

# CUSTOMIZED SERVICE CONTRACT (CSC)

for „Cloud Solution for Service Providers (CSSP)“



This Customized Service Contract (CSC) – hereinafter referred to as ‘Agreement’ – shall come into legal effect based on our offer, your order and our Order Confirmation without requiring your reconfirmation or a signature. You are hereinafter also referred to as "Partner", we as "ASC" and both together or individually as "Party(ies)".

You will receive support for the Subject of Agreement (cf. Section 1) within the scope of the service elements ordered.

The basis of this Agreement is formed by the following described **CSC Basic Concept** CSCcertified including RESPONSEplus

**CSCcertified** (see 10.1)

**RESPONSEplus** (see 11.1)

## DEFINITIONS

- Subject of Agreement:** “Cloud Solution for Service Providers (CSSP)”, please refer to the relating Business Partner Agreement.
- Equipment Location:** As described in your order, also referred to as ‘User’ thereafter.
- Beginning of Agreement:** As described in our invoice.  
Note: If the Subject of Agreement is installed by ASC, the Agreement comes into effect with handover, provision, acceptance, or commissioning of the Subject of Agreement – depending on whichever comes first – without the need of further confirmation or a countersignature.
- Duration of Agreement:** Indefinite, as long as the Subject of Agreement is operated by the Partner.
- Contract Fee:** Included in CSSP license fee.
- Billing:** According to CSSP Processing Agreement (Appendix 2 of the Business Partner Agreement)
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- Payment Conditions:** According to CSSP Processing Agreement (Appendix 2 of the Business Partner Agreement).
- Special Agreements:** If applicable, see our offer.

## 10. Responsibilities of ASC

### 10.1 For CSCcertified, ASC undertakes to provide to certified Partners the following basic services for the ‘Subject of Agreement’ listed under section 0 during the agreed Time of Performance

- ANALYZEcare: ASC Trouble Shooting and Problem Analysis (Level 3 Service)
- UPGRADEcare: Provision of Software Upgrades for the latest version of the ASC software
- UPDATEcare: Provision of Software Updates for the latest version of the ASC software
- SOFTcare: Provision of Software Updates for the latest version of software components provided by ASC by third parties
- DOCUcare: Technical Documentation

**Note:** CSCcertified is only available for certified and approved Partners, as in this case all Level 1 & 2 Services as indicated in section 16 will be provided by the Partner.

### 10.2 No operation of Subject of Agreement

This Agreement includes the aforementioned basic services and expressly does not include the operation of the Subject of Agreement by ASC. The Partner is the operator of the solution and thus responsible for the relevant measures required to maintain operation, including the performance of the usual duties of precaution and cooperation (e. g. Service Management, Change Management, Release & Deployment Management, Access Management, Software Configuration Management and Service Continuity Management). The Partner is free to effectively transfer its responsibilities to the User of the Subject of Agreement or to any other suitable third party; the Partner must ensure that the requirements associated with this are fulfilled by the aforementioned.

## 11. Time of Performance and Response Time

ASC will make all reasonable effort to provide the service within the agreed and below-mentioned Response Time. Generally, all Response Times are effective from the incident report issued by the Partner or User according to the Fault Priority Class listed in section 0.

### 11.1 RESPONSEplus: Faster Response Time

Incident Report	Please see the Service hours in Section 13.2, relating to your Support Region.			
Time of Performance	Please see the Service hours in Section 13.2, relating to your Support Region.			
<b>Fault Priority Class</b>	<b>Emergency</b>	<b>Priority 1</b>	<b>Priority 2</b>	<b>Priority 3</b>
Response Time after Incident Report	2 hours	4 hours	8 hours	Next working day
Beginning of Remote Support within	4 hours	8 hours	Next working day	Within two (2) working days

# CUSTOMIZED SERVICE CONTRACT (CSC)

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## 12. Fault Priority Classes

### Emergency / SOS:

Incident, which **completely** impairs usage of the system in its main functions.

