

THIS MASTER SERVICES AGREEMENT AGREED TERMS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement or a Contract:

Applicable Laws: all applicable laws, statutes, regulation from time to time in force.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Change Order: has the meaning given in clause 7.2.

Client Party Background IPRs: all Intellectual Property Rights in the Client Materials.

Client's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in an Order.

Client Materials: all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to Planet IT in connection with the Services, including the items provided pursuant to clause 5.1(i).

Contract: an agreement for the provision of Services by Planet IT to the Client agreed in accordance with clause 3.

Contract Conditions: the specific terms annexed to or referred to in an Order that contain additional Service or Product specific terms and conditions that apply to the Services or Products identified in the applicable Order.

Contract Charges: the sums payable for the Products and Services as set out in an Order.

Contract Term: the term (if any) specified as such in the applicable Order.

control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Planet IT Background IPRs: all Intellectual Property Rights that are owned by or licensed to Planet IT and which are or have been developed independently of this agreement or a Contract in each case either subsisting in the Deliverables or otherwise necessary or desirable to enable the Client to receive and use the Services.

Planet IT's Equipment: any equipment, including tools, systems, cabling or facilities, provided by Planet IT to the Client and/or used directly or indirectly in the supply of the Services, including any such items specified in an Order but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Client.

Planet IT Personnel: all employees, staff, other workers, agents and consultants of Planet IT and of any subcontractors who are engaged in the provision of the Services from time to time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.



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Deliverables: any output of the Services to be provided by Planet IT to the Client as specified in an Order and any other documents, products and materials provided by Planet IT to the Client in relation to the Services (excluding Planet IT's Equipment).

Force Majeure Event: as defined in clause 15.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Out-of-scope Services: any Services provided by Planet IT or which the Client requires Planet IT to perform which falls within any exclusions or is outside any assumptions contained in an Order.

Order: either:

- (a) A proposal or other document, agreed in accordance with clause 3, describing the Services and/or Products to be provided by Planet IT, the Contract Conditions and all applicable related matters; or
- (b) in the absence of a document agreed in accordance with clause 3, the Client's order form or the Client's written acceptance of Planet IT's quotation or proposal, as the case may be.

Products: the software and/or hardware or other products or equipment purchased by the Client from Planet IT as set out in an Order.

Scope of Works: a document prepared by Planet IT which sets out more detail regarding the Services and/or Products to be provided to the Client.

Services: the services which are provided by Planet IT under an Order, including services which are incidental or ancillary to the Services.

Service Levels: any service levels set out in the Order.

Site: the Client premises at which Services are to be performed.

Supported Users: those employees, agents and independent contractors of the Client who are authorized by the Client to use the Client's IT infrastructure as agreed between Planet IT and the Client from time to time.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018; the UK GDPR (as defined in the Data Protection Act 2018) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2 Clause and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.



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- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax and email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2. COMMENCEMENT AND DURATION**
- 2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless and until terminated earlier in accordance with clause 13.
- 2.2 Unless otherwise stated in the Order and unless terminated earlier in accordance with clause 13:
- a) each Contract for the provision outsourced IT support or fully managed IT support where the Order specifies that the Contract shall be made on an annual basis, shall continue for a period of 12 months (**Initial Term**) and shall automatically extend for a further period of 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be; and
 - b) any other Contract for the provision of outsourced IT support or fully managed IT shall continue indefinitely until either party gives to the other party 90 days' written notice to terminate the Contract.
 - c) Any other Contracts with a stated Contract Term shall commence on the date of the Order and shall continue in full force and effect for the Contract Term.
- 2.3 On termination of this agreement, howsoever arising, each Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Contract, unless terminated earlier in accordance with the terms of such Contract.
- 2.4 The termination of any Contract shall not affect any other Contracts or this agreement.

2.5 The Client may procure the provision of Products and/or Services by agreeing an Order with Planet IT pursuant to clause 3.

2.6 The parties shall not enter into any further Orders after the date on which notice to terminate this agreement is served under clause 13.

