

SYS-CARE SUPPORT AGREEMENT TERMS & CONDITIONS

1. DEFINITIONS

"Commencement Date" Means the date from which it is agreed that the services shall be available as stated in the Schedule.
"Customer" Means as defined in the Support Summary.
"Initial Period" Means the primary period of this Agreement as stated in the Schedule.
"Level of Services" Means the services to be supplied under this Agreement as specified in the Support Summary
"Schedule" Means any schedule referencing to this Agreement.
"Additional Services" Means services provided at the request of the Customer which falls outside of the scope of this Agreement.
"Additional Charges" Calculated by ANS on a time basis at the prevailing rates for providing additional services.
"Named Individuals" Means the nominated Customer employee(s) who ANS will contact to perform the services
"Service Hours" Means the hours between 9.00am and 5.30pm Monday to Friday inclusive, excluding all bank public holidays, unless otherwise specified in the Support Summary.
"Service Fee" Means the aggregate sum of the charges for the Services.
"Products Supported" Are "Products" those listed in the Support Summary .
"First line" means end user help desk
"Second line" means initial troubleshooting and diagnosis by IT professional
"Incident" means telephone support for a maximum of 2 hours after which the Customer will be charged £150 per hour unless agreed.
"Fix Time" - is the time taken from the Customer or Partner first logging an official request for Service to the time taken to resolve the problem, less any time the call is "parked" pending information or activity from Customer, Partner or a third party.
"Incident" - defined as a request for information or assistance made by the Customer and includes all telephone calls made whilst resolving the request.
"Response Time" - is the time taken from the Customer first logging an official request for Service to the time ANS respond, whether in terms of returning a telephone call or arriving on site, as detailed in previous section.

2. CHARGES AND PAYMENT

2.1 In consideration of the provision of the Services, the Customer shall pay the Service Fee in accordance with the terms stated in the Schedule. Payment shall become due on the first day of the period in question. No payment shall be considered made until received by ANS.

2.2 All charges payable hereunder are exclusive of Value Added Tax, which shall be invoiced to and paid by the Customer at the rate and in the manner for the time being prescribed by law.

2.3 If the Customer shall fail to make any payment within the time specified herein and in the Schedule, then, without prejudice to any other right of ANS, interest shall accrue on a daily basis on the amount outstanding from the due date until payment is received at the rate of 2% per calendar month.

2.4 The Service Fee will be invoiced and paid in advance by Direct Debit unless otherwise agreed.

2.5 Additional Products Supported maybe added to this agreement provided such Products are acceptable to ANS. Any Additional Charges for any additions will be added prorate.

2.6 Products Supported maybe removed from this agreement as the Customer may request on 90 days prior written notice provided always that such removal of products does not cause the revised Charges following the removal to fall to less than 75% of the Charges at the Commencement Date without the consent of ANS. The Charges for the removed product will be adjusted pro rata.

2.7 The Seller may adjust the price of the Goods and/or Services with effect from the date which is 12 months from the order date on each anniversary thereafter (each the "ANNIVERSARY", as appropriate) to reflect increases in the cost of raw materials and increases in the Consumer Price Index during the previous year. The Seller shall give the Customer not less than one month's prior notice in writing of the proposed adjustments. If the Customer objects to a proposed adjustment, it shall have the right to write to the Seller giving reasons for its objections and the parties shall seek to agree to the price adjustment. In the event that the parties cannot agree the proposed price adjustment within 15 business days of the date on which the Seller received the written reasons for objection from the Customer, the Customer may refer the matter to an "INDEPENDENT EXPERT" (which shall mean an independent firm of chartered accountants agreed on by the parties, or, if agreement is not reached within five business days of either party giving notice to the other that it wishes to refer a matter to an Independent Expert, such independent firm of chartered accountants as may be nominated by the President for the time being of the Institute of Chartered Accountants of England and Wales), who shall determine the appropriate adjustment in accordance with clause 2.10. If the Customer does not refer the matter to the Independent Expert within 5 business days of it being entitled to refer the matter to the Independent Expert, it shall be deemed to accept the price adjustments.

2.8 Pending agreement or determination of a proposed adjustment to the prices of the Goods and/or Services, the prices then in force shall continue to apply. Once agreement of the price adjustment has been reached or once the Independent Expert determines the appropriate adjustment, the adjusted prices shall be deemed to apply with effect from the Anniversary date in respect of which the adjustment relates (the "ANNIVERSARY DATE"). Within one month of the appropriate adjustment being agreed or determined, the Customer shall pay the Seller any outstanding sums due in

respect of its purchases of the Goods and/or Services since the Anniversary Date, together with any applicable VAT.