- Any incident that results in loss of recording functionality or data, or if allowed to persist would result in such recording loss
- Any incident that results in a loss of recording control capabilities, means the proper functioning of clients (CLIENT~~command~~, POWER~~play~~ Pro and PHONE~~app~~) to start and stop recordings
- Loss of the CTI-connectivity to a PABX, loss of API Interface connectivity when used to start and stop recording
- Loss of the connectivity to the data base
- Any incident that results in any data corruption causing a failure of the Solution or Solution Component to process data

### Priority 1:

Incident, which **significantly degrades** usage of the system in its main functions

- Any degradation in recording capacity or traffic handling capability
- Any degradation of the system's ability to provide applicable alarms
- Any incident that results in loss in the ability to search and replay recordings
- Loss of API interface connectivity (when not used to start and stop recording, e.g. for provisioning)
- Any kind of failover (DB, Recording, EC) or loss of one recording entity at parallel recording.

### Priority 2:

Incident, which impacts **usage of the system functionality**.

- Degradation of access for routine administrative capability
- Any incident not listed above which impacts system functionality

### Priority 3:

Incident, which **does not impact system functionality**.

- A software incident which does not affect system functionality
- Any incident or request that is not captured in the previous levels

## 13. Description of the Basic Service

### 12.1 ANALYZE~~care~~: ASC Trouble Shooting and Problem Analysis (Level 3 Service)

Based either on the findings received from Partner's previous Level 1 & 2 Services or from ASC's previous remote service activities (depending on the CSC Basic Concept chosen), ASC will – supported by the Partner – start an in-depth diagnosis of the problem, and attempt to find either an individual problem resolution (hotfix) or an acceptable work-around. ASC will – at its discretion – provide or recommend them to the Partner or install them on their own via remote service.

### 12.2 UPGRADE~~care~~: Provision of ASC Software Upgrades

“Upgrades” primarily contain major enhancements and new features – as well as bug fixes and other improvements – of ASC software products which are usually provided in combination with a new software version. However, they do not include the support for non-OEM third-party products or for a module not purchased with the original software. They neither include a new operating environment (e. g. server operating system, PBX version or network / system-side communication licenses). UPGRADE~~care~~ includes the provision of such Software Upgrades on a suitable medium (e. g. disk, FTP access, download link).

*Note: Applying a Software Upgrade may cause or require a new or modified Software License Agreement under certain conditions, which will become effective either by implicit action or a required explicit confirmation. This new or modified Software License Agreement will also come into force for the already installed software components.*

### 12.3 UPDATE~~care~~: Provision of ASC Software Updates

“Updates” primarily contain bug fixes, minor enhancements or improvements of the ASC software, but do not contain significant new features. UPDATE~~care~~ includes the provision of software patches, service packs and updates on a suitable medium (e. g. disk, FTP access, download link).

### 12.4 SOFT~~care~~: Provision of Software Updates for Third-Party Software

Services according to section 12.3, but specifically for updates of third-party software supplied by ASC. Upgrades of third-party software are explicitly not included.

### 12.5 DOCU~~care~~: Technical Documentation

ASC periodically provides technical documentation in electronic form. User manuals and installation manuals are part of the version release and will be updated accordingly.

### 12.6 Other Services

In addition to the basic services and Service Extensions mentioned above, the provision of further services may be agreed between ASC and the Partner; a written order by the Partner and an order confirmation by ASC are required for this purpose. At no time shall ASC be subject to any obligation deriving from this Agreement to accept a corresponding order from the Partner. The scope and form of the ordered services shall be recorded in a Service Agreement; however, Times of Performance including Response Times are always non-binding and depend on the availability of the relevant resources; the time of execution shall therefore be at the discretion of ASC and without any warranty whatsoever. These services will be invoiced depending on time and material expenditure on the basis of ASC's rates applicable at the Time of Performance.