3. ORDERS

3.1 This agreement governs the overall relationship of the parties in relation to the Products and Services provided by Planet IT to the Client, and this clause 3 sets out the procedure for the Client to request the provision of Products and Services from Planet IT under separate Contracts.

3.2 From time to time, the parties may agree that Planet IT shall provide Products and/or Services to the Client. The detail of the Products & Services to be provided, the applicable Charges and the relevant Contract Conditions shall be set out in an Order.

3.3 A Contract shall not enter into force, be legally binding or have any other effect unless:

- (a) an Order has been signed by the authorised representatives of both parties to it; and
- (b) as at the date the Contract is signed, this agreement has not been terminated.

3.4 Each Contract:

- (a) shall be entered into by the Client and Planet IT;
- (b) incorporates the terms of this agreement and the relevant Contract Conditions; and
- (c) forms a separate contract between its signatories.

and in the absence of an agreed and executed Contract, Planet IT shall not be under any obligation to supply any Services and/or Products to the Client.

3.5 All Orders for the sale of Products and Services are subject to acceptance by Planet IT and the availability of the Products and Services. In the absence of an agreed and executed Contract, Planet IT shall not be under any obligation to supply services or products to the Client.

3.6 Any amendments to this agreement agreed by the Client and Planet IT in accordance with clause 19 shall be deemed to apply to all future Contracts entered into after the date of such amendment.

3.7 If there is any inconsistency, conflict or ambiguity between the terms of the documents listed below, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:

- (a) Order
- (b) Contract Conditions
- (c) this agreement.

4. PRODUCTS AND SERVICES

4.1 The performance of the Services and the sale of Products shall be subject to the applicable Order and the related Contract Conditions.

4.2 In supplying the Services, Planet IT shall:

- (a) use reasonable endeavours to provide the Services (including any Service Levels) in accordance with an Order in all material respects;
- (b) use reasonable endeavours to meet any performance dates specified in an Order but any such dates shall be estimates only and time for performance by Planet IT shall not be of the essence of this agreement;
- (c) co-operate with the Client in all matters relating to the Services;



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- (d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in a Contract;
- (e) comply with Applicable Laws.

4.3 Occasionally, for operational reasons, Planet IT may:-

- (a) change the way Planet IT provides the Service provided that any change to the way Planet IT provides the Service does not significantly affect the performance or functionality of the Service; or
- (b) interrupt or suspend the Service. If this happens Planet IT will restore the Service as quickly as possible.

4.4 The Client acknowledges that Planet IT is not obliged to provide Out-of-scope Services and the provision of Out-of-scope Services may be charged for at Planet IT's applicable time and materials rates.

4.5 The Products specification or description (if any) will be set out in the Order. Planet IT reserves the right to amend any Product specification set out or referred to in the Order if required by any applicable statutory or regulatory requirement or if Planet IT's supplier amends the Product specification and Planet IT shall notify the Client in any such event.

4.6 All Products are sold subject to the applicable manufacturer provided warranty and licensing agreements. Planet IT shall use its reasonable endeavours to transfer the benefit of any manufacturer warranty or guarantee relating to the Products to the Client.

4.7 Planet IT shall deliver the Products and perform the Services as set out in the Order. Any dates quoted for delivery or installation of the Products or performance of the Services are approximate only and the time of delivery or performance is not of the essence. Planet IT shall not be liable for any delay in delivery of the Products or performance of the Services that is caused by a Force Majeure Event or the Client's failure to provide Planet IT with adequate delivery instructions or any other instructions that are relevant to the supply of the Products or performance of the Services.

