



MANAGED SERVICES TERMS & CONDITIONS AGREEMENT

2016

FlightPath IT

<http://flightpathit.com>

FLIGHTPATH IT, INC MANAGED SERVICES TERMS & CONDITIONS AGREEMENT

This Managed Services Terms & Conditions Agreement (“the Agreement”) is between FlightPath IT, Inc., a Massachusetts corporation (“FlightPath IT”), and the entity who executes a Managed Services Agreement (“MSA”) or any other Agreement with FlightPath IT into which this Agreement is incorporated by reference (“Client”). This Agreement is hereby attached and incorporated into each such MSA and/or other agreement executed by Client. By entering into an MSA or other agreement which incorporates this Agreement by reference, Client hereby agrees to be bound by and abide with the terms and conditions of this Agreement. This Agreement is effective upon the execution by FlightPath IT and Client of an MSA and/or other agreement which incorporates this Agreement by reference (the “Effective Date”), and shall remain in effect for so long as each such MSA and/or other agreement is in effect.

1. MANAGED SERVICES DEFINED IN THE MSA

- A. FlightPath IT shall provide the Managed Services (“Managed Services”) as defined and set forth in the Managed Services Agreement (“MSA”) executed by Client.

2. MONITORING AND SUPPORT

- A. FlightPath IT monitors all systems and networked equipment that it manages under the Managed Services (“Managed Systems”) 24 hours per day, 365 days per year, barring cases of third party hardware, software, or service failure and Force Majeure described in Section 14 of this Agreement, or other service interruptions that prevent monitoring, however caused. In case of interruptions in monitoring, FlightPath IT shall make commercially reasonable efforts to restore monitoring. The terms of FlightPath IT’s technical support of Managed Systems, or any help desk or other support services that may be offered as part of the Managed Services are determined by the MSA, where applicable.

3. START DATE / SERVICE PERIOD

- A. The Start Date is the date FlightPath IT turns on its services covered hereunder. The Service Period and billing begin on the Start Date. At the end of the Service Period, this Agreement will automatically renew for consecutive terms of the same duration as the Service Period, unless terminated in writing at least sixty (60) days prior to the expiration of the then-current term. If one or more equipment-related charges (such as a hardware lease) are paid in full during any given Service Period, the monthly fees for the next period will decrease by the amount of the current monthly fees attributable to the said charges. Any changes made to the Managed Services by mutual consent during a Service Period shall be documented by executing a subsequent MSA during that Service Period, but such changes to Managed Services shall not affect the Service Period itself as set forth in the original MSA, unless such subsequent MSA specifies a different Service Period. If FlightPath IT or Client fail to execute a subsequent MSA after a change in Managed Services has been mutually agreed upon in writing in another (non-MSA) agreement executed by FlightPath IT and Client (such as a Statement of Work), such failure shall not in any way affect Client’s

responsibility to pay the new and updated fees due and payable for the new Managed Services to which Client has agreed by executing such other (non-MSA) agreement.

4. START-UP FEES AND PAYMENT

- A. Start-up fees and the first month's service fees are due and payable with the signing of this Agreement. Monthly service fees are due during the Service Period and shall be paid monthly in advance by the first of each month, in advance for that month, without demand or invoice. Specifically, FlightPath IT shall not be required to generate an invoice or make any demands for payment on or before the first of each month in order for Client to be obligated to pay the monthly service fees specified by the MSA by the first of each month, in advance for that month. FlightPath IT shall provide invoices for each Managed Services payment due hereunder and at reasonable times and shall not unduly delay such invoicing. The fees and payments due hereunder are defined in the MSA. Service is subject to interruption and disconnection by FlightPath IT for nonpayment of monthly service fees or any other fees due and payable by Client, and FlightPath IT reserves the right to seek all other remedies at law.

5. TAXES AND OTHER CHARGES

- A. All amounts due and payable hereunder will be exclusive of applicable charges, fees, levies, imposts, duties, tariffs or other assessments imposed by or payable to any federal, state, local or foreign tax or governmental authority, including without limitation sales, use, goods, services, value added, transfer, customs, personal property, stamp duty, excise, withholding and other obligations of the same or similar nature (individually and collectively, "Taxes") based or measured thereon. Client will be responsible for the payment of all such Taxes, excluding Taxes based on FlightPath IT's income. Client will indemnify and hold FlightPath IT harmless from any current or future obligation, including due a change in legislation, to pay to any governmental entity any employer statutory Taxes, withholding Taxes, social security Taxes or any other Taxes in connection with FlightPath IT's performance under this Agreement, and from any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting therefrom.

