

Project and Portfolio Management - Plan View

G-Cloud 15 (RM1557.15)

Supplier Terms - ArvatoConnect

Company overview

ArvatoConnect is 100% owned by Bertelsmann SE & Co. KGaA, the ultimate parent company of Bertelsmann Group a global, financially stable company. In 2024 the group's businesses, with over 145k employees, generated revenues of €18.7 billion and €3.2 billion EBITDA globally. Bertelsmann, provide the business with long term stability, investment and also global partnership opportunities. This enables ArvatoConnect to support the UK BPO and Outsourced Services market. Bertelsmann's strategic focus is on a fast-growing and high-earning digital, international and diversified Group portfolio. Businesses in which Bertelsmann invests have long-term stable growth, global reach, sustainable business models, high market-entry barriers and scalability.

Within UK public sector we are recognised for providing high quality, complex and compliance heavy solutions, not only as a current and proven provider within both central and local government, but also as part of all of the key frameworks, the mandated route through which the public sector procures BPO and CRM services.

ArvatoConnect is a clear leader in several vertical markets, supporting a number of the world's leading brands, including the challenging and highly competitive automotive space, where we are engaged delivering FCA regulated services.

Our technology partnerships, combined with our deep domain industry expertise have enabled ArvatoConnect to successfully deliver business transformation and digital enablement for our clients, resulting in improved efficiency, reduced cost to serve and, importantly, improved customer satisfaction.

With an embedded culture of partnership supported by a strong, highly experienced leadership team, ArvatoConnect is recognised as one of the leading outsource providers in the outsourcing market. The scope of our services includes –

- BPO and Shared Services.
- Contact Centre Solutions.
- Customer Experience Management.
- Digital Communication Solutions.
- Automation and AI Consultancy and Implementation.
- Financial Services Management (FCA Accredited).

The UK HQ is situated in Datchet (Windsor) Berkshire with sites in Newcastle, East Yorkshire and Swansea. The Swansea site is our principal BPO and Shared Services facility.

Supplier Terms

Supplier Standard Terms

Acceptable Use Policy

<https://planview-media.s3.us-west-2.amazonaws.com/pdf/Planview+Software+Acceptable+Use+Policy.pdf>

DP Agreement

https://www.planview.com/legal/agreements/?_gl=1*38cdjg*_up*MQ..*_gs*MQ..&gclid=CjwKCAiAssfLBhBDEiwAcLpwfswjz8H7bzB0_lyfrYvKL7C3mEBGoax9L2qBeVPyPtyNTM47cg9N-hoC2gkQAvD_BwE&gclid=0AAAAADPnWIXnKVNXCuWcm1bQ83CqZ_2Q-#dpa

Supplier Service Specific Terms

Supplier SLA

https://www.planview.com/contracts/Service-Level-Agreement-05APR2022.pdf?_gl=1*x31yx8*_up*MQ..*_gs*MQ..&gclid=CjwKCAiAssfLBhBDEiwAcLpwfswjz8H7bzB0_lyfrYvKL7C3mEBGoax9L2qBeVPyPtyNTM47cg9N-hoC2gkQAvD_BwE&gclid=0AAAAADPnWIXnKVNXCuWcm1bQ83CqZ_2Q-

Licence Terms

SUBSCRIPTION SERVICES AGREEMENT



FOR CUSTOMERS OF AUTHORIZED PLANVIEW RESELLERS

This Subscription Services Agreement (“**Agreement**”) governs access to and use of Planview Products by Customers who have executed an Order Form (defined below) with an authorized Planview reseller (“**Reseller**”). Customer accepts this Agreement, which becomes binding on Customer, upon the earlier of the date (i) of Customer’s execution of an Order Form; or (ii) Customer’s access to or use of a Planview Product. This Agreement is effective between Customer and Planview on the date of acceptance (the “**Effective Date**”).