2.9 In addition to the price review mechanism set out in clause 2.6, if increases in the cost of raw materials or in the Consumer Prices Index exceed 5% in any one month, the Seller shall have the right to adjust the prices of the Goods and/or Services to reflect such increase ("PRODUCT PRICE ADJUSTMENT"). The Seller shall give the Customer not less than one month's prior notice in writing of the proposed adjustments ("PRODUCT PRICE ADJUSTMENT NOTICE"). If the Customer objects to a proposed adjustment, it shall have the right to write to the Seller giving reasons for its objections and the parties shall seek to agree to the price adjustment. In the event that the parties cannot agree the proposed price adjustments within 15 business days of the date on which the Seller received the written reasons for objection from the Customer, the Customer may refer the matter to an Independent Expert for determination. The Independent Expert shall determine the appropriate adjustment in accordance with clause 2.10. If the Customer does not refer the matter to the Independent Expert within 5 business days of it being entitled to refer the matter to the Independent Expert, it shall be deemed to accept the price adjustments.

2.10 Pending agreement or determination of a Product Price Adjustment under clause 2.8 the prices then in force shall continue to apply. Upon agreement of the Product Price Adjustment or once the Independent Expert has determined the appropriate adjustment, the adjusted prices shall be deemed to apply with effect from the date set out in the original Product Price Adjustment Notice. Within one month of agreement or determination of the Product Price Adjustment, the Customer shall pay the Seller any outstanding sums due in respect of its purchases of Products since the relevant date, together with any applicable VAT.

2.11 To enable the Independent Expert to make a determination in accordance with clauses 2.6 and 2.8 above:

2.11.1 The parties are entitled to make submissions to the Independent Expert and will provide (or procure that others provide) the Independent Expert with all such assistance and documents as the Independent Expert may reasonably require for the purpose of reaching a decision. Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.

2.11.2 The parties agree that the Independent Expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.

3. SERVICES

3.1 ANS undertakes to provide the Customer with the services specified in the SYS-Care Support Summary.

3.2 The Services will be available during the Service Hours. Additionally, services may be provided outside the Service Hours subject to agreement at additional charges for such work.

3.3 ANS will provide the services for Products or Product releases currently supported by the Product originator. ANS can offer support for other releases (earlier or beta) only on a reasonable endeavours basis.

3.4 The Services will be performed by competent and appropriately experienced, qualified and trained members of ANS staff and with all due care and skill.

3.5 The Services may include technical advice in relation to the Product, the Product documentation, updates and updated documentation. Such technical advice will be available during the Service Hours. The Customer shall nominate Named Individuals (including the principal contact) to whom ANS may be required to provide advice. These employees may require approval by ANS. ANS shall use all reasonable endeavours to provide the Customer with technical advice within the response time detailed in the Level of Service.

3.6 Technical advice may be delivered by telephone or onsite. Onsite advice may be included as an Additional Service. Technical advice at the Customer's premises in relation to the Products, Product Documentation, updates and updated documentation. Such technical advice will be available during the Service Hours. One of the Customer's nominated contacts must be present when ANS attends the Customer's premises. This shall be subject to an extra charge, unless already included in the SYS-Care Support Summary, at the current scale of charges.

3.7 Where equipment hardware maintenance has been purchased by the Customer and forms part of this Agreement, the following applies:

3.7.1 Any replacement parts will become the property of the Customer and all faulty parts will become the property of ANS. Only standard parts of equal quality and compatible revision level to those replaced shall be used by ANS to effect repairs.

3.7.2 ANS reserves the right to supply new, second hand or reconditioned replacement parts in the performance of the Services.

3.7.3 ANS does not warrant that the Services will cause the equipment to operate without interruption or error

4. RIGHT TO CHARGE ADDITIONAL FEES

4 ANS shall be entitled to fees at its then current rates in the following circumstances:

4.1 The Customer shall provide all such information as ANS shall consider necessary to enable ANS to carry out its obligations under the agreement. If and to the extent that ANS shall be delayed in the performance of such obligations by the failure of the Customer to provide such information and/or access as aforementioned, then ANS shall be entitled to recover from the Customer any additional costs that ANS may incur by reason of such delay or at ANS's sole discretion to terminate this Agreement and/or;

4.2 in the event that the Customer requires the Services to be carried out outside the Service Hours above and/or;

4.3 where, in ANS's sole opinion, more than a reasonable level of Service is being provided to the Customer as a result of untrained personnel operating the Product otherwise howsoever and/or;

4.4 where the Customer is not providing first and second line support

which will include initial diagnosis and/or

4.5 where services are required by the Customer which are not specifically within the Services to be provided under the agreement and/or;

4.6 if the Customer requests the Services to be provided without good reason and /or

4.7 where in the interests of the majority of Customers, as the ANS operates a fair play policy, we reserve the right to charge excessive users of the service an additional contribution prior to support being provided and /or

4.8 where on site escalation is required ("Call Out") expenses will be charged separately and travel time will be invoiced at the ANS standard rate per hour unless otherwise agreed.