6. RESPONSIBILITY OF PARTIES

- A. FlightPath IT shall use commercially reasonable efforts to provide the Client with substantially uninterrupted services by means of FlightPath IT's systems, personnel, and other resources.

7. ACCEPTABLE USE POLICY ("AUP")

- A. The Client shall use FlightPath IT's services only in accordance with applicable law and for lawful purposes. The Client shall not use or permit others to use FlightPath IT's services (including by transmitting, posting or storing content) in a manner which would violate any law or infringe any copyrights or trademarks. Once notified of any violation of this Acceptable Use Policy, the Client agrees to cooperate with FlightPath IT and work promptly to cease the noted activities. FlightPath IT reserves the right to interrupt or disconnect services for non-compliance with this AUP or in compliance with instructions from government authorities. Client shall be responsible for all authorized uses of services provided by FlightPath IT. A more extensive AUP may be provided as an addendum to this Agreement in connection with certain services.

8. FLIGHTPATH IT EQUIPMENT

A. In certain circumstances, FlightPath IT may supply client premises equipment or cloud premises equipment that may consist of any third party hardware and software not manufactured by FlightPath IT ("CPE") to the Client and retain ownership in such CPE. Unless otherwise specified through an SOW or other agreement, all CPE shall be purchased and owned by the Client, whether procured by FlightPath IT and passed through to Client, or purchased directly by Client from third party hardware and software vendors. In the event that any CPE is owned by FlightPath IT, FlightPath IT shall have the right to remove all CPE that it has supplied. Client agrees to allow FlightPath IT personnel and subcontractors reasonable access to the Client's premises and/or building (the "Client Site") for the purpose of installing, configuring, managing, maintaining, repairing, replacing and removing the CPE. If Client does not own the Client Site and access to portions of the Client Site other than the Client premises is needed (i.e. building phone room, data room, HVAC room, roof, etc.), Client shall obtain, with FlightPath IT's cooperation, all appropriate permissions from the owner or landlord for such activities.

9. NO WARRANTY

- A. FLIGHTPATH IT PROVIDES ALL SERVICES ON AN AS IS BASIS. IN PROVIDING ITS SERVICES, FLIGHTPATH IT, ITS OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS MAKE NO REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY STATED HEREIN AND EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR MULTIPLE DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO FOR LOST PROFITS, LOST REVENUES, LOST DATA, LOSS OF SECURITY, LOSS OF PRIVACY, COSTS OF RECREATING LOST DATA, COST OF PROCURING OR TRANSITIONING TO SUBSTITUTE SERVICES, OR LOSS OF USE, RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON FLIGHTPATH IT'S SERVICES OR THIRD PARTY SERVICES PROVIDED OR PASSED THROUGH BY FLIGHTPATH IT OR BY ANY OTHER PARTY IN CONJUNCTION WITH FLIGHTPATH IT'S SERVICES, BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), WHETHER IN CONTRACT OR IN TORT, OR UNDER ANY OTHER LEGAL THEORY, EVEN IF EITHER CLIENT OR FLIGHTPATH IT KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.
- B. Without limiting the foregoing, FlightPath IT shall not be liable for any damages resulting from the use or inability to use its services, reliance on its services or on information obtained therefrom, interruptions of service, breach, compromise, unauthorized access to any records, files, data, systems, or other assets, valuables and resources; errors, defects, viruses, malware, delays in operation or transmissions or any other failure of performance or business function. Further, except in the event of willful misconduct by FlightPath IT, FlightPath IT shall not be liable for any direct damages resulting from the loss of any of Client's data or third party data, breach of security or loss of privacy of data on Client's systems or third party systems that may occur on systems installed, serviced, and/or managed by FlightPath IT, or any direct or indirect damages resulting therefrom; the malfunction, performance or compromise of any system, network or other resource related to or associated with in any capacity or by any theory with FlightPath IT services, and any Client or third party damages, claims, losses or expenses resulting therefrom; any personal injury (whether of a physical or psychological nature) or death of any person, whether associated with Client or otherwise, that may in any capacity or by any theory be associated with services provided by FlightPath IT, and any Client or third party damages, claims, losses or expenses resulting therefrom.