**The following is an overview of Other Services that are not included in this Agreement, but for which performance can be agreed in accordance with the aforesaid for a separate charge:**

# CUSTOMIZED SERVICE CONTRACT (CSC)

for „Cloud Solution for Service Providers (CSSP)“



- 12.6.1 Services or service elements, which
  - are not expressly performance elements of this Agreement;
  - possibly correspond to the content of this Agreement, but were not explicitly ordered upon conclusion of this Agreement;
  - fall outside the agreed Time of Performance and Response Time; or
  - in case of CSC certified could have been provided by a certified Partner without further queries or consultation, according to reasonable discretion.
- 12.6.2 Trouble Shooting of the Subject of Agreement, including any hardware and software components included therein which have been damaged by external causes and influences such as:
  - negligence, improper handling, unauthorized interference or improper usage;
  - unauthorized programming or the unapproved use of firmware and software;
  - use of material or equipment that does not comply with the ASC specifications; or
  - breach of duty by a partner or operator while maintaining the contractual item according to ASC specifications.
- 12.6.3 Customer-specific software developments or adaptations (e. g. Professional Services).
- 12.6.4 Performance of software updates/upgrades, if these are requested by the Partner without any objective necessity like troubleshooting.
- 12.6.5 System enhancements, expansions, changes, or relocations (so-called Move/Add/Change (MAC) activities), migrations outside the regular upgrade path or to a new system platform, as well as data recovery.
- 12.6.6 Availability for and support or implementation of regular or unscheduled tests or other actions in the IT infrastructure in connection with the Subject of Agreement (e. g. disaster recovery test, patch days).

## 14. Reporting and Communication Channels

### 14.1 Ticket Opening

Cases can be opened easy and well-structured via the [Support Request Form](#) in [ASC's Partner Portal](#). This Case Opening Process gives you the certainty that your support requests will automatically and immediately be turned into cases with ASC.

### 14.2 Service Desk

For further communication (not case opening), the Partner can access ASC level 2 support via the following channels during the mentioned Service hours:

Region EMEA and all other regions, not listed below

- Service hours: Monday to Friday, 8:00 am to 6:00 pm CET (excluding bank holidays in Germany)
- by phone for calls from Germany: +49 700 2727 8776 or +49 700 ASCSUPPORT, alternatively +49 6021 8671 999
- by phone for calls from outside Germany: +49 6021 8671 999
- by e-mail: [CustomerService@asctechnologies.com](mailto:CustomerService@asctechnologies.com)

Region United Kingdom

- Service hours: Monday to Friday, 9:00 am to 7:00 pm CET (excluding bank holidays in Great Britain)
- by phone: +44 1276 676070
- by e-mail: [UK@asctechnologies.com](mailto:UK@asctechnologies.com)

Region Italy

- Service hours: Monday to Friday, 8:30 am to 5:30 pm CET (excluding bank holidays in Italy)
- by phone: +390 2480 21 77
- by e-mail: [IT.support@asctechnologies.com](mailto:IT.support@asctechnologies.com)

Region France

- Service hours: Monday to Friday, 8:00 am to 6:00 pm CET (excluding bank holidays in France)
- by phone: +33 1 75 43 65 34
- by e-mail: [FR.services@asctechnologies.com](mailto:FR.services@asctechnologies.com)

Region Spain/Portugal

- Service hours: Monday to Friday, 8:00 am to 6:00 pm CET (excluding bank holidays in Spain)
- by phone: +34 910 31 66 40
- by e-mail: [ES.support@asctechnologies.com](mailto:ES.support@asctechnologies.com)

Region Switzerland

- Service hours: Monday to Friday, 8:00 am to 6:00 pm CET (excluding bank holidays in Switzerland)
- by phone: +41 41 798 00 44
- by e-mail: [ch-hotline@asctechnologies.com](mailto:ch-hotline@asctechnologies.com)

Region North- and Central America (USA / Canada / Mexico)

- Service hours: Monday to Friday, 8 am to 6 pm EST (excluding US bank holidays)
- by phone: +1 732 515 5930
- by e-mail: [na.servicedesk@asctechnologies.com](mailto:na.servicedesk@asctechnologies.com)

Region South America (Brazil, Argentina, Columbia, Chile etc.)

