

The logo for Planet IT, featuring the word "PLANET" in white and "IT" in yellow, set against a background of a starry night sky with a view of Earth's horizon at the bottom.

# PLANET IT

ONE TEAM  
MAKING YOUR IT MORE EFFICIENT

Terms and Conditions



## Definitions and Interpretation

### TERMS AND CONDITIONS

#### 1 INTERPRETATION

##### 1.1 Definitions

In this Agreement the following words and expressions shall have the following meanings:

**Additional Services** means such additional services as the parties may agree in an Order Form;

**Applicable Data Protection Law** Means the General Data Protection Regulation (EU\_ 2016/679) and the Privacy and Electronic Communication Regulation 2003, any amendment, consolidations or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom, or where relevant, the European Economic Area, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in England and Wales or, where relevant, a European Economic Area judicial authority;

**Charges** means Planet IT's charges for the Services as set out in each Order, and any other sums due to Planet IT under this Agreement;

**Colocation Services Schedule** means a document attached to (and incorporating) the associated Order Form which contains a description of the relevant colocation Services and any related terms and conditions;

**Commencement Date** means the date as shown in the Front Sheet;

**Confidential Information** means all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the Commencement Date) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information. Planet IT's Confidential Information includes all designs, layouts and information relating to the Data Centre, pricing and commercial terms, and the Data Centre Rules;

**Control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company;

**Controller** shall have the same meaning as set out in Applicable Data Protection Law;

**Cross Connects** means the fibre optic cables leading along the routes in the Common Areas as set out in the Cross Connect Services specification;

**Cross Connect Break Fix Service** means Planet IT's support service to resolve issues with the Cross Connects;

**Cross Connect Services** means the cross connect services to be provided by Planet IT if requested by the Customer in accordance with clause 5;

**Customer** has the meaning set out in the Front Sheet;

**Data Centre** means the data centre from which the Services are provided as specified in the Order Form;

**Data Centre Rules** means Planet IT's data centre rules as provided to the Customer by Planet IT from time to time, which may include (without limitation) Planet IT's data centre rules and policies, specification and service descriptions, acceptable use policy, and operational procedures.

**Data Protection Regulator** means the UK Information Commissioner's Office, the European Data Protection Board, any national data protection authority with jurisdiction over the matter and any successor body or bodies to such organisations, as the context may require;

**Data Subject** shall have the same meaning as set out in Applicable Data Protection Law;

**Force Majeure Event** has the meaning set out in clause 17.4.1;

**Front Sheet** means the attached "Front Sheet";

**Helpdesk** means the helpdesk operated by Planet IT as the main contact for the Customer if any fault or failure in the Services arises;

**Initial Period** means the initial period of this Agreement as set out in the Front Sheet;

**Order** means each order for Services in accordance with the associated Order Form;

**Order Form** means each order form under this Agreement setting out the specific Services to be provided by Planet IT, which in the case of any Order for colocation services shall incorporate the Colocation Services Schedule;

**Personal Data** shall have the same meaning as set out in Applicable Data Protection Law;

**Processing** (including process, processed, processing and any other derivatives) shall have the same meaning as set out in Applicable Data Protection Law;

**Processor** shall have the same meaning as set out in Applicable Data Protection Law;

**Rate Card** means Planet IT's standard rate card for Services as amended or updated by notice to the Customer from time to time;

**Ready For Service Date** has the meaning set out in the relevant Order Form;

**Services** means the services to be performed by Planet IT, as detailed in each Order Form and in the Data Centre Rules and any other services agreed between the parties from time to time, as described in an Order Form;

**Service Credits** means such service credits due to the Customer as set out in the Colocation Services Schedule;

**SLA** means the service level agreement attached as an Annex to the Colocation Services Schedule detailing the applicable "Service Levels";

**Term** has the meaning ascribed to it in clause 2; and

**Terms and Conditions** mean the terms and conditions set out in this document

## **1.2 Construction**

1.2.1 The term "Agreement" means these Terms and Conditions and all documents incorporated into these Terms and Conditions by reference, including each Order Form, the Colocation Services Schedule and all documents attached to such Order Forms and Colocation Services Schedule or specifically incorporated by reference including policies.

1.2.2 In this Agreement, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
- (b) words importing the whole shall be treated as including a reference to any part;
- (c) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement; and
- (d) references to termination of this Agreement shall include its expiry.

1.2.3 Any phrase in this Agreement introduced by the term "include", "including", "in particular" or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term.