10. SERVICE LEVEL AGREEMENT

- A. Depending on nature of the services being supplied hereunder, a separate Service Level Agreement or Commitment Scope may be provided. If such Service Level Agreement or Commitment Scope is provided, it shall be executed separately.

11. LIMITATION OF LIABILITY

- A. Both parties agree that it is impossible to guarantee the trouble-free performance of computer hardware, software, networks, environments, security and systems, the security, privacy, specific functionality or performance of any free-standing or integrated system or resource; the reliability, applicability or performance of any technology or technology-related asset; the applicability, outcome or performance of any training or the behavior of any human resources; whether procured, provided, installed, managed, supported, administered, trained and/or supervised by FlightPath IT, or in any way associated with FlightPath IT services or otherwise. Therefore, Client and FlightPath IT agree to certain further limitations of liability and damages.
- B. To the extent not prohibited by applicable law, FlightPath IT's maximum aggregate and cumulative liability under this Agreement for any and all losses, claims, damages, expenses, attorney and expert fees or liability of any kind, including but not limited to claims of breach of contract, breach of warranty, negligence (including strict liability), whether in contract or in tort, or under any other legal theory, is limited to the amount in fact paid by Client hereunder for the two (2) months immediately preceding the event giving rise to such loss, damage, claim, or liability. In no event shall FlightPath IT be liable for any consequential, incidental, special, exemplary, indirect, punitive or multiple damages in connection with or arising out of this Agreement, (ii) any accompanying or associated MSA, whether signed concurrently or not, and, (iii) any other agreement between Client and FlightPath IT that incorporates this Agreement; including but not limited to claims or damages involving loss of business, revenue, profits, use, data, good will, reputation, or other economic advantage, however caused, and regardless of the legal theory of liability, even if FlightPath IT and/or Client knew, or should have known of the possibility thereof. Client and FlightPath IT agree that the provisions of Section 9 (No Warranty) and this Section 11 (Limitation of Liability) of this Agreement shall constitute Client's sole and exclusive remedy with respect to (i) FlightPath IT's services and any claims or actions arising therefrom, and, (ii) any third party services passed through or provided by FlightPath IT or by any other party in conjunction with FlightPath IT's services, and any claims or actions arising therefrom; even if a mediator, arbitrator, or court of competent jurisdiction finds that such sole and exclusive remedy has failed its essential purpose.

12. INDEMNITY

- A. Client agrees to indemnify, defend, and hold harmless FlightPath IT, and its officers, directors, principals, members, managers, employees, subcontractors, agents, representatives, successors and assigns from and against any damage, claim, loss, expense (including reasonable attorneys' fees and damage to any person or property), occurring as a result of (i) Client's use or inability to use of FlightPath IT's services, or use or inability to use by those authorized by Client of FlightPath IT's services; (ii) Client's handling, storage, transmission or possession of information, data, messages or other content or assets on FlightPath IT's systems or network, on Client systems or network that are installed, managed or otherwise serviced by FlightPath IT, or on third party systems and networks that FlightPath IT uses to provide its services, including but not limited to, claims: (A) for libel, slander, invasion of privacy, identity theft, infringement of

copyright, and invasion or alteration of private records or data; (B) for infringement of patents; (C) for security breaches of any kind; or (D) based on handling, storage, transmission or possession of information that contains viruses, malware or other destructive code, media, or any unlawful content; (iii) Client's or third parties' reliance on FlightPath IT's services or on information obtained therefrom; (iv) Client's breach of any software licensing requirements of third parties; (v) Client's failure to comply with any provision of this Agreement or FlightPath IT's Professional Services Agreement; or, (vi) Client's failure to obtain permits, licenses, or consents that Client may be required to obtain to enable FlightPath IT to provide its products or services (e.g., landlord permissions, wiring permits, etc.)