- Service hours: Monday to Friday, 8 am to 6 pm EST (excluding bank holidays)
- by phone: +55 11 4040-4500
- by e-mail: [CustomerService@asctechnologies.com](mailto:CustomerService@asctechnologies.com)

Region APAC

- Service hours: Monday to Friday, 8 am to 6 pm HKG (excluding bank holidays)
- by phone: +65 3157 0252
- by e-mail: [CustomerService@asctechnologies.com](mailto:CustomerService@asctechnologies.com)

# CUSTOMIZED SERVICE CONTRACT (CSC)

for „Cloud Solution for Service Providers (CSSP)“



Region NZ / AU

- Service hours: Monday to Friday, 8 am to 6 pm AEDT (excluding bank holidays)
- by phone: +61 3 9956 3874
- by e-mail: [CustomerService@asctechnologies.com](mailto:CustomerService@asctechnologies.com)

Out of regional business hours, regional service desk phone numbers will be re-routed to global ASC 24x7 support, available only for SOS incidents of customers/partners with 24x7 entitlement.

Please note that

- submitting an e-mail does not automatically result in the creation of a case. Cases must be opened via the Support Request Form in ASC's partner portal, see 14.1
- Fault reports in the "SOS/Emergency" priority class must also be reported by telephone in addition to opening a case via the partner portal. The telephone report is pre-requisite for prioritization and processing of the case

All e-mails relating to existing service cases should be sent to [CustomerService@asctechnologies.com](mailto:CustomerService@asctechnologies.com). To ensure a clear assignment, the respective case number must be listed in the subject line of the e-mail.

## 15. Scope and Framework of this Agreement

**15.1** At the time of the initial installation and commissioning, the requirements of the ASC software on the underlying ICT infrastructure (e. g., operating system, databases or other non-ASC software, hardware layout or functionality, memory or storage capacity, CPU or overall system performance, other characteristic computing parameters) are typically fulfilled. Subsequent software updates or upgrades might increase or change these requirements, though. Any direct or indirect effort resulting therefrom, such as system enhancements, retrofitting, conversions, or migrations of the ICT infrastructure, is explicitly not subject of this Agreement, and is in all respects excluded from ASC's obligations under this Agreement.

### 15.2 ASC ensures proper functioning of its products under the following conditions:

- Compliance with requirements defined by ASC – described in section 15.1 – for the initial installation and configuration, and for subsequent updates or upgrades.
- Observance of the underlying ICT infrastructure version specified by ASC.
- Guaranteeing the operability of the underlying ICT infrastructure (see also section 15.5).
- Supplemental to the ASC Maintenance Policy according section 15.7, ASC may advise the User for compatibility reasons to retain a certain version, to install and then retain a specific version or to keep the software up to date. In addition, ASC reserves the right to fix potential bugs by providing a Software Update or Upgrade instead of modifying the existing version.

*Note: In the case of CSCcertified as the selected base concept, the performance of such software update or upgrade is not part of this Agreement and would be charged by ASC unless performed independently by Partner.*

ASC will dismiss all User claims resulting from a violation of the conditions mentioned above.

Limitations of the functionality or operability can arise – as described in section 22 – due to acts or omissions of third-party manufacturers or license holders for the required software that are beyond the control of ASC. User claims resulting therefrom will be rejected by ASC.

**15.3** ASC reserves the right to change or remove certain functionalities in future software updates or upgrades. ASC does not guarantee that functionalities included in previous software versions are preserved or maintained in future ones and refuses any User claim resulting therefrom.

**15.4** All modifications in the ASC software caused by an unauthorized change of the ITC infrastructure; carrying out a modification or conversion; attaching or using devices not delivered by ASC; as well as the support of devices not supplied by ASC but connected to the same network, are not part of this Agreement and expressly excluded from ASC's obligations derived therefrom.