1.2.4 Any obligation on a party not to do something shall include an obligation not to allow that thing to be done.

1.2.5 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

1.2.6 A reference to Business Day means a working day (i.e. not a weekend or a public holiday observed by local banks) in the territory in which Services are being performed.

## **2 DURATION**

This Master Services Agreement shall come into effect on the Commencement Date and, subject to provisions for earlier termination, shall continue for the Initial Period and thereafter shall renew for successive renewal terms of 12 months unless and until terminated by either party giving to the other at least three (3) months' notice in writing to expire at the end of the Initial Period, or any renewal term (the "Term").

## **3 FRAMEWORK**

3.1 From time to time the parties may sign Order Forms for the provision of Services, Cross Connect Services and/or Additional Services. All Order Forms will be subject to the terms of this Master Services Agreement and, in relation to any colocation services, any terms contained in the Colocation Services Schedule.

3.2 In the event of any conflict between the terms of this Agreement and any Order Form the following order of precedence shall apply (in order of priority, with the highest priority shown first) but only to the extent of such conflict:

- 3.2.1 the Order Form;
- 3.2.2 the Colocation Services Schedule (for colocation services only);
- 3.2.3 this Agreement.

## **4 SERVICES**

4.1 In consideration of payment of the applicable Charges, Planet IT shall provide and the Customer shall receive the Services on the terms set out in this Agreement and the applicable Services Schedule any in any event from the relevant Ready for Service Date for the relevant Services Term.

4.2 Planet IT warrants that it will:

- 4.2.1 perform the Services in accordance with the Data Centre Rules with reasonable skill and care;

4.2.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and use reasonable efforts to provide sufficient number of personnel to ensure that Planet IT's obligations are fulfilled; and

4.2.3 use reasonable endeavours to meet any agreed performance dates, but any dates shall be estimates only and time for performance by Planet IT shall not be of the essence of this Agreement.

4.3 Planet IT will operate the Help Desk in accordance with the Data Centre Rules.

4.4 The Customer shall act in a timely manner and provide properly competent and qualified personnel with respect to its obligations under this Agreement and to any tasks to be undertaken by it, whether expressly set out in this Agreement or otherwise reasonably requested of it by Planet IT. The Services are provided on the assumption that the Customer and its agents fulfil their obligations and tasks on time and as stated, including but not limited to any specific Customer dependences in the applicable Order Form.

4.5 If, as a result of any act or omission by the Customer or its agents (howsoever caused) which is not directly and wholly caused by Planet IT (including the provision of any incorrect or inadequate information or data by the Customer), Planet IT is prevented or delayed from performing any of its obligations under this Agreement or the cost of such performance increases, then:

4.5.1 the time for performance of Planet IT's obligations shall be extended for a reasonable period;

4.5.2 the Customer shall pay Planet IT at Planet IT's standard time and materials rates for any additional time spent and materials used by it with respect to any delays or extra work caused by such act or omission of the Customer; and

4.5.3 Planet IT may recover all other reasonable costs, loss or damage from the Customer which it sustains as a direct result of such act or omission, including any losses or costs suffered or incurred by Planet IT relating to its financing of the Data Centre.

4.6 If the Customer requests that Planet IT provide any other Services to the Customer, such Services and the Charges payable for such Services will be set out in the applicable Order Form.

## **5 CROSS CONNECT SERVICES**

5.1 If the Customer requests that Planet IT installs Cross Connects on its behalf, it shall give Planet IT written notice specifying the required data cables and connection points (each a "Cross Connect Notice").

5.2 Following receipt of the Cross Connect Notice, Planet IT shall issue an Order Form (detailing the specification for such Cross Connect Services and the associated Charges) for acceptance by the Customer.

5.3 If the Customer accepts the Order Form issued under clause 5.2 Planet IT will procure the installation of such Cross Connects with reasonable care and skill and in accordance with the Order Form, provided that to do so will not breach the Data Centre Rules.

5.4 By issuing the Cross Connect Notice the Customer shall be deemed to have accepted the installation of the Cross Connect.

5.5 Planet IT will perform the Cross Connect Break-Fix Service, where selected by the Customer in an Order, in accordance with the Data Centre Rules.

## **6 ADDITIONAL SERVICES**

If the Customer requests that Planet IT provide any other services to the Customer, such Additional Services and the Charges payable for such Additional Services will be set out in the applicable Order Form.