- B. FlightPath IT agrees to indemnify and defend Client, its directors, officers, employees, agents and successors against third party claims enforceable in the United States alleging that FlightPath IT's services as provided infringe any third party United States patent or copyright or contain misappropriated third party trade secrets. FlightPath IT's obligations under this section will not apply to the extent that the infringement or violation is caused by (i) functional or other specifications that were provided or requested by Client, or (ii) Client's continued use of infringing services after FlightPath IT provides reasonable notice to Client of the infringement. For any third party claim that FlightPath IT receives, or to minimize the potential for a claim, FlightPath IT may, at its option and expense, either: (i) procure the right for Client to continue using the services in question; (ii) replace or modify the services with comparable services; or (iii) terminate the services. The provisions of this Section 12 state the entire liability and obligations of the indemnifying party, and the exclusive remedy of the indemnified party, with respect to any of the claims identified herein.

13. GENERAL

- A. This Agreement, any addendum to this Agreement, the FlightPath IT Professional Services Agreement ("PSA") delineating the terms of the relationship, the MSA that describes the Managed Services to be provided hereunder, and, in the event FlightPath IT provides Client with cloud services, a Cloud Services Availability Commitment Scope ("CSACS"), constitute the entire agreement of the parties and supersede all negotiations, proposals or purchase or other work orders, written or oral, provided that the Client shall also adhere to all policies and procedures established by FlightPath IT. This Agreement can be amended only by written agreement signed by duly authorized representatives of the parties. This Agreement may be assigned by either party without notice in the event of a merger or sale of substantially all of the assigning company's assets or stock. The obligations under this Agreement shall be binding on and inure to the benefit of both Client and FlightPath IT, their successors, and permitted assigns. Any purchase order issued by the Client shall be solely for the internal convenience of the Client, and no term or condition contained in the purchase order shall in any way modify this Agreement or any of the rights or obligations of either party hereunder.

14. FORCE MAJEURE

- A. Neither party to this Agreement shall have liability or responsibility to the other party for any delay, failure to perform, service interruption, outage, damage, malfunction, or any consequence thereof or damage resulting therefrom, due to any circumstance beyond the party's reasonable control including, but not limited to, inclement weather, climate change, resource shortages, all acts of nature and acts of God, strikes, civil disturbances, riots, terrorist acts, unavailability of or delays in goods or services needed from third parties including but not limited to third party hardware, software, data center, collocation, and cloud service providers, interruption or outage of or delay in telecommunications including the public

Internet, voice lines, data lines, or any telecommunications equipment or service, transportation, delivery, power outages, electrical or other utility services, failure of third party hardware, software or services, or any acts or omissions of any third parties.

15. TERMINATION

- A. Termination by Client is permitted without charge only in the case where all of the services provided hereunder as defined by an MSA executed by Client are unavailable or out of service for a period of seven consecutive days from ticket open, other than due to Force Majeure, provided Client works in good faith with FlightPath IT to correct the outage and does not contribute to the outage intentionally or not, by action, inaction, or omission. In such case, service fees will be due up to the ticket-open date. All other terminations permitted under this Agreement by Client require a payment of all fees due and payable under this Agreement for the entire then-current Service Period as a lump sum within five (5) business days of such Termination, and the return of all FlightPath IT equipment. Paragraphs 4, 5, 9, 11, 12, 13, 16, and 17 of this Agreement shall survive termination of this Agreement.

16. VENUE; GOVERNING LAW

- A. Venue for the purpose of any disputes regarding this Agreement shall lie exclusively in Massachusetts, and the state and federal courts of the Commonwealth of Massachusetts shall have exclusive jurisdiction over the parties and subject matter of this Agreement. Each party consents and submits to the in personam jurisdiction of any state or federal court located with the Commonwealth of Massachusetts. Any party attempting to bring any suit concerning this Agreement in any state other than Massachusetts shall be deemed to have consented to that suit's dismissal for improper venue and lack of jurisdiction and shall be liable to the other party for the other party's reasonable and necessary attorney's fees and costs incurred in moving to dismiss the suit. The interpretation of this Agreement is governed by Massachusetts law (except for any conflicts of law rules, if any, that might make the laws of another jurisdiction govern).