1. DEFINITIONS. Capitalized terms in this Agreement have the following meanings:

1.1 “Affiliate” means an entity that controls, is controlled by, or is under common control with a party to this Agreement. With respect to Planview, Affiliates will be limited to Plaza Holdings, Inc., and any entities that Plaza Holdings, Inc. controls through one or more intermediaries. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through ownership of fifty percent (50%) or more of the voting or equity securities of such entity or its assets.

1.2 “Availability Target” means the target metric for availability of the Planview Product in a production environment, as described in the Service Level Agreement available at <https://www.planview.com/legal/agreements/#service>.

1.3 “Beta Features” means a new feature or functionality of the Planview Product that may be made available to Customer to try at its option at no additional charge, which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or similar description, including features or functionality made available via Planview Labs; a

Beta Feature shall not be deemed part of the Planview Product for purposes of this Agreement unless and until it is put into production.

1.4 “Competitor” means any entity that offers directly competitive functionality or services to those offered by Planview.

1.5 “Customer” means the entity accepting this Agreement as described above and any Affiliate of such entity that executes an Order Form with Reseller, which must include a commitment by the Affiliate to be bound by the terms and conditions of this Agreement as though it were an accepting party hereto.

1.6 “Customer Data” means electronic data, content, or other information collected, received, created, or hosted by the Planview Product in connection with Customer’s or its Users’ use of the Planview Product, including, for the avoidance of doubt, any personal data / personally identifiable information, all of which shall be considered Customer’s Confidential Information.

1.7 “Data Processing Agreement” or “DPA” means Planview’s Data Processing Agreement found at <https://www.planview.com/legal/agreements/#dpa>.

1.8 “Documentation” means the online user manuals that describe the functions, operation, and use of the Planview Product, which Planview makes available to subscribers in its customer portal referred to as the “Customer Success Center”.

1.9 “Error” means any error or defect in a Planview Product that causes it not to conform in material respects to the Documentation and **“Error Correction”** means a modification to the Planview Product that corrects or provides a workaround for an Error.

1.10 “Improvements” means updates, enhancements, extensions, modifications, and new releases to the Planview Product (other than Error Corrections) that Planview elects to incorporate into and make a part of the Planview Product, and for which Planview does not charge an additional Subscription Services fee.

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1.11 “Intellectual Property Rights” means any and all worldwide intellectual property rights, including copyright, rights in registered and unregistered trademarks (including domain names), trade secrets, patents, trade or business names, know-how, database rights, and other proprietary rights (including rights in any invention, discovery, or process), whether registered or unregistered, statutory, or common law, under any applicable laws anywhere in the world, and all moral rights related thereto.

1.12 “Order Form” means a separate agreement, order form, purchase order, and/or any other document for ordering Subscription Services or other Planview products and services executed by the Customer and Reseller from time to time, which shall be bound by the terms of this Agreement and that will specify or reference the Planview Products being subscribed to, the number of Users, the Subscription Period, the applicable fees, applicable Statement of Work (if any), and other commercial terms as mutually agreed between the Customer and Reseller. For the avoidance of doubt, any legal terms, including terms intended to modify the terms of this Agreement, included in an Order Form shall not be binding on Planview.

1.13 “Planview Product” means the Planview product designated in the applicable Order Form, including associated Documentation, hosted by Planview as a Subscription Service.

1.14 “Planview Data” means data created by, or resulting from, the use of the Subscription Services, including analyses, statistics, reports, and aggregations, which (a) excludes all personally identifiable information, such that there is no reasonable basis on which any

individual, or Customer itself, could be identified by the Planview Data and (b) shall be considered Planview Confidential Information.

1.15 “Professional Services” means the services performed by Planview to set up the Planview Product, to create interfaces with or customize the Planview Product, to provide consultation regarding usage of the Planview Product, or such other services as described in one or more Statements of Work referencing this Agreement.

1.16 “Project Materials” means (a) the productized Planview documents, reports, training courses, and course materials, as customized by Planview for Customer’s set up and use of the Planview Product and/or (b) Planview Product-specific interfaces and code customizations created by Planview for Customer’s use with the Planview Product, each (if applicable) as defined in a Statement of Work.