## **7 CUSTOMER OBLIGATIONS**

The Customer shall not, without the prior written consent of Planet IT, at any time from the Commencement Date until the expiry of 12 months after the termination of this Agreement, solicit or entice away from Planet IT or employ or attempt to employ any person who is, or has been, engaged

as an employee, consultant or subcontractor of Planet IT in the provision of the Services (but this restriction shall not apply where the person is also a subcontractor of the Customer).

## 8 CHARGES AND PAYMENT

8.1 In consideration of the provision of the Services, the Customer shall pay to Planet IT the Charges. The Charges may include installation charges, recurring charges, nonrecurring charges, usage charges and other expenses as may be specified in this Agreement or in any Order Form.

8.2 Where Services are provided on a time and materials basis:

8.2.1 the Rate Card shall apply and in the absence of any rate in the Rate Card, Planet IT's standard daily fee rates for each person shall apply and third party costs passed through to the Customer; and

8.2.2 all materials shall be supplied at Planet IT's standard rates. 8.3 All Charges are expressed exclusive of VAT. The Customer shall pay to Planet IT, in addition to the Charges, the amount of VAT (if any) which is properly chargeable by Planet IT to the Customer on or in respect of the Charges. In this clause, "VAT" means any distribution, export, franchise, goods and services, import, occupation, purchase, sale, use, value or value added tax and any similar tax, tariff, charge, duty, impost, or levy.

8.4 Unless otherwise specified in the Order Form, the Charges and any reimbursable costs and expenses will be invoiced monthly in arrears.

8.5 Planet IT may increase the Charges as follows: 8.5.1 at any time to reflect any increase in the charges from Planet IT's energy provider; and 8.5.2 the Charges for Services that are charged on a periodic basis, by giving the Customer not less than 30 days' notice.

8.6 Planet IT may increase its Charges to reflect any change in the law or tax rules that affect operators of data centres, including any Energy Charges incurred by Planet IT in the provision of the Services. If a change of that kind is implemented, Planet IT will provide the Customer written notice of any resulting increase in the Charges and the date on which it will become effective.

8.7 Planet IT may increase its Charges in the event of significant currency fluctuations which are detrimental to Planet IT.

8.8 All payments shall be made by the Customer in Pounds Sterling (or in such other currency as expressly agreed by Planet IT) by transfer to such bank account as Planet IT may from time to time notify in writing to the Customer.

8.9 If: 8.9.1 payment of an invoice is not made in full by the due date and there is no bona fide dispute in relation to the whole of the amount unpaid, Planet IT shall, without prejudice to any other rights or remedies, have the right to:

- (a) suspend the Services and work under any other agreements with the Customer;
- (b) charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent (4 %) per annum above the Bank of England base rate from time to time (or such other bank as Planet IT may from time to time specify), until payment; and

8.9.2 Planet IT reasonably considers that, the Customer may not make payment for the Services by the due date, it may:

- (a) make such changes to the terms of payment for the Services as it reasonably thinks fit before supplying further Services, including requiring payment in advance and/or a guarantee; and
- (b) refuse to supply further Services unless and until such payment terms are complied with.

8.10 The Charges are Confidential Information and shall be treated as such in accordance with clause 9.

8.11 All Charges shall be paid gross, free and clear of any rights of counterclaim or set-off and without any deduction or withholding, unless the deduction or withholding is required by law. If any deduction or withholding is required by law, then the Customer shall pay such additional amount as shall be required to ensure that the net amount received and retained (free of any liability) by Planet IT equals the full amount which would have been received by it had no such deduction or withholding been required.

8.12 Notwithstanding anything to the contrary in the Agreement, if Planet IT partially installs or activates a Service, Planet IT reserves the right to commence billing for such Service on a full or a pro rata basis. Notwithstanding anything to the contrary in the Agreement, if a Service installation is delayed, incomplete or is not usable by the Customer through no fault of Planet IT or its agents, Planet IT will have the right to commence billing as if installed and according to the anticipated Ready for Service Date (which date shall then become the Ready for Service Date for the purposes of that Service).

8.13 Planet IT may update the Rate Card from time to time by written notice to the Customer.

## **9 CONFIDENTIALITY**

9.1 Each party shall use the Confidential Information of the other party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.

9.2 Each party shall take all reasonable precautions (and at least as great as those it takes to safeguard its own confidential information) to safeguard every part of the Confidential Information.