17. ARBITRATION

- A. Notwithstanding Paragraph 16 of this Agreement, as a material part of this Agreement, Client and FlightPath IT agree that any and all disputes, claims, or controversies arising out of or relating to this Agreement or of FlightPath IT's services shall be determined by confidential, final, and binding arbitration in Massachusetts, in accordance with the then-existing rules for commercial arbitration of the American Arbitration Association. Disputes, claims, and controversies subject to final and binding arbitration under this Agreement include, without limitation, all those that otherwise could be tried in a court to a judge or jury in the absence of this Agreement. By agreeing to submit all disputes, claims, and controversies to binding arbitration, both Client and FlightPath IT expressly waive their rights to have such matters heard or tried in a court before a judge or jury or in any other tribunal, and shall agree to all discovery requests and submit to all depositions as if it is doing business in the Commonwealth of Massachusetts. The scope of any arbitral award shall be expressly limited by the terms of this Agreement. Any award shall be final, binding and conclusive upon the parties, subject only to judicial review provided by statute, and a judgment rendered on the arbitration award may be entered in any state or federal court having jurisdiction thereof. Notwithstanding the foregoing, both Client and FlightPath IT agree that before undertaking the aforementioned arbitration, they shall submit all disputes, claims, or controversies to a mutually agreeable mediator in an attempt to informally resolve said disputes, claims or controversies without the need for arbitration. Both Client and FlightPath IT agree that prior to even engaging mediation,

they will make every effort to resolve any disputes peacefully. Nothing in this Section shall be deemed to prohibit FlightPath IT from seeking injunctive relief or to restrict FlightPath IT from asserting or enforcing any collection action in court, other than as set forth in Section 16 and this Section 17 of this Agreement.

18. EXCLUSIONS FROM MANAGED SERVICES

A. The following is a list of costs, expenses, charges or services explicitly excluded from the Managed Services listed in any MSA executed by Client. The below is not meant to constitute a complete list, and any cost, expense, charge, or service that is not specifically listed and explicitly included in an executed MSA is excluded from Managed Services by definition:

- Any parts, equipment, or hardware costs, fees or charges of any kind
- Any software, licensing, software assurance, renewal, or upgrade fees of any kind
- Any taxes of any kind
- Any shipping, handling, courier, or postage charges of any kind
- Any 3rd party vendor, OEM, or other manufacturer support fees or incident fees of any kind
- Any premise wiring services (voice/data/video cabling) of any kind
- Training of any person in any context, unless otherwise specified
- Travel, travel time, gas or gas mileage, per diem or accommodations, when applicable, when visiting Client offices or any other third party site on Client's behalf
- Any non-IT materials needed to provide services or requested by Client, including but not limited to office supplies or media
- Any type of service, repair, reconfiguration, maintenance or management occasioned or made necessary by the alteration of systems, devices, software or other resources, with or without administrative access to such resources, by anyone other than authorized FlightPath IT personnel. Includes any change or service occasioned by acts or omissions by the Client's own employees, principals, consultants, subcontractors, third party vendors, or any other third parties who may have or have had physical, logical or remote access to Client's resources
- Maintenance of third party applications, software, software packages or add-ons, whether acquired through FlightPath IT or any other source. The only exception is software made or modified by FlightPath IT in order to provide managed services.
- Any software programming or scripting (creation or modification of software code) and program (software) maintenance
- Any work, project, service or support of any kind, whether one-time, periodic, or ongoing, that involves a new resource that was not present at the time an MSA is executed
- Any work that does not qualify as a service ticket with respect to restoring the normal functioning of the resources being managed as per an MSA, i.e. any work that does not involve proactive management, routine administration, or troubleshooting (whether client-prompted/requested or otherwise) malfunctioning or non-functioning systems or resources under management as per an MSA. Any such work is defined as a Project. Projects include but are not limited to re-configuring resources by client request, integrating with newly acquired/introduced hardware, software or networks, or with other formerly non-existent third party resources, or otherwise making changes to managed resources, when such configuration, integration or changes are not warranted nor necessary (a) to manage such resources, or, (b) to keep such resources in good working order. Such Projects are by definition not part of Managed Services, since Managed Services concern themselves with proactively managing, maintaining, troubleshooting, and keeping operational existing resources explicitly covered by an MSA.