1.17 “Statement of Work” means the document describing the scope of Professional Services to be performed by Planview from time to time, including Customer’s obligations, timeframe for performance, and applicable fees, which shall be attached as an exhibit to the applicable Order Form and governed by the terms of this Agreement. For the avoidance of doubt, the fees will also be included in the applicable Order Form and will be invoiced by and paid to Reseller.

1.18 “Subscription Period” means the term to which Customer subscribes to a Subscription Service, as set forth in the applicable Order Form.

1.19 “Subscription Services” means services provided by Planview on a subscription basis, including, but not limited to, the hosting of Planview Products, the provision of Premium Support, and subscription Professional Services, if and as described in an Order Form.

1.20 “Support Services” means (a) Planview’s standard support services for the Planview Product or (b) if purchased by Customer as indicated in the Order Form, Planview’s premium support services for the Planview Product (“**Premium Support**”); the terms for both standard support and premium support are found at <https://www.planview.com/legal/agreements/#support> (“**Support Terms**”). Generally, Support Services include the deployment of Error Corrections and Improvements but exclude Upgrades.

1.21 “Upgrades” means significant or material new features, functions, or capabilities of the Planview Product that Planview makes available to its customers for an additional Subscription Services fee.

1.22 “User(s)” means any and all persons (provided they are not Competitors) (i) designated by Customer to access or use the Planview Product, which persons must be assigned user identifications and

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passwords (“**Access IDs**”) by Customer; or (ii) referenced by any data or information that is submitted or entered into or otherwise provided to the Planview Product by a User under clause (i) above, unless such entry of data or information is specifically permitted by a licensing role that Customer has subscribed to.

2. PLANVIEW OBLIGATIONS

2.1 Subscription Services and Support Services. Planview will make the Subscription Services available to Customer for the Subscription Period, pursuant to the terms of this Agreement. During the applicable Subscription Period, (a) the Planview Product will perform materially in accordance with the Documentation, (b) the functionality of the Planview Product will not be materially decreased from that available as of the first day of the Subscription

Period, (c) Planview will use commercially reasonable efforts to meet the Availability Target for the Planview Product, and (d) if the Reseller is not obligated to provide support services directly to Customer, Planview will provide Support Services. For the avoidance of doubt, Reseller may also directly provide support services to Customer, as will be documented in an agreement between Customer and Reseller. In such case, (i) Planview shall have no responsibility for providing Support Services to Customer; and (ii) Planview shall have no liability arising from any aspect of Reseller's provision of, or failure to provide, support services to Customer.

2.2 Professional Services. Planview will provide the Professional Services as described in each Statement of Work, in all material respects. Planview is responsible for the supervision, direction, and control of its personnel engaged in providing Professional Services. Subject to its obligations under the DPA (if applicable), Planview may subcontract any aspect of the Professional Services and Planview will be responsible for the performance of any such subcontractor. Planview's performance of the Professional Services is contingent upon Customer's timely and effective performance of its responsibilities, decisions, and approvals, and Planview may rely on Customer decisions and approvals. For the avoidance of doubt, Reseller may also directly provide professional services to Customer, as will be documented in an agreement between Customer and Reseller. In such case, (i) Planview shall have no responsibility for providing the contracted-for professional services to Customer and (ii) Planview shall have no liability arising from any aspect of Reseller's provision of, or failure to provide, the contracted-for professional services to Customer.

2.3 Data Privacy and Security; Business Continuity

2.3.1 Data Privacy. Planview will in addition to its confidentiality obligations under Section 6, collect, use, and process Customer Data solely in accordance with Planview's Privacy Statement found at <https://www.planview.com/trust/privacy/>. If Planview processes any personal data of individuals on Customer's behalf when performing its obligations under this Agreement, then the parties record their intention that Customer is the data controller or data intermediary and Planview is the data processor (with "data controller/intermediary" and "data processor" as defined under applicable data protection/data privacy laws) and, in any such case, (a) Customer shall ensure that it is entitled to transfer the relevant personal data to Planview so that it may lawfully process the personal data on Customer's behalf, and (b) if applicable, the parties shall comply with the terms of the DPA. Furthermore, it is Customer's responsibility to inform its employees and/or consultants that their data is processed by Planview for the provision of the Subscription Services and the Support Services, according to the terms of the DPA, as well as for Planview's own purposes, if applicable, as stated in Planview's Privacy Statement.