9.3 The provisions of clause 9.1 shall not apply to Confidential Information that:

9.3.1 the receiving party can prove was known to the receiving party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing party; 9.3.2 is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf, provided that this clause

9.3.2 shall only apply from the date that the relevant Confidential Information enters the public domain;

9.3.3 the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or

9.3.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.

9.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.

## **10 WARRANTY**

10.1 Each party represents and warrants that;

10.1.1 it is duly incorporated and validly existing under the laws of its country of incorporation;

10.1.2 it has the full right, power and authority to execute and perform this Agreement and any documents to be entered into pursuant to this Agreement (together "the Contract Documents") in accordance with their terms;

10.1.3 the Contract Documents have been or shall be duly executed by or on behalf of it in accordance with all rules that apply to it and constitute legal, valid and binding obligations, enforceable against it in accordance with their terms;

10.1.4 the execution and performance of the Contract Documents has been approved by it in accordance with all rules that apply to it and shall not:

(a) conflict with, or result in a breach of, or constitute a default under, or result in a violation of, any of its constitutional or organisational documents; or result in a breach of any law, order, judgment or decree of any court or governmental agency to which it is subject or bound; or

(b) constitute a breach of or violate any agreement that it has with any person;

10.1.5 no act or consent, approval, authorisation or order of any person or entity is required and no condition is required to be satisfied for the execution and performance of the Contract Documents; and

10.1.6 there are no claims, actions, suits or proceedings or regulatory investigations pending or, to its knowledge, threatened against or affecting it that would make it in breach of the other representations and warranties in this clause 10.

## **11 ANTI-BRIBERY**

Each party shall have and maintain throughout the Term of this Agreement its own policies and procedures, including adequate procedures to ensure compliance with applicable anti-bribery laws.

## **12 DATA PROTECTION**

12.1 Each Party shall comply with Applicable Data Protection Law in connection with this Agreement, and shall not cause the other party to breach any of its obligations under Applicable Data Protection Law.

12.2 If subsequent to the date of this Agreement the factual arrangements between the Customer and Planet IT dictate that Planet IT is a Processor and the Customer is a Controller in the course of the provision of the Services then, where Planet IT Processes Personal Data on behalf of the Customer, it shall:

12.2.1 do so only for the purposes of performing this Agreement as instructed in this Agreement or in accordance with documented instructions made by the Customer from time to time (unless required to do so by Applicable Data Protection Law where, in such case, Planet IT will inform the Customer of that legal requirement before processing, unless the law prohibits such disclosure);

12.2.2 notify the Customer prior to carrying out any instruction from the Customer if, in Planet IT's reasonable opinion, such instruction is likely to result in a breach of Applicable Data Protection Law;

12.2.3 assist and co-operate with the Customer as reasonably requested by the Customer from time to time to ensure the Customer's compliance with its obligations under the Applicable Data Protection Law;

12.2.4 implement appropriate technical and organisational measures to ensure a level of security to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects;

12.2.5 ensure that only those personnel who need to have access to the Personal Data are granted access to such Personal Data and only for the purposes of the performance of this Agreement;

12.2.6 ensure that personnel that do have access to the Personal Data:

(a) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(b) are informed of the confidential nature of the Personal Data;

(c) undergo training in the Applicable Data Protection Law and in the care and handling of Personal Data; and

(d) comply with the obligations set out in this clause 12 and those set out in clause 9 above;

12.2.7 not transfer Personal Data outside of the EEA without the prior written consent of the Customer.

12.2.8 within 48 hours of becoming aware of a potential Personal Data Breach alert and inform the Customer of a potential Personal Data breach (including, but not limited to, any unauthorised or unlawful Processing, loss of, damage to or destruction of the Personal Data) suffered by Planet IT or by any agents, sub-contractors, affiliates or third Parties to which Personal Data has been transferred by contacting the Customer's contact at [enquiries@planet-it.net](mailto:enquiries@planet-it.net) and provide all co-operation and



assistance to enable the Customer to comply with its obligations under Applicable Data Protection Law and to reduce the impact of the incident on its business operations and reputation;

12.2.9 notify the Customer promptly (but in any event within 48 hours of receipt) should it:

- (a) receive notice of any complaint made to a Data Protection Regulator or any finding by a Data Protection Regulator in relation to its Processing of Personal Data;
- (b) receive any request on behalf of a Data Subject, exercising their rights under the Applicable Data Protection Law and shall provide the Customer with a copy of any such communication. Planet IT shall not take action in relation to such communication, unless compelled by law, without the Customer's prior approval, and shall comply with any instructions the Customer gives in relation to such communication; or
- (c) become aware of any circumstance where Planet IT has breached this clause 12 or Applicable Data Protection Law;

12.2.10 forward to the Customer all communications it receives from third parties relating to the processing of any Personal Data, including by not limited to requests to exercise rights under Applicable Data Protection Laws, complaints, general correspondence or communications which suggest non-compliance by the Customer and/or Planet IT of Applicable Data Protection Law. Planet IT will not do anything or enter into any communication with such third party unless expressly authorised to do so by the Customer.