5. EXCLUSIONS

The obligations of ANS to provide Services shall not extend to and ANS shall be entitled to make additional charges for:

5.1 Providing services where in the reasonable opinion of ANS they are impractical to perform due to alterations in the locations of the Product specified attached or connected to any other device or equipment not approved in writing by ANS prior to such connection Or providing services where in the opinion of ANS the Customer has not complied with technical or environmental installation conditions as specified by the Product manufacturer or ANS or;

5.2 Providing services required as a direct or indirect result of damage caused by accident, disaster (which shall include but not be limited to fire, flood, water, wind and lightning) transportation, neglect, nuisance, electrical current or voltage fluctuations or;

5.4 Providing services required as a result of radiation affecting the hardware or software attached or unauthorised attempts to repair, upgrade, maintain, relocate or modify the Products or equipment. or;

5.5 Providing services in respect of Products which can no longer be maintained in good working order or;

5.6 Diagnosis and/or rectification of problems not associated with the Products or;

5.7 Providing Services for Products that are outside the manufacture's life cycle will be provided on a best endeavour basis or;

5.8 hardware or software configuration changes, upgrades, repairs or modifications made or attempted by the Customer not notified or agreed with ANS or;

5.9 Any changes or modifications to equipment resulting from technical or regulatory changes by telco's, relevant authorities or regulatory bodies or;

5.10 Services, labour or materials associated with the relocation of any equipment or labour and travelling expenses resulting from requests of the Customer for Service when the equipment is subsequently found to be operating correctly and/or appears to be inoperative owing to incorrect or failure of circuits and or services provided by a Telco, or failure of other host equipment or failure of other devices directly or indirectly connected to the equipment.

6. CUSTOMER OBLIGATIONS

The Customer undertakes to ANS throughout the term of this agreement to procure/provide where applicable to the services or additional services:-

6.1 maintain appropriate back-up and archiving procedures that ensure any data, configuration details, operating software, user details etc lost by reason of equipment failure or as a result of maintenance operations, is recoverable from back-up files or archives.

6.2 Initial diagnosis of any call. For the avoidance of doubt the Customer will provide first and second line support.

6.3 Where required restoration of the systems and data from back up.

6.4 Such access to the place of use as ANS shall reasonably require to discharge its services.

6.5 At the place of use, such facilities as ANS shall reasonably require to discharge its operations (including without limitation adequate workspace, telephone access and office furniture and equipment).

6.6 All reasonable precautions to protect the Health & Safety of ANS's employees, agents and sub-contractors while on site.

6.7 The equipment and supply of all documentation and other information necessary for ANS to diagnose any fault in the Product. responsible for the general care of the equipment, ensuring it is maintained, operated and transported in accordance with the manufacturers specifications, manuals or documentation

6.9 not permit the Equipment to be used or operated by other than properly qualified operators employed by or under the Customer's control

6.10 Undertake to respond to ANS requests to aid remote resolution of the problem, such as a detailed explanation, provision of information such as log/configuration files, apply software patches or upgrades, make recommended configuration changes and allowing remote access, where agreed

6.11 provide ANS with access to appropriate knowledgeable employees and to all documentation, diagnostics programmes, operating system, utilities and application programmes necessary to enable correct diagnosis and resolve reported problems

6.12 ensure that personnel of ANS working on or near potentially hazardous equipment, whether due to the temporary or permanent state of the electrical system or the nature of the work to be carried out, will be accompanied by another competent person at all times whilst doing so

6.13 Where Services have been rendered or costs incurred as a result of a breach of any of the foregoing, ANS reserves the right to render reasonable charges for the same

7. ANS'S WARRANTY

7.1 ANS warrants and undertakes to the Customer to perform any Additional Services it agrees to provide within a reasonable time of being so requested by the Customer.

7.2 ANS does not warrant that the Services (or the Additional Services) will cause the equipment to operate without interruption or error.

7.3 Subject to the foregoing and to clause 6, a; condition, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the performance by ANS of the Services hereunder are hereby excluded.