2.3.2 Data Security; Compliance. Planview has implemented and will maintain security procedures and practices appropriate to information technology service providers designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure, as described at <https://www.planview.com/trust/security/> (the "**Security Plans**"). Planview may amend its Security Plans at any time, provided that Planview shall not reduce its data security capabilities from those in existence on the Effective Date. In addition, as applicable to each Planview Product (as specified in the Security Plans), Planview will maintain sufficient controls to meet the objectives stated in ISO 27001, ISO 27701, SSAE 18, SOC 2 Type 2, or equivalent standards (as the case may be) (collectively, the "**Standards**"). Once per calendar year, Planview will obtain an assessment against the applicable Standards by an independent third-party auditor and, on Customer's request, will share a summary of the results. If Customer requires

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Planview to respond to privacy and security questionnaires or assessments that are not capable of being readily completed by referencing such results, the Standards, or other existing Planview policies and procedures, then Planview will have the right to charge

Customer for the time of its personnel in connection therewith. If Customer requires Planview to submit to or participate in third-party compliance exercises or to obtain third-party compliance certifications through a compliance portal, system, or platform ("**Compliance Portal**"), then Planview will not be subject to such requirements unless mutually agreed upon in writing and Planview shall be entitled to (i) charge Customer for the cost of meeting such requirements, including for the time of its personnel in connection therewith, and (ii) reimbursement by Customer for all costs associated with Planview's procuring, accessing, or using the Compliance Portal.

2.3.3 Business Continuity. Planview hosts the Planview Products at data centers that have attained SSAE 18 SOC 2 Type 2 attestations or have ISO 27001 certifications (or equivalent or successor attestations) for the Subscription Period. Each data center includes full redundancy (N+1) and fault tolerant infrastructure for electrical, cooling, and internet. Services that support Planview Products are architected to ensure maximum uptime and service availability. Production data is backed up according to each Planview Product's Recovery Point Objective (RPO) and Recovery Time Objective (RTO). Planview backs up all Customer Data in accordance with Planview's standard operating procedure.

2.4 Beta Features. From time to time, Planview may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Features or not in its sole discretion. For the avoidance of doubt, Beta Services are for evaluation purposes only and not for production use, are not supported, are not covered by any warranty (except as required by law) or service level commitment, and may be subject to additional terms. Planview may discontinue Beta Services at any time in its sole discretion and may never make them generally available. Planview will have no liability for any harm or damage arising out of or in connection with any Beta Feature.

3. CUSTOMER RESPONSIBILITIES

3.1 Professional Services Assistance. If Planview is providing Professional Services to Customer, then Customer shall assist Planview as set forth in the applicable Statement of Work.

3.2 Access IDs; Named Users; User Reconciliation. For all Users falling under Section 1.22(i) above, Customer is responsible for creating and maintaining secure passwords, for maintaining the confidentiality of all Access IDs, and for all acts that occur with them in connection with Customer's account. Access IDs cannot be shared or used by more than one User; however, they may be reassigned by Customer from time to time to new Users where expressly permitted in the Documentation for the relevant Planview Product, replacing Users who no longer require access to the Planview Product. For the avoidance of doubt, this is solely a right of reassignment of Access IDs and not a right of reduction of the number of Users purchased under the applicable Order Form. Customer must notify Planview promptly after learning of any unauthorized use of Customer's account, breach of security, or loss or theft of Access IDs. Planview may remotely review Customer's use of the Subscription Services, and on Planview's request, Customer will provide reasonable assistance to verify Customer's compliance with the limitations on its rights to access and use the Subscription Services. If Planview determines that Customer has exceeded its permitted access and use rights, Planview will notify Customer and within thirty (30) days thereafter Customer shall either (a) disable any unpermitted use, or (b) purchase via an Order Form subscription for the excess Users in minimum increments of twenty-five (25) Users, at Planview's then-current price. The number of Users cannot be decreased during the applicable Subscription Period.