12.2.11 taking into account the nature of the processing and the information available to Planet IT shall assist the Customer in carrying out a risk assessment of the Processing of the Personal Data which the Processor carries out under this Agreement in order that the Customer is able to complete a data protection impact assessment in compliance with Applicable Data Protection Law, including providing information about Planet IT's current technical and organisational measures, and what further measures it could put in place to mitigate any risks to the rights and freedoms of Data Subjects, and the risks of Personal Data Breach in relation to the Personal Data, as identified by it or the Customer.

12.2.12 unless any law enacted in the European Economic Area or the United Kingdom requires otherwise, upon termination of this Agreement at the option of the Customer comply or procure that any party to whom it has disclosed the Personal Data to comply with the following: (i) return to the Customer all Personal Data and any other information provided by the Customer to Planet IT; and/or (ii) delete all Personal Data provided by the Customer to Planet IT permanently safely and securely (subject to a reasonable timeframe to delete the Personal Data and subject to any retention periods of back-ups where the Personal Data has been put immediately beyond use) and provide the Customer with a certificate of destruction; and (iii) cease to process the Personal Data.

12.3 Planet IT shall maintain accurate written records of the Processing it undertakes in connection with this Agreement, which shall contain at a minimum:

12.3.1 its details, the Customer's details, the details of its Data Protection Officer;

12.3.2 the categories of Processing carried out on behalf of the Customer;

12.3.3 the details of any transfers to any third countries, where applicable, and the safeguards in place for that transfer; and

12.3.4 an accurate record of the security measures it has in place.

12.4 Planet IT shall provide the records set out in clause 12.3 to the Customer or a Data Protection Regulator on request.

12.5 Planet IT will not engage another Processor (a "SubProcessor") to process the Personal Data on its behalf without consent of the Controller (not to be unreasonably withheld or delayed). All Sub-Processors engaged by Planet IT as at the Commencement Date, which have been notified to the Customer and are set out at Annex 1 to this Agreement shall be deemed authorised by the Customer. Planet IT shall:

12.5.1 ensure all Sub-Processors are subject to, and contractually bound by, at least the same obligations as Planet IT under this clause 12 and clause 9 above;

12.5.2 take such action as required under Applicable Data Protection Law to ensure that the transfer is subject to adequate safeguarding measures; and

12.5.3 remain fully liable to the Customer for all acts and omissions of any Sub-Processor, as if they were the acts and omissions of Planet IT.

12.6 Planet IT may engage an additional or replacement SubProcessors, subject to:

12.6.1 the provisions of paragraph 12.5 being applied; and

12.6.2 Planet IT notifying the Customer of the additional or replacement Sub-Processor prior to the appointment of the additional or replacement Sub-Processor, where the Customer objects to the additional or replacement sub-processor, the Parties shall discuss the objection in good faith. If Planet IT appoint a SubProcessor without resolving the Customer's objection, the Customer will have a right to terminate this Agreement immediately on written notice to Planet IT.

12.7 Planet IT shall allow the Customer, or its external advisers (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit Planet IT's Processing activities and those of its relevant agents, group companies and sub-contractors, and comply with all reasonable requests or directions by the Customer, to enable the Customer to verify and procure that Planet IT is in full compliance with its obligations under this clause 12.

12.8 The parties shall execute and deliver any necessary documentation (including addendums to this Agreement) as may be required for the purposes of either party complying with Applicable Data Protection Law.

12.9 Where Planet IT Processes Personal Data on the Customer's behalf, Customer shall set out the subjectmatter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data being Processed and the categories of Data Subjects in a side letter or addendum to this Agreement (to the extent such information is not already contained in this Agreement).

12.10 The Customer retains all rights, title and interest in the Personal Data including any amendments or alterations to such Personal Data made by Planet IT or on Planet IT's behalf.

