAs:

3.3.1 Maintenance. You are not entitled to a credit under any Service Level Agreement for downtime or outages resulting from Maintenance. Maintenance means:

a. Atlas maintenance windows - modification or repairs to shared infrastructure, such as core routing or switching infrastructure that we have provided notice of at least seventy-two hours in advance, that occurs during off peak hours.

b. Scheduled customer maintenance – maintenance of your configuration that you request and that we schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades;

c. Emergency maintenance – critical unforeseen maintenance needed for the security or performance of your configuration or Atlas' network.

3.3.2 Exclusions of Service Level Agreements. You are not entitled to a credit for a failure to meet a SLA which results from denial of service attacks, viruses or malware, hacking attempts, change which you effect or request which results in downtime or outages or interferes with our ability to provide the Services, deficiencies, bugs or errors in your application, application code, data structures, system software, operating system, or any vendor supplied patches or any other circumstances that are not within our control.

3.3.3 Save as expressly set out herein, all conditions or warranties which may be implied or incorporated into this contract by law or otherwise are hereby expressly excluded to the extent permitted by law. In no circumstances whatsoever will Atlas be liable for economic, indirect or consequential loss.

3.3.4 While Atlas will use all reasonable endeavours to provide a prompt and continuing service it will not be liable for any loss of data resulting from delays, non-deliveries, missed deliveries, or service interruptions caused by events beyond the control of Atlas, or by errors or omissions of the Customer.

3.3.5 Atlas specifically exclude any warranty as to the quality or accuracy of information received through the Service.

3.3.6 The liability of Atlas to the Customer in respect of an event or series of connected events arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or otherwise, shall be limited to £1,000 or the maximum monthly credit, whichever is the larger sum.

3.3.7 Each provision of these clauses 3.5.2 to 3.5.6 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstances and shall remain in force notwithstanding the termination or expiry of this Agreement.

3.3.8 Requests for Credits. You must request a credit via support ticket emailed to customer.service@atlas-comms.com within thirty days following the occurrence of the event giving rise to the credit. If the claim is approved, the credit will be applied during the next billing cycle following approval. You must show that your use of the Service to which the applicable SLA applies was adversely affected in some way as a result of the downtime or outage to be eligible for the credit. For the purpose of determining whether a credit is due, time periods will be measured from the time stamp generated by our ticket system, the time an interruption is recorded in our monitoring system, until Service availability is restored or the affected device is powered back on, as applicable. You may open a support ticket to document the start time for a support request or other incident, or if you contact us by telephone to request support, we will open a ticket. If you contact us by email, there may be a delay between the time of the call and the time we open a ticket.



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#### 4. TERM AND RENEWAL

- 4.1 Term. The initial term indicated in the Service Description begins on the date that we make the Services available for your use and continues for the period stated in the Service Description. If no period is stated in the Service Description, then the initial term shall be 3 months. Upon expiration of the initial term, the Service Description will automatically renew for successive renewal terms of one month each, unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the then current term following the process in section 4.3.
- 4.2 The Service Description is deemed to be incorporated into the Agreement.
- 4.3 Non-renewal Process. You must follow Atlas' non-renewal process accessible to give effective notice of non-renewal. All notices of non-renewal you may give that are outside of that process, including notices given by telephone shall be invalid. All notices of non-renewal of service must be emailed to [customer.service@atlas-comms.com](mailto:customer.service@atlas-comms.com). For clarity powering down or deleting of a virtual server instance via the portal or API does not constitute a termination of contract. Before the effective date of termination, you are responsible for retrieving a copy of the Customer Data and deleting Customer Data from the Services. Upon the effective date of termination, you will no longer have access to the Services. For avoidance of doubt these CloudCompute Terms of Service, shall continue to apply following your notice of non-renewal until the effective date of termination. You will not have access to your data stored on the Services during a suspension or following termination or expiration. You acknowledge that if you terminate the Services or delete instances through your Control Panel, API or other means, that the data contained thereon will no longer be recoverable.
- 4.4 Either party may terminate this agreement forthwith where the other party is in a material breach of this agreement and fails to remedy the same within 21 days of written notice demanding such remedy.
- 4.5 Either party may terminate this agreement forthwith where the other party commits any act of bankruptcy; or compounds with its creditors; or a petition or receiving order in bankruptcy is presented or made against the other party; or in a petition to wind up the other party or an administration order presented in relation to the other party or a resolution or petition is passed or presented (otherwise than for reconstruction or amalgamation) or a receiver or administrative receiver is appointed.
- 4.6 If this agreement is terminated (save in respect to Clauses 4.4 & 4.5 above) before the expiry of the Initial Term, Atlas will charge the Customer a termination fee of 50% of the total subscription fee payable in respect of the Initial Term or the subscription fee payable for the remainder of the Initial Term (whichever is less).