3.3 Use Guidelines and Restrictions. Customer shall use the Planview Product in accordance with the Documentation, this Agreement, and with all applicable laws. Customer shall not: (a) publish, disclose, copy, rent, lease, modify, loan, distribute, sell, resell, transfer, assign, alter, or create derivative works based on the Planview Products or Subscription Services, or any part thereof; (b) reverse engineer, decompile, translate, adapt, or disassemble the Planview Products or Subscription Services, including to: (i) build or create a

competitive product or service, or (ii) build or create a product or service using similar ideas, features, functions, or graphics of the Planview Product, nor shall Customer attempt to create the source code from the object code for the Planview Product; (c) permit any third party to access the Planview Product except as expressly permitted herein or under an Order Form or Statement of Work; or (d) create

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any unauthorized Internet "links" to the Subscription Services or "frame" or "mirror" any content of the Planview Product.

4. FEES AND PAYMENT

4.1 Fees and Expenses. In consideration of the Subscription Services and the Professional Services provided by Planview hereunder, Planview's fees and expenses are as stated in each applicable Order Form (the "**Planview Fees**"). Customer agrees that Planview is entitled to be reimbursed for all miscellaneous out-of-pocket expenses incurred by Planview in performing the Professional Services, as well as for reasonable travel expenses, provided such expenses have been pre-approved by Customer. Reimbursement of travel expenses will be in accordance with Planview's travel expense policy, a copy of which will be provided to Customer upon request.

4.2 Invoicing and Payment. Invoicing and payment of fees for Subscription Services and Professional Services shall be in accordance with the terms as set forth in the applicable Order Form, and Customer shall pay to the Reseller accordingly.

4.3 Remedies for Late Payment. If Customer's account with Reseller is thirty (30) days or more past due, Planview reserves the right to suspend the Subscription Services and related Professional Services, until such amounts are paid in full by Customer to Reseller. The foregoing remedies will not apply to the extent a payment is the subject of a good faith dispute between the parties, provided that Customer notifies Reseller of such dispute prior to the payment due date, timely pays all undisputed portions of the relevant invoice, and works in good faith with Reseller to expeditiously resolve the dispute.

5. PROPRIETARY RIGHTS

5.1 Planview's Rights. As between the parties, Planview owns all right, title, and interest, including all Intellectual Property Rights, in and to (a) the Planview Products (and all Improvements, Upgrades, and Error Corrections), the Subscription Services, the Documentation, and the Project Materials, (b) the PLANVIEW trademark and any other trademarks used with the Planview Products or services provided by Planview hereunder, (c) the Planview Data, and (d) all other Planview-supplied material developed for use in connection with the Planview Product or Subscription Services generally, exclusive of Customer Data. For the avoidance of doubt, Project Materials are provided to Customer solely for use with the Planview Product and for no other purpose. Nothing in this Agreement shall be deemed to limit Planview's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services. Any rights not expressly granted herein are reserved by Planview. Except for the access and use rights expressly set forth in this Agreement, no other rights in or to Planview's intellectual property are granted to Customer. In no event shall any Planview Product be deemed to have been sold or licensed to Customer, even if, for convenience, Planview and/or the Reseller uses words such as "sale" or "purchase" or "license" in Order Forms or other documents or communications.

5.2 Customer Data. As between the parties, Customer owns all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data. Customer hereby grants to Planview a royalty-free, fully-paid, non-exclusive, non-transferrable (except as set

forth in Section 11.7 (Assignment) and/or as provided for in the DPA), and worldwide right to access, host, use, copy, process, export, and display Customer Data, (a) as reasonably necessary for Planview to (i) provide, maintain, and update the Planview Products in accordance with this Agreement, and (ii) prevent or address service, security, support or technical issues; (b) for the purposes as expressly permitted in writing by Customer, and (c) as required by law. Planview is not responsible for reviewing and/or validating the Customer Data for accuracy, correctness, compliance with applicable law, or usability.