## **13 LIMITATION OF LIABILITY**

13.1 Nothing in this Agreement shall limit the liability of Planet IT to the Customer for:

13.1.1 death or personal injury resulting from its negligence;

13.1.2 fraudulent misrepresentation; or

13.1.3 any liability which cannot be excluded by law.

13.2 Subject to clause 13.1, the following provisions set out the limitations on the liability of Planet IT (including any liability for the acts and omissions of its respective employees, agents and sub-contractors) to the Customer with respect to:

13.2.1 any breach of its contractual obligations arising under or in connection with this Agreement; and

13.2.2 any representation, statement, act or omission given, made or carried out under or in connection with this Agreement (whether such liability arises in contract, tort (including negligence and negligent misstatement), misrepresentation, breach of statutory duty or otherwise howsoever.

13.3 It is the Customer's responsibility to ensure that the Services are suitable for its needs. In particular, except as expressly set out in this Agreement, Planet IT expressly disclaims all warranties of merchantability, satisfactory quality or fitness for a particular purpose or that use of the Services or any part will result in any economic advantage, increase in profits or reduction in costs. Planet IT expressly disclaims all warranties and makes no representations that:

13.3.1 the Services or any part thereof will be error-free,

13.3.2 the Services will operate without interruption or will be compatible with any other systems, facilities, software, equipment or hardware; or

13.3.3 information and materials located or obtained through use of the Services are timely, accurate, relevant or complete.

13.4 Except as expressly set forth in this Agreement, all conditions, warranties and other terms and all representations expressed or implied by statute, common law or otherwise with respect to the Services are excluded to the fullest extent permitted by law.

13.5 In no event shall Planet IT be liable for any tortious loss (including negligence and negligent misstatement), misrepresentation, breach of statutory duty or for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise and whether or not Planet IT is advised of the possibility of loss, liability, damage or expense):

13.5.1 loss of revenue;

13.5.2 loss of actual or anticipated profits (including for loss of profits on contracts);

13.5.3 loss of the use of money;

13.5.4 loss of anticipated savings;

13.5.5 loss of sales or business;

13.5.6 loss of operating time or loss of use;

13.5.7 loss of opportunity;

13.5.8 loss of or damage to goodwill or reputation;

13.5.9 loss of, damage to or corruption of data; or

13.5.10 any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type specified in clauses 13.5.1 – 13.5.9).

Direct financial and other losses not excluded by this clause are accepted by Planet IT up to the limits set out in clause 13.6.

13.6 Except as stated in clauses 13.1 and 13.5, and subject always to the SLA for colocation services (where associated Service Credits are the Customer's sole remedy in respect of Planet IT's failure to provide the Services in accordance with the applicable Service Levels) the aggregate liability of Planet IT to the Customer, whether in contract or tort (including negligence and negligent misstatement) or for misrepresentation, breach of statutory duty or otherwise arising under or in connection with this Agreement (including liability for recovery of sums paid by the Customer and for all damages, costs and expenses) shall not exceed the Charges under the Order Form in which the liability arises.

13.7 Planet IT shall not under any circumstances be liable to the Customer under this Agreement for any claim by any of the Customer's clients or customers arising out of the Customer's failure to provide any services which it has agreed to provide to such client or customer (however arising).

## **14 SUSPENSION OF SERVICES**

14.1 Without prejudice to any other rights of either party under this Agreement or otherwise, Planet IT may suspend the Services, or any part thereof, by giving 3 business days' written notice to the Customer (unless otherwise required by law or order of an applicable lawful authority or regulatory body in which case Planet IT shall only be obliged to give such notice as it can reasonably give in the circumstances), and subject to Planet IT or Customer as applicable not having remedied the situation to which the notice relates within 30 days of receipt of the notice, in the event that:

14.1.1 Planet IT is entitled to terminate this Agreement pursuant to clause 15 or otherwise; or

14.1.2 either party is required to comply with any applicable laws or request of any governmental department, regulatory body or decision of any court or other judicial body of competent jurisdiction and such compliance would prevent either party or both parties from performing its or their obligations under this Agreement.

14.2 In the event that suspension of the Services, is implemented as a consequence of the material breach, fault or omission of the Customer, the Customer shall reimburse Planet IT for all reasonable costs and expenses incurred by the implementation of the suspension and/or the re-commencement of the provision of the Services.

14.3 In the event that the Services (or any part thereof) are suspended under this clause 14, the Customer shall continue to pay the Charges in accordance with this Agreement for those Services

which are not suspended, and Planet IT shall continue to meet the Service Levels in respect of those Services which are not suspended.