**15.5** Technical support for hardware provided by the customer is not part of this Agreement; the Partner is required to conclude an accompanying Maintenance Agreement on its own initiative for this hardware.

### 15.6 Three-Strike Policy

To keep an overview of the tickets, it is necessary to obtain feedback from the partner in a timely manner. Often, delays occur due to missing feedback about open tickets. Therefore, ASC uses the so-called three-strike policy. The Partner will receive two reminders asking for the required information withing the following deadlines.

Two reminders elapsed time	Emergency	Priority 1	Priority 2	Priority 3
Incident	By E-Mail/Phone immediately	3 days	5 days	10 days

If there is no reply to the second reminder, the case will be closed on the following working day.

### 15.7 Software Maintenance Policy

Keeping the landscape of deployed software versions as homogeneous as possible by consistently updating the installed base helps to improve the security, performance and user experience and ensures that our Partners and Users keep pace with constantly changing technological requirements. For this reason, software maintenance at ASC is subject to the following rules:

- ASC provides software maintenance for the current and last main version until the release of the second last main version as follows:
  - For the current main version (N), ASC creates minor versions (N.x) as required.

# CUSTOMIZED SERVICE CONTRACT (CSC)

for „Cloud Solution for Service Providers (CSSP)“



- ASC targets to create custom hotfixes for the current and the last main version (N and N-1), if required. However, it is ASC's discretion to decide based on technical feasibility, for which version a custom hotfix will be produced. If an existing software error has already been corrected in a newer version of the ASC software, ASC shall make this newer software version available to the Partner or User. It is then the responsibility of the Partner or User to upgrade or update their ASC software accordingly.
- ASC does not provide software maintenance for any older software versions (N-2 and earlier), however those older software versions can, in principle, continue to be supported within the framework of a CSC contract subject to individual agreement and additional charges. In these cases, ASC will accept incident cases for those older versions and analyze and troubleshoot them in service. If the case analysis however leads to a software bug, then ASC will only provide those custom hotfixes that already exist for the older software version that the Partner is using; no R&D analysis will take place and no new minor or correction versions or custom hotfixes will be created. Nonetheless, ASC strongly recommends that the ASC software is always kept up to date.

## 16. Responsibilities of the Partner

The Partner is obliged to conscientious performance of its obligations under this Agreement without causing ASC any costs. This includes in particular the necessary availability, activities and arrangements to help ASC fulfill its obligations in an appropriate and efficient manner throughout the entire duration of this Agreement.

Prior to initial installation and the commissioning of the Subject of Agreement, the Partner is obliged to provide a proper remote maintenance option in terms of available bandwidth, stability, and sufficient temporary/functional range of usage, and without causing any costs for ASC. A remote connection is an indispensable precondition for ASC to fulfill all its obligations under this Agreement, especially in terms of processing incidents, debugging and the elimination of errors. The Partner indemnifies ASC against all claims arising from occurring incidents until a proper remote connection is provided and established. Time limits defined within this Agreement will be suspended until then.

### Partner's special obligations to cooperate:

- Before the beginning of this Contract, the Partner provides ASC – according to ASC's specifications – with detailed written information, including all required data to fulfill the required service tasks. This information must be supplemented, if requested by ASC, and kept up to date during the entire contract period.
- The Partner reports all changes in the hardware and software environment which may impact the executed services to ASC uncalled for and in time.
- The Partner accepts and pre-qualifies the incident reports and hands them over to ASC with sufficiently informative descriptions of the incident and errors – upon request also in writing. The Partner provides ASC with the required log files as well as upon request with the required debugging documents (e. g. protocols, log files, and test data) free of charge;
- The Partner grants ASC's support engineers unrestricted access to hardware and software as well as to diagnostic programs, documentations, user programs and other required data to perform the necessary services.
- The Partner must ensure, upon request from ASC, that an authorized own representative is available on site during the entire duration of the Remote Support or On-Site Intervention. The Partner also needs to nominate a responsible contact person who is in the position to make binding decisions or effectuate them without delay.
- It is the partner's responsibility that who takes over the administration and configuration of the subject of Agreement, be it partner or end customer, completes the corresponding ASC training course (Admin & Use) as a prerequisite to being entitled to open cases with ASC.