4.8 Subject to clause 4.7, If Planet IT fails to deliver the Products and/or perform Services, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods or services of similar description and quality in the cheapest market available, less the price of the Products and/or Services.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

- (a) ensure that the terms of the Order and any information contained in a product specification, proposal or other services specification are complete and accurate;
- (b) co-operate with Planet IT in all matters relating to the Services;
- (c) comply with all dependencies and specific obligations on the Client set out in the Order;
- (d) ensure that the Client Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant laws, standards and requirements including any set out in the Order;
- (e) comply with all licence terms and conditions applicable to Products that are software, as notified to the Client by Planet IT or the applicable licensor from time to time
- (f) provide, for Planet IT and Planet IT Personnel, in a timely manner and at no charge, virtual access to the Client's IT infrastructure (including hardware, software, network facilities,



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telecommunications services, data centres, cabling etc) as required by Planet IT in order to provide the Services and Products;

- (g) where Services are provided at the Site, provide, for Planet IT and Planet IT Personnel, access to the Site, office accommodation, data and basic food and beverage facilities and any other facilities as reasonably required by Planet IT including any such access as is specified in an Order;
 - (h) where Services are provided at the Site, to prepare the Site according to any instructions Planet IT may have given the Client and to provide a suitably secure place and conditions for Planet IT's Equipment and Planet IT Personnel's personal items and, where required, continuous mains electricity supply and internet connectivity.
 - (i) provide to Planet IT in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under an Order or otherwise reasonably required by Planet IT in connection with the Services and ensure that they are accurate and complete;
 - (j) have duty of care for Planet IT Personnel and inform Planet IT of all health and safety and security requirements that apply at the Site and any of the Client's premises which Planet IT might visit;
 - (k) ensure that all the Client's Equipment is:
 - (i) in good working order and suitable for the purposes for which it is used in relation to the Services;
 - (ii) to the extent that it is within the scope of each Contract, technically compatible with the Service and not harm Planet IT's network or other client's equipment;
 - (iii) adequately protected against viruses and other breaches of security; and
 - (iv) conforms to all relevant United Kingdom standards or requirements;
 - (l) not use the Services and/or Products in a manner that is likely to or will:
 - (v) compromise the security and/or integrity of the network or other systems including, but without limitation, introducing viruses, causing a denial of service or failing to employ appropriate security procedures (other than to the extent that such security procedures are specifically to be provided by Planet IT pursuant to the provisions of the applicable Contract);
 - (vi) contravene any Applicable Laws including, without limitation, the Computer Misuse Act 1990;
 - (vii) involve the sending of unsolicited marketing or advertising materials in breach of Applicable Laws;
 - (viii) result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or which would result in the breach of any third party's Intellectual Property Rights, confidential information or privacy; or
 - (ix) in any way in which Planet IT considers is or is likely to be detrimental to the provision of the Service to the Client or service to any of Planet IT's other clients.
- Planet IT may suspend the applicable Services on immediate notice to the Client if Planet IT reasonably suspects that the Client is in breach of this clause 5.1(l).
- (m) obtain and maintain all required wayleaves and property licences and all necessary licences and consents and comply with all relevant legislation as required to enable Planet IT to provide the Services, including in relation to the installation of Planet IT's Equipment, the use of all



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Client Materials and the use of the Client's Equipment and software insofar as such licences, consents and legislation relate to the Client's business, premises (including but not limited to the Site), staff and equipment, in all cases at its own cost and before the date on which the Services are to start;

- (n) not permit or make without limitation any attempt to disassemble, deconstruct, breakdown, hack or otherwise interfere with any Planet IT Equipment;
- (o) keep, maintain and insure Planet IT's Equipment in accordance with Planet IT's instructions from time to time and not dispose of or use Planet IT's Equipment other than in accordance with Planet IT's written instructions or authorisation; and
- (p) notify Planet IT of any change to the names of or the numbers of Supported Users;
- (q) comply with any additional responsibilities of the Client as set out in the relevant Order.

5.2 The Client acknowledges that, notwithstanding the provision of Services by Planet IT, the Client is responsible for its information technology environment. Further, if Planet IT identifies improvements to such environment, whether by way of technologies, processes, or otherwise, which the Client does not accept and act upon, Planet IT shall not be responsible for any losses or liability resulting from such failure.

5.3 If Planet IT's performance of its obligations under this agreement or any Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, Planet IT shall have the right to suspend performance of the Services or supply of Products until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Planet IT's performance of any of its obligations;
- (b) Planet IT shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Planet IT's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Client shall reimburse Planet IT on written demand for any costs or losses sustained or incurred by Planet IT arising directly or indirectly from the Client Default.