## **15 TERMINATION**

15.1 Without prejudice to any other rights or remedies of Planet IT, Planet IT may terminate this Agreement with immediate effect by written notice if the Customer fails to pay all or any Charges by the due date (save to the extent that there is a bona fide dispute in relation to the whole of the amount unpaid) and continues to fail to pay such sums for 14 days after receipt of written notice to do so from Planet IT.

15.2 Unless otherwise agreed between the parties in writing, any termination of the Agreement in accordance with this clause 15 shall immediately terminate the Order(s) in force at the point of termination. Neither party shall be able to terminate individual Services or the Order unless otherwise agreed by both parties.

15.3 An Order may be terminated immediately by either party on written notice, if the other is in material breach of an obligation under an Order (other than as mentioned in clause 15.1) and in the case of any such breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so. For the purposes of this clause 15.3, Planet IT shall only be deemed to be in material breach of an Order in the event of at least three unrelated catastrophic failures over a period of six (6) months.

15.4 Planet IT may terminate this Agreement immediately on written notice if

15.4.1 the Customer (i) is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts, (ii) passes a resolution for winding up (other than for the purpose of a solvent amalgamation or reconstruction) or has an order to that effect made by a court of competent jurisdiction, (iii) enters into a composition or scheme of arrangement or voluntary arrangement with its creditors or has a receiver, manager, liquidator, administrator or administrative receiver is appointed over any of its assets, or (iv) ceases or threatens to cease to do business;

15.4.2 notice of intention to appoint an administrator over the assets of other party is given by any person or an application is made to court or an order is made for the appointment of an administrator over the assets of other party; or

15.4.3 Control of the Customer is transferred to any person or persons other than the person or persons in Control of the Customer at the date of this Agreement.

15.5 Termination of an Order or this Agreement for any reason, whether under this clause 15 or not, shall be without prejudice to the accrued rights and liabilities of the parties on the date of termination.

15.6 Upon the termination of an Order or this Agreement for any reason:

15.6.1 unpaid invoices rendered by Planet IT in respect of the Services shall become immediately payable by the Customer;

15.6.2 Planet IT shall upon payment of all outstanding invoices deliver to the Customer all deliverables whether or not then complete, and return all materials of the Customer;

15.6.3 Planet IT shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it. In the absence of agreement, the Customer shall pay for any such assistance at Planet IT's standard time and material rates.

## **16 ANNOUNCEMENTS**

16.1 The parties agree to keep confidential the terms of this Agreement, and neither party shall make any announcement in relation to this Agreement or otherwise publicise its existence or its contents or use or refer to the name, trade mark or trade name of the other party in any disclosure without the prior written consent of the other party.

16.2 Nothing in this Agreement shall prevent Planet IT from including the Customer's name and logo in the list of customers in its website and in presentations from time to time.



## 17 GENERAL

### 17.1 Subcontracting and Assignment

17.1.1 Planet IT may sub-contract to any other person the performance of any of the obligations undertaken by it and exercise any of the rights granted to it under this Agreement.

17.1.2 Planet IT may assign, transfer, deal with or charge or otherwise encumber this Agreement without the consent of the Customer.

17.1.3 The Customer may not assign, transfer, hold on trust, deal with charge or otherwise encumber this Agreement without the consent of Planet IT, which may be given or withheld with the absolute discretion of Planet IT.

### 17.2 Representatives and Governance

17.2.1 Planet IT and the Customer will each nominate an appropriately experienced person with appropriate authority to act as its representative under this Agreement. The parties will notify each other in writing of each party's nominated representative together with their contact details, and will keep such contact details up to date from time to time.

17.2.2 A party may change its representative by giving written notice to the other party, but shall use commercially reasonable efforts to maintain continuity of its nominated representative.

17.2.3 The parties may agree a regular schedule of meetings or conference calls at which the parties' nominated representatives shall review the Services and any matters arising.

17.2.4 Planet IT shall provide the Customer (subject to payment of Planet IT's applicable Charges) with Planet IT's standard information and reports reasonably requested by the Customer in order to enable the Customer to comply with its greenhouse gas or energy usage reporting requirements according to applicable laws.

### 17.3 Dispute resolution

17.3.1 If a dispute arises under this Agreement ("Dispute"), including any Dispute arising out of any amount due to a party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process ("Dispute Notice").