6. CONFIDENTIALITY

6.1 Confidential Information. “**Confidential Information**” means any information disclosed by either party (“**Discloser**”) to the other party (“**Recipient**”), in any form, that (a) Discloser identifies at the time of

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disclosure as confidential or proprietary or (b) should otherwise reasonably be understood by Recipient to be confidential or proprietary given the nature of the information, its legends and markings, or the circumstances of disclosure. Confidential Information may also include third-party confidential or proprietary information disclosed to Recipient. Recipient’s obligations under this Section 6 will not apply to any Confidential Information that Recipient can document: (i) was or becomes in the public domain through no fault of Recipient; (ii) was rightfully known by Recipient, free of any restriction on use or disclosure, prior to receiving the information from Discloser; (iii) is rightfully acquired by Recipient from a third party who has the right to disclose it and provides it free of restriction on use or disclosure; or (iv) was independently developed by Recipient without reference to any Confidential Information.

6.2 Recipient’s Obligations. Recipient will treat all Confidential Information with the same degree of care as Recipient accords to Recipient’s own confidential information, but in no event less than reasonable care. Recipient will not use, copy, disseminate, or disclose any Confidential Information except to the extent necessary for the purpose of providing and/or receiving the Subscription Services, Professional Services, and/or Documentation under this Agreement or to enforce its terms (collectively, the “**Purpose**”). Recipient will disclose Confidential Information only to those of its employees, agents, officers, directors, and advisors who need to know such information for the Purpose and who are bound by confidentiality obligations no less protective than those required under this Section 6 (each, a “**Representative**”). Recipient will be responsible for any Representative’s failure to comply with the terms of this Section 6. Disclosure to anyone other than a Representative will require Discloser’s prior written consent. Recipient will give prompt notice to Discloser of any unauthorized use or disclosure of Confidential Information of which it becomes aware and will assist Discloser in remedying any such unauthorized use or disclosure. Recipient may not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody Confidential Information and that are provided to Recipient under this Agreement.

6.3 Compelled Disclosure. A disclosure by Recipient of any Confidential Information that is (a) legally compelled by a court of competent jurisdiction or required by a regulatory or governmental body to be disclosed, or (b) necessary to disclose in litigation or other legal action to enforce this Agreement, will not be considered a breach of this Agreement; provided, however, that with respect to disclosures under clause (a), Recipient will, if legally permitted, provide Discloser (i) prompt notice thereof prior to the compelled disclosure so that Discloser may seek an appropriate protective order or other remedy, and (ii) reasonable assistance in obtaining any such order or remedy. If Recipient is nonetheless legally compelled or otherwise required to disclose under clause (a), then it will disclose only that portion of the Confidential Information that is legally required and will make reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so disclosed.

6.4 Return or Destruction of Confidential Information. All documents, materials, and other tangible or intangible objects furnished to Recipient by Discloser (whether or not they contain or disclose Discloser's Confidential Information) are the property of Discloser and all summaries, copies, and excerpts thereof made by Recipient or otherwise in Recipient's possession are and will remain the property of Discloser. After any request by Discloser, Recipient will promptly return or destroy all such documents, materials, and objects, as well as all such summaries, copies, and excerpts. Notwithstanding the foregoing, Recipient may retain a copy of Confidential Information to the extent required for reasonable internal risk, insurance, or audit purposes, as well as any electronic copies made as part of Recipient's standard backup and archival practices, provided that any such Confidential Information retained shall remain subject to the terms and obligations set forth in this Agreement.

6.5 Injunctive Relief. Each party agrees that its obligations under this Section 6 are necessary and reasonable in order to protect Discloser and its business, and expressly agree that monetary damages may be inadequate to compensate Discloser in the event of a breach of this Section. Accordingly, each party acknowledges that any such breach or threatened breach may cause irreparable and continuing injury to Discloser and that, in addition to any other remedies that may be available in law, at equity, or otherwise, Discloser will be entitled to seek injunctive relief without the necessity of proving actual damages or posting a bond to obtain a preliminary injunction. However, the foregoing will not relieve a party of its obligation to demonstrate harm to obtain a permanent injunction.