5.4 The Client shall indemnify Planet IT against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Planet IT arising out of or in connection with any claims brought against Planet IT by a third party because the Service is or has been used in breach of this agreement or the terms of a Contract.

6. GOVERNANCE

6.1 The Client shall appoint a contract manager and Planet IT shall appoint an account manager to:

- (a) oversee the delivery and receipt of the Services on a day-to-day basis;
- (b) deal with and sign any change orders that are issued in accordance clause.

6.2 The Client's contract manager shall have budgetary authority and the authority to contractually bind the Client on all matters relating to the relevant Services (including by signing Change Orders).

6.3 Planet IT may replace their account manager from time to time where reasonably necessary in the interests of its business.



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- 6.4 The Client's contract manager and Planet IT's account manager shall have meetings at an agreed frequency and at mutually convenient times to discuss the delivery and receipt of the Products and Services, any change control proposals and any other issues relating to the Services.

7. CHANGE CONTROL

- 7.1 Following the formation of a Contract, Planet IT may carry out a more detailed scoping exercise after which it may provide the Client with a Scope of Works which may propose changes to the scope or execution of the Services, the specification of the Products and/or a change to the Contract Charges. The proposed changes set out in the Scope of Works shall come into effect when it has been signed by the Client and Planet IT shall not be obliged to provide any of the applicable Products or Services until such Scope of Works has been signed.

- 7.2 In addition to the Scope of Works process set out in clause 7.1 above, either party may propose changes to the scope or execution of the Services or specification of the Products but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Products and/or Services;
- (b) the Contract Charges;
- (c) the timetable for the Products and/or Services; and
- (d) any of the other terms of the relevant Order.

- 7.2 If Planet IT wishes to make a change to the Products and/or Services it shall provide a draft Change Order to the Client.

- 7.3 If the Client wishes to make a change to the Products and/or Services:

- (a) it shall notify Planet IT and provide as much detail as Planet IT reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) Planet IT shall, as soon as reasonably practicable after receiving the information at clause (a), provide a draft Change Order to the Client.

- 7.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Order; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 29 (Multi-tiered dispute resolution procedure).

- 7.5 Planet IT may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to clause 7.34 on a time and materials basis at the then current Planet IT's daily rates.

8. CHARGES AND PAYMENT

- 8.1 In consideration of the provision of the Services and sale of Products by Planet IT, the Client shall pay the Contract Charges. For the provision of IT support Services, the Contract Charges are based on the number of Supported Users (subject to a minimum number of users and/or hours as stated in the Order and therefore the amount payable may be adjusted each month).

- 8.2 Planet IT shall invoice the Client for the Contract Charges at the intervals specified, or upon the occurrence of events set out, in the Order. If no intervals or events are so specified, Planet IT shall invoice the Client:



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- (a) For Services in advance of the Services being rendered, with the first invoice for support services being raised on Contract signature and subsequent invoices being raised on the 1st of each month for the Services provided in that month; and
 - (b) Upon delivery to Planet IT for Products purchased on behalf of the Client; and
 - (c) in advance any other non-recurring charges.
- 8.3 Unless otherwise stated in the Order, the Contract Charges for Products shall be invoiced at the point the Contract is entered into.
- 8.4 Subject to the Client's prior written approval, the Client shall reimburse Planet IT for any of the following expenses which shall be payable by the Client monthly in arrears, following submission of an appropriate invoice:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Planet IT engages in connection with the Services; and
 - (b) the cost to Planet IT of any materials or services procured by Planet IT from third parties for the provision of the Services as such items and their cost are by the Client in advance from time to time.
- 8.5 Unless otherwise stated in an Order, the Client shall pay each invoice submitted to it by Planet IT in full and cleared funds within 30 days of receipt to a bank account nominated in writing by Planet IT from time to time.
- 8.6 As part of its credit management procedures, Planet IT may at any time:
 - (a) require the Client to make payment in advance or pay a deposit or provide a guarantee as security for payment of future invoices by the means requested by Planet IT; and/or
 - (b) change the payment terms set out in clause 8.5; and/or
 - (c) carry out a credit check against the Client. The Client agrees to provide Planet IT with any information Planet IT may reasonably require for this.
- 8.7 Planet IT reserves the right to:
 - (a) increase Contract Charges for the provision of:
 - (i) outsourced IT support or managed IT support Services on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period or 2% (whichever is greater) and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index. Planet IT shall notify the Client of the increase in Contract Charges no later than 90 days before the anniversary of the date of this agreement;
 - (ii) outsourced IT support or fully managed IT support Services or any other Contracts for the provision of Services on a rolling basis at any time in line with the percentage increase in the Retail Prices Index in the period since the commencement of this agreement or since the last increase in Contract Charges (whichever is the later) and shall be based on the latest available figure for the percentage increase in the Retail Prices Index. Planet IT shall give the Client 90 days' notice of any increase in Contract Charges.
 - (b) increase the Contract Charges or charge for additional time spent where the Client otherwise exceeds Planet IT's fair usage policy or the assumptions set out in the Order both of which shall be subject to the terms of Planet IT's fair usage policy the current version of which is set out in the Appendix to this Agreement;

- (c) increase the price of the Products, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Products to Planet IT that is due to:
 - (i) any factor beyond Planet IT's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Client to change the delivery date(s), quantities or types of Products ordered, or the Product specification; or
 - (iii) any delay caused by any instructions of the Client in respect of the Products or failure of the Client to give Planet IT adequate or accurate information or instructions in respect of the Products.
- 8.8 If the Client disputes any invoice (or part thereof) the Client shall notify Planet IT in writing within 14 days of receipt of invoice providing all relevant information to substantiate its dispute. The Client will pay any undisputed amount in accordance with this clause 8.
- 8.9 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Planet IT any sum due under this agreement on the due date (or if the Client pays any previously disputed amounts after the due date for payment):
 - (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause and amounts of compensation will accrue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) Planet IT may suspend part or all of the Services or supply of the Products until payment has been made in full.
- 8.10 All sums payable to Planet IT under this agreement:
 - (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Planet IT and its licensors shall retain ownership of all Planet IT Background IPRs. The Client and its licensors shall retain ownership of all Client Party Background IPRs.
- 9.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Planet IT.
- 9.3 The Client shall indemnify Planet IT against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Planet IT arising out of or in connection with:
 - (a) any claim brought against Planet IT for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Client Background IPRs'; and
 - (b) any claim that the Client has used the Services or Products to infringe the Intellectual Property Rights of a third party.

10. DATA PROTECTION

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Planet IT is the processor. Each Order shall set out the scope, nature and purpose of processing by Planet IT, the duration of the processing and the types of personal data and categories of data subject.
- 10.3 Without prejudice to the generality of clause 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Planet IT for the duration and purposes of this agreement.
- 10.4 Without prejudice to the generality of clause 10.1, Planet IT shall, in relation to any personal data processed on behalf of the Client and in connection with the performance by Planet IT of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Client unless Planet IT is required by Applicable Laws to otherwise process that personal data. Where Planet IT is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, Planet IT shall notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Planet IT from so notifying the Client;
 - (b) implement and maintain appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or Planet IT has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Planet IT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) Planet IT complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
 - (e) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Client if, in the opinion of Planet IT, an instruction infringes the Data Protection Legislation.
- 10.5 The Client consents to Planet IT appointing third party processors of personal data under this agreement. Planet IT confirms that it has entered or (as the case may be) will enter with the third

party processor into a written agreement which Planet IT undertakes reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and Planet IT, Planet IT shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.

- 10.6 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

11. CONFIDENTIALITY

- 11.1 Each party to this agreement and a Contract undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2(a).

- 11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement or a Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement or a Contract.