17.3.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party will promptly (but no later than 5 business days thereafter):

(a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this agreement ("Designated Representative"); and

(b) notify the other party in writing of the name and contact information of such Designated Representative.

17.3.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.

17.3.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.

17.3.5 Notwithstanding the foregoing, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.

### 17.4 Force Majeure

17.4.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by any act or omission beyond its reasonable control (whether involving the workforce of the party affected or any other party) including failure of a utility service or transport network, act of God, war, riot, civil

commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors ("Force Majeure Event").

17.4.2 Such delay or non-performance shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for 90 days or more, Planet IT may, at its option and if in its opinion it is reasonable for it to do so, terminate this Agreement by giving 14 days written notice of such termination to the Customer. Force Majeure shall not affect the Customer's payment obligations.

#### **17.5 Amendments and change control**

17.5.1 Planet IT may, from time to time and by giving the Customer reasonable notice where appropriate, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope or quality of the Services.

17.5.2 Where the Customer or Planet IT sees a need to change this Agreement, the Customer may at any time request, and Planet IT may at any time recommend, such change only in accordance with the change control procedure set out in this clause 17. The Customer may not use the change control procedure to reduce the area of the Customer Area or otherwise materially reduce the overall scope and extent of the Services.

17.5.3 Until such time as a change is made in accordance with the change control procedure, the Customer and Planet IT shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such change.

17.5.4 Where a written request for an amendment is received from the Customer, Planet IT shall, unless otherwise agreed, submit two copies of a change control note signed by Planet IT to the Customer within 15 business days of the date of the request.

17.5.5 A recommendation to amend this Agreement by Planet IT shall be submitted directly to the Customer in the form of two copies of a change control note signed by Planet IT at the time of such recommendation. The Customer shall give its full response to the change control note within 3 weeks.

17.5.6 For each change control note submitted by Planet IT the Customer shall, within the period of the validity of the change control note:

- (a) allocate a sequential number to the change control note; and
- (b) evaluate the change control note and, as appropriate:
  - (i) request further information; or
  - (ii) arrange for two copies of the change control note to be signed by or on behalf of the Customer and return one of the copies to Planet IT; or
  - (iii) notify Planet IT of the rejection of the change control note.

17.5.7 A change control note signed by the Customer and by Planet IT shall constitute an amendment to this Agreement.

17.5.8 The parties shall maintain a register of all changes and ensure that all changes are logged and referenced to the Agreement.

#### **17.6 Waivers and Remedies**

Except as otherwise stated in this Agreement, the rights and remedies of each party under this Agreement are in addition to any other rights or remedies under this Agreement or the general law, and may be waived only in writing and specifically. Delay in exercising or nonexercise of any right or a partial exercise of any right under this Agreement is not a waiver of that or any other right under this Agreement. Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

#### **17.7 Severance**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement. The parties shall negotiate in good faith to modify any such provisions so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions.

## **17.8 Entire Agreement**

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.

## **17.9 Survival of Obligations**

Notwithstanding any provision of this Agreement to the contrary, any clause which expressly or impliedly is intended to survive termination of this Agreement for any reason whatsoever shall continue in full force and effect after termination.

## **17.10 No Partnership/Agency**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **17.11 Rights of Third Parties**

A person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **17.12 Notices**

All notices between the parties with respect to the Agreement shall be in writing and signed by or on behalf of the party giving it. Any notice shall be duly given (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or special or recorded delivery (or other "proof of delivery" or "proof of posting" service that Royal Mail may from time to time offer) or (iii) on sending if sent by email (provided that a copy is also sent by post).

## **17.13 Governing Law and Jurisdiction**

This Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

# PLANET IT



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## Terms and Conditions

### Confidentiality

All information within this document is given in the strictest confidence and is considered as Confidential Information and genuine commercially sensitive information. With regards to this all parties shall treat information detailed in the strictest confidence and shall not, without the prior consent of the other party, disclose any information with regards to this proposal to any other organisations, whosoever they may be. In the event the customer is compelled by law or by any applicable regulatory agency (including a request to disclose information in accordance with the Freedom of Information Act 2000) to disclose any Confidential Information the customer shall immediately consult with Planet IT Limited prior to any such pending disclosure so that the parties may discuss whether the Confidential Information is exempt from disclosure or so that a protective order or other appropriate remedy may be obtained. If such an order or other remedy is not available, the customer shall disclose only that minimum portion of Confidential Information that it is legally compelled to disclose, consistent with the advice of its counsel.

### Disclaimer

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