#### 5. FEES

- 5.1 Atlas will charge you and you agree to pay when due the fees for the Services in accordance with your Service Description. Unless you have made other arrangements, Atlas will charge you monthly, by invoice, beginning on the date that Atlas first makes the Services available to you and monthly in advance thereafter. Payment for the Service must be made in advance of the period invoiced for to ensure provision of the Service. Unless stated otherwise, fees are stated and will be charged in the same currency as per your Service Description. Any credit that we may owe you, such as a credit for failure to meet a Service Level Agreement, will be applied to fees due from you for Services, and will not be paid to you as a refund. You authorise Atlas to obtain a credit report at any time during the term of the Agreement.
- 5.2 For those Services provided on a month-to-month term, we may increase fees at any time on thirty days' advance written notice. If your Service Description contains Services with a specified term longer than one month, then we may increase your fees effective as of the first day of the renewal term following thirty days from the day of our written notice of such fee increase.

## **6. RESALE**

You may resell the Services, except as provided in the Agreement or otherwise restricted by Atlas. You are responsible for use of the Services by any third party to the same extent as if you were using the Services yourself. You may not resell the use of our Role Based Access Control services.

## **7. CUSTOMER DATA PRIVACY**

- 7.1 You warrant that you shall process any Personal or other Data relating to your customers (meaning Sensitive Data that can be used to identify an individual or is likewise defined by applicable law) in compliance with all applicable laws. You shall, or you shall require your end user(s) to, implement those technical and organisational measures required by the applicable laws relative to your use of the Services and the nature and the volume of the Personal Data stored on the Customer Configuration or processed through your use of the Services. You are responsible for providing any necessary notices to individuals and for obtaining any legally required consent from individuals in relation to our provision of any Services to you or your processing of any Personal Data.
- 7.2 Atlas reserve the right to put the names and other information from the Service Description relating to its Customer into a computerised directory for internal use only, unless specific written instructions are received from the Customer.
- 7.3 The Customer shall inform Atlas forthwith of any changes of address, telephone number, contact email personnel changes or any other material details, which were originally provided to Atlas.
- 7.4 Atlas is not responsible to you or any third party for unauthorised access to your data or the unauthorised use of the Services unless the unauthorised access or use results from Atlas's failure to meet its security obligations stated in this ACC Services Agreement or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorise to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorised by you.
- 7.5 In accepting these Terms you give consent that we can process your personal data, receive and hold confidential and/or sensitive personal data in relation to you and that, where appropriate, we can disclose this to others, such as suppliers, delivery companies. If you have a concern about disclosure of any particular sensitive personal or commercial data you can raise this with us at any time.

## **8. CUSTOMER DATA BACKUP**

Although the Service may be used as a backup service, you agree that you will maintain at least one additional current copy of your Customer Data somewhere other than on the Atlas CloudCompute Services. If you utilize Atlas Vault backup services, you are responsible for performing and testing restores as well as testing your systems and monitoring the integrity of your Customer Data. You have the option to create a snapshot or backup of your cloud servers or databases, however, it is your responsibility to initiate the snapshot or backup and test them to determine the quality and success of your snapshots and backups.