12. LIMITATION OF LIABILITY

- 12.1 The parties agree that the limits and exclusions in this clause reflect the allocation of risk agreed between them, taking into account Planet IT's available insurance cover, and the Client acknowledges that it is responsible for making its own arrangements for the insurance of any excess loss. The Client acknowledges that it is responsible for reviewing whether it should enter into a business continuity insurance contract.

- 12.2 Nothing in this agreement or any Contract limits or excludes the Client's or Planet IT's liability in connection with this agreement or any Contract for:

- (a) death or personal injury caused by its negligence or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) any other matter for which liability cannot be legally limited or excluded.

- 12.3 Subject to clause 12.2 each Planet IT Party's total liability to the Client under each Contract in respect of all breaches of duty occurring within any contract year shall not exceed the cap. Planet IT accepts no liability for the performance by a Planet IT Party of any Contract entered into by an Planet IT Party.

- 12.4 In clause 12.3:

- (a) **cap.** The cap is 100% of the total charges in the contract year in which the breaches occurred;
- (b) **contract year.** A contract year means a 12-month period commencing with the date of this agreement or any anniversary of it;



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- (c) **total charges.** The total Contract Charges means all sums paid by the Client and all sums payable under this agreement in respect of goods and services actually supplied by Planet IT, whether or not invoiced to the Client; and
 - (d) **total liability.** Planet IT's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement.
- 12.5 This clause 5 sets out specific heads of excluded loss:
- (a) subject to clause 12.2, the types of loss listed in clause 12.5 (b) are wholly excluded by the parties to the agreement and to each Contract.
 - (b) The following types of loss are wholly excluded
 - (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Wasted expenditure.
 - (v) Business interruption.
 - (vi) Loss of anticipated savings.
 - (vii) Loss of use or corruption of software, data or information.
 - (viii) Loss of or damage to goodwill.
 - (ix) Indirect or consequential loss.
- 12.6 Subject to clause (c), both parties agree that the commitments regarding the Products and Services set out in clause 4 and in any Order are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the merchantability, satisfactory quality or fitness for any particular purpose of the Services or Products, or that the use of the Services or Products will result in any economic advantage, increase in profits or reduction in costs, to the fullest extent permitted by law.
- 12.7 The Client acknowledges and accepts that given the nature of computer systems and telecommunications networks, Planet IT cannot warrant, nor is it a condition of this agreement or any Contract that the operation of any network, hardware, software, firmware or middleware will be uninterrupted or free from errors or guaranteed to be capable of withstanding cyber-attacks or other unauthorised hacking or intrusions.
- 12.8 Planet IT shall not be liable to the Client for any breach of any provisions of this agreement and/or any Contract (whether in breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise) to the extent caused by any Client Equipment or third party software requested by the Client or in relation to which the Client is under a license and/or the failure of any network carrier to provide network capacity and/or connectivity (or any element thereof) to Planet IT or the Client on which it was reliant for the purposes of this agreement and/or the applicable Contract.
- 12.9 Planet IT shall not be liable to the Client to the extent any claim or action is caused by any breach of Applicable Law or of this agreement or applicable Contract by the Client.
- 12.10 Planet IT shall not be liable for any advice or recommendation not given in writing by Planet IT Personnel to the Client or its employees or agents as to the performance of Services and such advice or recommendation is acted upon entirely at the Client's own risk.
- 12.11 Unless the Client notifies Planet IT that it intends to make a claim in respect of an event within the notice period, Planet IT shall have no liability for that event. The notice period for an event shall start

on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, either party may terminate this agreement or a Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
- (f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1 (b) to clause (h) (inclusive); or
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.2 Without affecting any other right or remedy available to it, Planet IT may suspend and/or terminate this agreement or any Contract with immediate effect by giving written notice to the Client:

- (a) if the Client fails to pay any amount due under this agreement or any Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) if any of the events mentioned in 13.1(b) to clause (h) (inclusive) occurs; or