7. WARRANTIES, REMEDIES, AND DISCLAIMER

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7.1 Warranties. Planview warrants that (a) it will provide the Planview Product in a manner that materially conforms with the Documentation and (b) it will perform the Professional Services in a competent and workmanlike manner that materially conforms to the Statement of Work requirements.

7.2 Exclusions. Planview will have no obligation or liability of any kind for a breach of Section 7.1(a) to the extent a warranty claim arises from Customer's access to or use of the Planview Product (a) not expressly authorized under this Agreement, (b) in violation of applicable law, (c) as modified by anyone other than Planview or its contractors, or (d) in combination with any non-Planview-provided hardware, software, or data with which it was not initially set up by Planview or subsequently expressly approved by Planview ("**Excluded Combinations**"), in each case if breach of warranty would not have occurred but for such access or use. If Planview provides services in response to a warranty claim and determines that the claim was caused by any of the foregoing exclusions, then Planview may impose charges at its then-standard time and materials rates, including travel and out-of-pocket expenses. For the avoidance of doubt, Planview disclaims any obligation or liability in respect of any professional services provided by Reseller.

7.3 Remedies. If the Planview Product fails to perform as warranted, then Customer must report the relevant Error to Planview within thirty (30) days after becoming aware of it by submitting a Support Services ticket, and, if Planview is able to recreate the Error, it will correct or provide a permanent workaround at no additional charge. If Planview fails to provide the Professional Services as warranted, then Customer must report such failure to Planview within five (5) days after the performance thereof, and Planview will re-perform such Professional Services at no additional charge. The provisions of the Section constitute Customer's sole and exclusive remedy, and Planview's sole and exclusive liability, for breach of the warranty set forth above.

7.4 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, PLANVIEW MAKES NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF

TITLE, NON-INFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE. PLANVIEW DOES NOT WARRANT THAT THE PLANVIEW PRODUCT WILL BE UNINTERRUPTED, ACCURATE, OR ERROR-FREE OR THAT IT WILL BE SUITABLE FOR OR MEET ALL OF THE REQUIREMENTS OF CUSTOMER.

8. MUTUAL INDEMNIFICATION

8.1 Indemnification by Planview

8.1.1 Subject to Section 8.3, Planview will (a) defend Customer from any third-party claims, demands, suits, or proceedings (“**Claims**”) made or brought against Customer to the extent alleging that the use of the Planview Product infringes a registered patent or copyright of a third party or misappropriates a trade secret, and (b) pay, with respect to any such Claim, all court-ordered awards of damages or amounts agreed to in settlement by Planview.

8.1.2 Should the Planview Product become, or in Planview’s opinion be likely to become, the subject of a Claim for which indemnity is provided under Section 8.1.1, Planview will, at its option and expense, either (a) obtain for Customer the right to continue to use the Planview Product or (b) replace or modify the Planview Product so that it becomes non-infringing while providing substantially similar features and functions. If Planview, in its sole discretion, determines that neither of these alternatives is commercially reasonably available, then Planview will terminate Customer’s access to and use of the Planview Product and reimburse Customer for any prepaid, unused Subscription Service fees therefor, for the remainder of the then-current Subscription Period.

8.1.3 Planview will have no obligation or liability for any Claim under Section 8.1.1 to the extent arising from (a) Customer’s access to or use of the Planview Product (i) not expressly authorized under this Agreement, (ii) in violation of applicable law, (iii) after termination under Section 8.1.2, (iv) as modified by anyone other than Planview or its subcontractors, or (v) Excluded Combinations, in each case if the Claim would not have occurred but for such access or use; or (b) Customer Data.