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## 9. SUSPENSION OF SERVICES

We may suspend Services without liability if:

- (i) you have failed to pay for your services in advance of the period you have been invoiced for
- (ii) we reasonably believe that the Services are being used in violation of the Agreement;
- (iii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement;
- (iv) there is an attack on your Customer Configuration or your Customer Configuration is accessed or manipulated by a third party without your consent,
- (v) we are required by law or by a regulatory or government body to suspend your Services, or
- (vi) there is another event for which we reasonably believe that the suspension of Services is necessary to protect the Atlas CloudCompute Service the Atlas network or our other customers.

We will give you advance notice of a suspension under this paragraph of at least 12 Business Hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Atlas or its other customers from imminent and significant operational, legal, or security risk. If your Customer Configuration is compromised, then you must address the vulnerability prior to Atlas placing the Customer Configuration back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Service. If a suspension is based on your breach of your obligations under the Agreement, we may continue to charge you the fees for the Services during suspension, and may charge a reasonable reinstatement fee upon reinstatement of the Services.

## 10. MICROSOFT SOFTWARE

Your use of any Microsoft® software is governed by:

- (i) Microsoft's license terms for use of Microsoft software on the Atlas CloudCompute under the license mobility program, and
- (ii) any use restrictions on your use of the Microsoft software as indicated in your Service Description, such as a limitation on the number of users. If you resell any part of the Services that include Microsoft software, then you must include the Microsoft terms in a written agreement with your customers.

## 11. SERVICES MANAGEMENT AGENT

You agree that Atlas may install service management agents on your Customer Configuration for purposes of providing & supporting the Services and identifying security vulnerabilities. Atlas agrees that its agents will use only a minimal amount of computing resources (except as otherwise necessary for the provision of the Services) and Atlas will not otherwise use the agents to view or capture Customer Data. The Services will become Unsupported Services if you disable or interfere with our services management software agent(s).



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## 12. ADDITIONAL TERMS

- 12.1 Cloud Server Images. If you provision a Cloud Compute Service using a non-standard or non-Atlas image or installation (even if such image is made available to you by Atlas during configuration, provided that it is identified as such), then Atlas shall have no obligation to provide Support for that Service, and any Support provided shall be on an AS IS basis. You agree that if you use our Services to share or receive an image you do so at your sole risk.
- 12.2 Role-Based Access Control. Your designated account administrator is responsible for role administration. You may self-manage role administration via the Atlas Cloud Compute control panel or API. When making permission changes with role-based access control services, there may be a delay before the implementation of changes, including self-managed changes. Atlas is not responsible for any loss that may occur due to the delayed implementation of changes.

## 13. MODIFICATIONS

- 13.1 Atlas may, at reasonable intervals, send a revised version of reasonable modifications of these terms under this Agreement together with a notice stating when such terms will come into force. If the Customer continues to use the service after such date, then the customer shall be deemed to have accepted these revised terms with effect from the specified date.
- 13.2 Atlas shall have the right by notice in writing to the customer to modify the Agreement at any time to comply with any law or regulation or other requirement applicable to or imposed upon Atlas by any competent authority.

## 14. GENERAL

- 14.1 Neither party shall be liable in respect of any breach of this Contract due to any cause beyond its reasonable control including but not limited to: Act of God, inclement weather, flood, lightning or fire; industrial action, act or omission of Government, or other competent authority, riot, war or act or omission of any other party for whom that party is not responsible.
- 14.2 Laws Applicable to Customer. Customer acknowledges that it is solely responsible for compliance with all laws applicable to its use of the ACC, including data privacy laws and regulations. If Atlas's access to the ACC under this ACC Services Agreement would result in exposing Atlas to regulated data (including but not limited to personal data or financial information) in violation of applicable law, Customer shall communicate such to Atlas in writing and Customer shall take appropriate measures to encrypt or secure such data, or otherwise prevent access to such data by Atlas.
- 14.3 These Terms and Conditions are governed by and shall be construed in accordance with the Laws of Northern Ireland and the Customer hereby submits to the exclusive jurisdiction of the Northern Irish Courts. Subject to clauses 4.1 and 4.2 this Agreement represents the entire agreement between the parties. No variations to these Terms and Conditions shall be valid unless in provided in writing and agreed by both the parties hereto.