**16.1** Regular maintenance of the Subject of Agreement as well as of the infrastructure required for its operation in accordance with the requirements of ASC and additional instructions given by ASC's Support Engineers.

**16.2** Regular backup of recordings and operating data as well as of the most recently approved software and configuration state.

**16.3** Compliance with the applicable procedures for reporting incidents and support requests to ASC.

**16.4** The Partner is obliged to address alarms of the Subject of Agreement to a defined e-mail address of the User / operator / end customer / Partner via SNMP.

**16.5** For **CSCcertified**: The Partner provides a sufficient number of qualified technicians as specified by ASC locally or, should the Subject of Agreement be spread over more than one location, in the respective area. These technicians will be trained and certified by ASC on the Partner's expense. ASC reserves the right to verify the Partner's compliance with these requirements. If necessary, ASC will offer additional trainings to keep the Partner's technicians at the required level, so that the Partner can fulfill its obligations under this Agreement.

### The Partner is responsible to provide the following Level 1 & 2 Services:

- Hotline support and handling User inquiries ("first customer contact") during usual business hours in the User's specific time zone;
- Remote service during usual business hours in the User's specific time zone;
- Troubleshooting and provision of error messages and log files;
- Remedy of errors by installing new Software Updates and Upgrades;
- Installation of Software Updates or Upgrades at the Equipment Location;
- Forwarding the task – exclusively by a certified employee of the partner – to ASC Level 3 Service, in case the issue cannot be fixed otherwise.

ASC reserves the right to review the Partner's compliance with the *ASC Technical Training and Certification Requirements*. Based on the results of such review, ASC may, at its sole discretion, either require the Partner to participate in additional training in order to maintain the required level of qualification and certification at all times, or convert the concluded basic contract from **CSCcertified** to **CSCpremier** - at the correspondingly increased conditions - without the need for a separate order.

# CUSTOMIZED SERVICE CONTRACT (CSC)

for „Cloud Solution for Service Providers (CSSP)“



In addition, the Partner should provide the following services:

- On-site support, if an issue cannot be fixed by remote Level 1 & 2 Services. On-site support should only be performed by ASC-certified technicians; their tasks include – not listed conclusively – on-site diagnostics/troubleshooting, correction of configuration data, applying hotfixes released by ASC, and exchanging identified faulty components.

All activities of Level 1 & 2 Services must be documented in the ASC incident-tracking tool if requested by ASC.

Incidents which could not be resolved by the Partner's Level 1 & 2 Service must be reported to ASC's Level 3 Service within the agreed Time of Performance. For this report, a case needs to be opened via the ASC Support Request Form according to Section 14. The case must include a sufficiently precise description of the incident as well as detailed documentation of all measures undertaken so far

- 16.6** In case the Partner fails to meet any of its responsibilities, including deficiencies in the proper and professional execution of its services, ASC shall be released from all contractual obligations and liability. The Partner hereby accepts its obligation to include this limitation of liability for ASC in all its Service Agreements with the User.

## **17. Data protection and data security according to the European General Data Protection Regulation (GDPR)**

### **17.1 Processing data**

To perform any kind of required installation / maintenance / repair services – irrespective of whether included within this Agreement or ordered separately – it might be required that ASC must process (personal) customer data (system-related data as well as configuration and recording data, also as part of so-called log files).