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8.2 Indemnification by Customer. Customer will (a) defend Planview from any Claims made or brought against Planview alleging that the Customer Data (or Planview’s use of it in accordance with this Agreement) or Customer’s access to or use of the Planview Product in a manner falling under one of the exceptions set forth in Section 8.1.3 infringes or misappropriates the Intellectual Property Rights of, or has otherwise harmed, a third party and (b) pay, with respect to any such Claim, all court-ordered awards of damages or amounts agreed to in settlement by Customer.

8.3 Indemnification Process. The obligations of the parties under this Section are conditioned on the indemnified party (a) notifying the indemnifying party promptly of any actual or threatened Claim (provided, that the failure to provide prompt notice will not limit the indemnifying party’s obligations under this Section unless and to the extent it was materially prejudiced thereby), (b) giving the indemnifying party sole control of the defense of such Claim and of any related settlement negotiations, and (c) cooperating with and, at the indemnifying party’s reasonable request and expense, assisting in the defense and settlement of the Claim. The indemnified party may retain its own counsel to advise it with respect to any Claim, at its sole expense. The indemnifying party will not settle a Claim in a manner that requires the indemnified party to admit fault or liability or admits same on the other party’s behalf, without its prior consent. This Section 8.3 states each party’s entire liability and the other party’s exclusive remedy for any Claims.

9. LIMITATIONS OF LIABILITY

9.1 Cap on Direct Damages. PLANVIEW SHALL BEAR NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY OBLIGATION THAT IS PERFORMED OR

DESIGNATED TO BE PERFORMED BY RESELLER HEREUNDER. SUBJECT TO SECTION 9.3, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER HEREUNDER FOR THE PLANVIEW SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.

9.2 Exclusion of Consequential and Related Damages. SUBJECT TO SECTION 9.3, TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR LOSS OF OR DAMAGE TO RECORDS OR DATA, ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES (INCLUDING COSTS OF COVER), OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGE OR LOSS HOWEVER CAUSED AND IRRESPECTIVE OF THE THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

9.3 Excluded Claims, Cumulative Remedies. The limitations and exclusions of liability shall not apply to (a) Customer's obligations to pay under Sections 3.2, 4, or 10.4, (b) under Section 8 (Indemnification), or (c) loss or damage arising from (i) infringement or misappropriation by a party of the other party's Intellectual Property Rights, or (ii) willful misconduct, fraud or that cannot legally be limited by contract. Damages arising from a party's breach of its obligations under Section 6 (Confidentiality) are excluded from Section 9.2 but are subject to Section 9.1. Other than as expressly stated in this Agreement, the remedies provided herein are in addition to, and not exclusive of, any other remedies available to a party at law or in equity.

9.4 Insurance. Planview maintains insurance coverage in the categories and within the policy limits set forth below and maintain certificate(s) evidencing all such coverages, which will be made available upon request to Planview. All insurance coverage shall be on an occurrence basis. The only exception is if the claims-made coverage provides a three (3)-year period of "tail coverage" on any expiring/canceled claims-made insurance policy. Planview will not cancel or materially reduce the policies and minimums set forth below without notice to Customer.

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General Liability (Including Contractual Liability and Completed Operations)	\$1M per occurrence / \$2M aggregate
Automobile Liability Including Hired and Non-owned Vehicles	\$1M combined single limit
Workers' Compensation	Statutory
Employers' Liability	\$1M per employee
Primary Commercial Blanket Bond	\$1M
Umbrella Liability	\$5M
Professional Liability/ Errors & Omissions Coverage (Including coverage for Copyright, Trademark, Privacy, and Associated Intellectual Property Risk)	\$5M – shared policy with the Cyber
Privacy & Network Liability (Including Data Breach Fund and Regulatory Proceedings)	\$5M – shared policy with the Professional Liability / E&O

Further Information

For further information about this or any of our G-Cloud services, please contact us as follows:

Richard Husband
Public Sector Director
ArvatoConnect

E-Mail: richard.husband@arvatoconnect.co.uk
Mobile: +44 (0) 7867 464428

www.arvatoconnect.co.uk

Botanica | Ditton Park | Riding Court Road | Datchet | Slough SL3 9LL