7.4 All telephone support is given in good faith on a best endeavours basis and not on a guaranteed fix basis. The Customer recognises

- that there is a limitation to the service level that can be given over the telephone compared with an engineer on site.
- 8 LIABILITIES**
- ANS shall be liable in respect of any negligent act or omission or breach of statutory duty on the part of ANS, its employees, agents or sub-contractors:
- 8.1 For loss of damage in respect of death or personal injury (without limitation), and
- 8.2 For direct physical damage to the Customers property or any other property in or upon the Customers premises up to a maximum of £1,000,000 in respect of any one event or series of connected events.
- 8.3 In the event that any limitation or provision be held to be invalid for any reason and ANS becomes liable for loss or damage that would otherwise have been excluded, such liability shall be limited to the amount specified as the Service Fee in the SysCare Support Summary.
- 8.4 ANS shall not be liable for any indirect or consequential loss or damage including (without limitation to the foregoing) economic loss, loss of profits, business operating time or use or, save as stated in clause 8.1 or 8.2 any other form of loss or damage of whatsoever nature and howsoever arising, which will include but not be limited to; loss or corruption of data, anticipated profits, pure economic loss, revenues, anticipated savings, loss of clients, goodwill, business opportunities, wasted overhead, .
- 8.5 The warranties and condition in the Agreement are in substitution for and to the exclusion of all other warranties and conditions whether statutory or otherwise and the liability of ANS under this Agreement shall be limited in the manner and to the extent defined herein.
- 8.6 Except as set out in the above clause, ANS's liabilities or obligations under or pursuant to this Agreement are expressly limited to the provision of the Services and shall be limited to a refund of the charges for the Services paid by the Customer.
- 9 CUSTOMERS WARRANTY**
- 9.1 The Customer warrants and undertakes to ANS that it is the owner of the Product (or where the Product is leased or hire purchased, that the Seller has consented to this Agreement) and that the Customer has full power and authority to enter into this agreement and that the Customer permits and consents to ANS performing the Services and any Additional Services.
- 10 DURATION OF AGREEMENT**
- 10.1 This Agreement shall commence on the Commencement Date specified in the SysCare Support Summary and shall continue for the Initial Period and thereafter shall continue for periods of twelve months (automatically renewing for a further twelve months on each anniversary of the Initial Period) unless and until either party serves written notice on the other party to terminate the Agreement.
- 10.2 A notice to terminate the Agreement under this clause shall only be effective if it provides a minimum of three months notice expiring on the expiry of the Initial Period or any anniversary of the Initial Period.
- 11 TERMINATION**
- 11.1 ANS shall be entitled to terminate the agreement with the Customer forthwith by notice in writing without prejudice to any of its other rights in the following circumstances:
- 11.1.1 If the Customer (whether under this or any other agreement between the Customer and ANS) is overdue with any payment commits any breach of contract which is incapable of remedy or which if the same be capable of remedy it fails to remedy within 14 days of ANS's written notice or do so or:
- 11.1.2 If any distress or execution shall be levied on the Customer's assets or if the Customer shall make an offer to make arrangement or composition with creditors or commit an act of bankruptcy or if any petition or receiving order in bankruptcy or administration order shall be presented or made against the Customer or if the Customer is a limited company and any resolution or petition to wind-up the same (other than for the purpose of reconstruction or amalgamation of a solvent company) shall be passed or an administration order made or if a receiver or administrator or administrative receiver be appointed over the Customer's assets and undertakings or any part thereof or if serious doubts arise as to the solvency of the Customer.
- 11.1.3 ANS shall without prejudice to its right to terminate be entitled to suspend further provision of the Services if any of the events mentioned in paragraph 11.1.1 or 11.1.2 of the Condition occur.
- 11.1.4 Notwithstanding any termination or suspension in accordance with these Conditions (whether under this Condition or otherwise) the Customer shall pay to ANS all fees which fell due for payment prior to termination or suspension in full without refund including sums for Services already provided to the date of such termination or suspension in addition the Customer shall indemnify ANS against any resulting loss, damage or expense incurred by ANS.
- 11.1.5 Forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within part 1 of the Insolvency Act 1986 or a proposal for any other composite scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the or any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.2 The termination rights under this agreement are without prejudice to the other rights and remedies available to the parties.
- 12 NAMED INDIVIDUALS**
- 12.1 The Customer shall immediately communicate to ANS the identity of the Named Individuals within its undertakings who shall act as the sole contact point and channel of communication for the provision of the services. The Customer shall forthwith inform ANS of any change in the identity of any Named Individuals.
- 13 CONFIDENTIALITY**
- 13.1 Each of the parties undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or entering into of this agreement save that which is:
- 13.1.1 Insignificant or obvious
- 13.1.2 Already in possession other than as a result of a breach of this clause; or
- 13.2 In the public domain other than as a result of a breach of this clause
- 13.3 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 13.1 by its employees, agents or sub-contractors.
- 14 EMPLOYMENT OR ENGAGEMENT OF ANS STAFF**
- The Customer shall not directly or indirectly during nor at any time within twelve months after the termination of the Agreement:
- 14.1 Solicit or entice away or employ any ANS employee or sub-contractor, or attempt to solicit or entice away or employ any ANS employee or sub-contractor who is directly associated with the performance of this Agreement.
- 14.2 Retain, engage or in any other way whatsoever have the benefit of the services of an ANS employee or sub-contractor who is directly associated with the performance of this Agreement other than pursuant to the terms of this Agreement and/or Agreement Schedule executed with ANS whether paid or unpaid.
- 14.3 If any restrictions contained in Clause 14 shall be judged by any court or authority of competent jurisdiction to be void or unenforceable but would be valid if part of the working thereof was deleted and/or the period thereof was reduced, the said restrictions shall apply within the jurisdiction of that Court or competent authority with such notification as may be necessary to make it valid and effective.
- 14.4 If within a period of six months from the provision of Goods or Services to it a Customer employs an employee of the Seller the Customer shall pay to the Seller a sum equal to 6 months gross basic salary of that employee.
- 15 FORCE MAJEURE**
- 15.1 Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including but not limited to fire, strikes, (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event or Force Majeure").
- 15.2 Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of circumstances giving rise to the Event of Force Majeure.
- 15.3 If a default due to an Event of Force Majeure shall continue for more than four weeks, then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.
- 16 INTELLECTUAL PROPERTY RIGHTS AND LICENCES**
- 16.1 All updates and beta releases and the Copyright and other intellectual property of whatsoever nature therein, are and shall remain the property of ANS or the originator of the Product (as the case may be).
- 16.2 The Customer shall ensure that the Product is properly licensed to use the hardware and that the Customer has the right to enter into this Agreement for the series and in this respect the Customer shall indemnify ANS against all damages and costs as a consequence of legal proceedings based on the unauthorised use of alleged use thereof by ANS hereunder.
- 16.3 Any software fixes generated by ANS for any Product covered by this Agreement shall become the property of ANS.
- 17 ALTERATIONS**
- 17.1 The Customer agrees that it shall make no alteration or modification to the software element of the Product covered by the Agreement without prior written approval of ANS. Any unauthorised alterations or modifications will entitle ANS to terminate the Agreement forthwith.
- 18 WAIVER**
- 18.1 The waiver by either party of a breach or default of any of the provisions of this agreement by the other shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver or any breach of default by the other party.
- 19 NOTICES**
- 19.1 Any notice request, instruction or other document to be given shall be delivered or sent by first class post or by facsimile (such facsimile notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in the SysCare Support Summary (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile) upon the expiration of 12 hours after despatch.
- 20 INVALIDITY AND SEVERABILITY**
- 20.1 If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 21 SUCCESSORS**
- 21.1 This agreement shall be binding upon and ensure for the benefit of the successors in title of the parties.
- 22 ASSIGNMENT**
- 22.1 The Customer shall not (but ANS shall be entitled to) assign transfer or sub-licence all or any part of the Agreement or its rights and obligations there under.
- 23 RELOCATION**
- 23.1 In the event that the Customer changes the location of the Product from the Site Address specified in the SysCare Support Summary, then the Customer agrees to advise ANS in writing of the new location and agrees that any such change will entitle ANS to terminate the Agreement forthwith or require an additional fee for the services if the new location is further than the previous location from ANS support centre.
- 24 SUB-CONTRACTORS**
- 24.1 ANS shall be entitled to employ sub-contractors to carry out all or any of its obligations under this Agreement should ANS so wish.
- 25 HEADINGS**
- 25.1 Headings to the clauses are for the purpose of information and identification only and shall not be construed as forming part of this agreement.
- 26 LAW**
- 26.1 This agreement shall be governed by and construed in accordance with English Law and the parties hereto agree to submit to non-exclusive jurisdiction of the English Courts.
- 27 ACKNOWLEDGEMENTS**
- The parties hereby acknowledge:
- 27.1 ANS has been open to negotiation and represent the outcome of such negotiation, (whether or not any change has been made to the terms during the course of the negotiation)
- 27.2 the specification of the duties of the supplier as contained in the T&Cs accord with their expectations and are fair and reasonable
- 27.3 some limitation of liability is to be expected
- 27.4 the limitation of liability for breach of the duties is fair and reasonable in light of the price paid or to be paid and the nature of the services
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