**Any processing takes place exclusively on basis of the Regulation (EU) 2016/679 as of April 27th, 2016 (General Data Protection Regulation, in short „GDPR“) as well as of the German Data Protection Act as of June 30th, 2017 (BDSG, BGBl. I S. 2097) and requires the previous conclusion of an Agreement on Data Processing according to Art. 28 GDPR as specified by ASC.**

The User or Partner ensures and confirms herewith, that the customer data will have been backed-up before ASC starts its activities; that any operational, commercial or legal risk is excluded in case of the deletion of data; and that in case of a possible deletion of data, resultant claims against ASC, its employees, or its data processors are excluded.

### **17.2 Transport of Data /Data Storage Media**

ASC explicitly points out that the transport of data or data storage media constitute a potential risk, as data may be damaged, lost or fall into wrong hands during transport. As data storage media may contain confidential, personal or otherwise sensitive data, ASC uses data encryption to avoid their unauthorized use as far as possible. The Data Controller within the meaning of data protection law - usually the User, but never ASC - must ensure appropriate technical and organizational measures for the transport (freight or data transmission).

In the course of repair / reconstruction of data storage media, it may be necessary that ASC passes data to GDPR-compliant cooperation partners (Data Processors) for further processing. If it should be impossible to reconstruct a data storage medium, the Data Controller must issue an instruction on how to treat these data storage media (e. g. returning them or chargeable destruction according to DIN 66399).

### **17.3 Data security in relation to software adaptations to be carried out**

Within the context of service interventions and the associated intervention into the Subject of Agreement, it is possible that data content may be overwritten or deleted. It cannot be excluded that the overwriting or deletion of data may also affect existing (i. e. already saved) recordings. There is also the technically unavoidable chance that the recording function will not be available or only partly available during the system intervention, i. e. that recordings during this period will therefore not take place reliably.

The Partner hereby declares that:

- the service intervention is an instruction in the sense of art. 28 para. 3 (a) GDPR that the Partner as the Data Controller is authorized for or that it issues on behalf of the Data Controller on basis of its explicit and documented approval;
- a complete and restorable backup of the system - but at least of all GDPR-relevant data - will be available by the start of the service intervention;
- the Partner is fully and unconditionally liable for any claims for damages which may arise from this instruction; and
- the Partner indemnifies and holds ASC harmless from and against any liability for the service intervention as well as possible own or third-party claims. This also applies to possible sanctions by supervisory authorities.

## **18. Ownership of Proprietary Data and Software**

All modifications, enhancements or customizations to ASC proprietary software, associated documentation, and other performances of ASC provided to Partner in connection with the services provided hereunder, including but not limited to any object code, source code, flowcharts, documentation and any other materials developed under this Agreement and any modifications or enhancements thereto as well as all applicable patents, copyrights, trademarks and trade secrets including translations, compilations, partial copies with modifications and derived works are and shall remain the sole and exclusive property of ASC, and title thereto is and shall remain in ASC. The Partner shall not utilize nor divulge such information to any third party except for the purpose of rendering services to the User. The same aforesaid restrictions, where applicable, apply to any third-party software provided by ASC.

## **19. Employees**

It is expressly agreed that ASC and Partner are acting hereunder as independent contractors and under no circumstances shall any of the employees of one Party be deemed to be the employees of the other for any purpose. This Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other except to the extent and for the purposes expressly provided for and set forth herein. ASC employees and subcontractors shall be governed by ASC's employment policies, rules and regulations, but shall observe the Partner's or User's hours, rules and policies while on the Partner's or User's premises.

# CUSTOMIZED SERVICE CONTRACT (CSC)

for „Cloud Solution for Service Providers (CSSP)“



## 20. Warranty

ASC represents to the Partner that all services of this Agreement will be provided in the best possible manner. The warranty set forth in this Agreement is a limited warranty and it is the only warranty made by ASC. ASC expressly disclaims all other warranties expressed or implied, including warranties of merchantability and fitness for a particular purpose. ASC does not warrant that the services will meet the Partner's or User's requirements or will be uninterrupted or error-free, or that those errors will be corrected. ASC's limited warranty is in lieu of all liabilities or obligations of ASC for damages arising out of or in connection with the services provided under this Agreement.

ASC shall bear no responsibility for correcting, curing, or otherwise remedying any non-conformity or defect in the Subject of Agreement or any other breach with respect of the condition or operation of the Subject of Agreement, if:

- 20.1 the Subject of Agreement is not maintained and operated under regular conditions by qualified personnel;
- 20.2 the Subject of Agreement incorporates spare or replacement parts other than those purchased from or authorized by ASC;
- 20.3 the Subject of Agreement has been altered, abused, misused, or dismantled;
- 20.4 the User employs the Subject of Agreement in connection with components, parts, programs, or equipment which are unauthorized or not recommended by ASC;
- 20.5 the non-conformity or defect or other breach with respect to the condition or operation of the Subject of Agreement has arisen as a result of damage to the Subject of Agreement occurring subsequent to delivery thereof to the Equipment Location; including "acts of God", unless, in any such case, such event or condition directly results from the fault or negligence of ASC; or
- 20.6 the non-conformity or defect or other breach with respect to the condition or operation of the Subject of Agreement has not been reported to ASC within thirty (30) days before termination of the foregoing warranty period.

## 21. Limitation of Liability

Unless otherwise provided by law, ASC shall not be liable for any direct or indirect damages (damages to property or personal injury, financial or immaterial damages, downtimes, loss of income, anticipated profits or business opportunities of the Partner or third parties) or consequential damages arising from or related to any installed base or due to the delivery of any services agreed upon within this Agreement. This Limitation of Liability extends to third parties which have been commissioned by ASC to perform the services defined within this Agreement.

## 22. Force Majeure

ASC shall not be responsible for any delays or failures in performance resulting from acts or omissions of third parties including suppliers of equipment, licensees of third-party software or suppliers of maintenance services.

If circumstances of force majeure occur, the Parties shall be exempt from fulfilling their obligations under this Agreement. The Parties shall inform each other – immediately and in writing – about the occurrence of a circumstance of force majeure.

Examples of force majeure are war, pandemics, epidemics, strikes, riots, expropriations, significant changes in legislation, supranational/legal export, sanction or embargo regulations, storms, floods and other natural disasters as well as other circumstances beyond the control of the parties, in particular fire, water ingress, power failures and interruptions of lines for electricity or data transmission.

## 23. Adjustment of the contract fee

Not applicable – see Business Partner Agreement.

## 24. Duration of Agreement

Not applicable – see Paragraph 4 of this agreement.

## 25. Miscellaneous

- 25.1 Neither Party may assign its rights or obligations under this Agreement to any other Party except that ASC may assign its rights or obligations under this Agreement to its subsidiaries, affiliates, representatives, authorized service providers or other subcontractors, or the surviving entity of a merger or consolidation involving such Party. Each such assignee shall fulfill ASC's obligations under this Agreement.
- 25.2 Any notice or other communication required to be given hereunder will be in writing, addressed to the parties appearing in this Agreement, and shall be deemed to have been sufficiently given or served for all purposes ten (10) business days after being mailed by prepaid registered mail, or one (1) business day after being transmitted by facsimile, or delivered in person.
- 25.3 If any provision of this Agreement becomes ineffective, incomplete, or unenforceable under applicable law, this will not affect the remaining content of the Agreement; the ineffective provision shall be replaced by an enforceable provision to the same or nearest possible equivalent effect.
- 25.4 The terms and conditions herein – along with the 'Business Partner Agreement (if applicable), the 'ASC Lifecycle Policy' and the 'License Agreement for ASC Software Products' in its latest version – constitute the entire agreement between the parties, govern the parties obligations relating to the services provided hereunder and supersede any and all other agreements, oral or written, relating to such subject matter that may have been entered into between the parties prior to the date of this Agreement. To the extent there is a conflict between this Agreement and other ASC documentation, the terms of this Agreement shall govern.