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- (c) as set out in the Planet IT fair usage policy the current version of which is set out in the Appendix to this Agreement.
- 13.3 Without affecting any other right or remedy available to it, and unless otherwise set out in a Contract either party may terminate this agreement or any Contract on the giving of not less than 90 days written notice to the other party, provided that in the case of a Contract such notice not to expire before the end of the applicable Contract Term.
- 14. CONSEQUENCES OF TERMINATION**
- 14.1 On termination or expiry of a Contract:
- (a) the Client shall immediately pay to Planet IT all of Planet IT's outstanding unpaid invoices and interest relating to the relevant Contract and, in respect of the Products and/or Services supplied but for which no invoice has been submitted, Planet IT may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Client shall, return all of Planet IT's Equipment relating to the relevant Contract. If the Client fails to do so, then Planet IT may enter the Client's premises and take possession of Planet IT's Equipment. Until Planet IT's Equipment has been returned or repossessed, the Client shall be solely responsible for its safe keeping;
 - (c) Planet IT shall on request return any of the Client Materials relating to the Relevant Contract not used up in the provision of the Services;
 - (d) And in the event that any employee(s) of Planet IT is or are subsequently employed by the Client within a period of 6 months following termination whether or not this is due to the operation of TUPE, Planet IT shall (in its absolute discretion) have the right to charge and the Client shall pay a fee equivalent to 25% of the gross remuneration of the employee(s) to contribute to the recruitment costs of a replacement for the employee(s) provided that this clause shall not apply to the extent that the employee(s) accepts an offer of employment from Planet IT in accordance with clause 15.5(c).
- 14.2 On termination or expiry of this agreement or a Contract, the following clauses shall continue in force: clause 1 (Interpretation), clause 9 (Intellectual property rights), clause 10 (Data Protection); clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 15 (TUPE), clause 17 (Non-Solicitation), clause 20 (Waiver), clause 22 (Severance), clause 25 (Conflict), clause 29 (Multi-tiered dispute resolution procedure), clause 29 (Governing law) and clause 30.2 (Jurisdiction).
- 14.3 Termination or expiry of a Contract or this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 15. TUPE**
- 15.1 The parties do not consider or intend that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) shall operate to transfer the employment (and/or any liability arising from or in connection with such employment) of any employees or former employees of the Client (or its agents, contactors and consultants) to Planet IT as a result of or connected to Planet IT's appointment to provide Services or Products under this agreement or any Contract.
- 15.2 If, notwithstanding clause 15.1 above, any person who is or has been employed or engaged by the Client (or its agents, contactors and consultants) transfers or claims to have transferred to the employment of Planet IT whether as a result of the application of TUPE or otherwise as a result of or connected to this agreement or a Contract or as a result of the supply of Products and/or the provision of the Services or the termination or cessation of the same, the following process shall apply:

- (a) the Planet IT shall notify the Client in writing within seven (7) days of becoming aware of that fact (a "**Notification**");
- (b) Planet IT may at its discretion accept such person's claim;
- (c) within fourteen (14) days of Notification, the Client may offer employment to such person or may take at its own cost such other steps as it feels necessary to effect a written withdrawal of the claim. If such offer of employment is accepted, Planet IT shall immediately release the person from its employment;
- (d) if no such offer of employment has been made by the Client or such offer has been made but not accepted or if such person has failed to withdraw the claim then Planet IT may, following its notification to the Client in writing in advance, terminate the employment of such person within seven (7) days or as soon as it is reasonably practicable thereafter, but in any event within one (1) month of the expiry of the twenty-one (21) day period from Notification.

For the avoidance of doubt, if Planet IT accepts that a person's employment has transferred to it and/or fails to take the action outlined in sub-clauses 15.2(a), 15.2(c), or 15.2(d) above within the appropriate time period then such person shall be deemed to have transferred to Planet IT and Planet IT shall not be entitled to any indemnity pursuant to clause 15.3 or otherwise.

- 15.3 Subject to the provisions of clause 15.2 above being followed (or the parties acting in any other way as may be agreed between them), the Client shall indemnify Planet IT against all Employee Liabilities suffered or incurred as a result of the transfer or alleged transfer.
- 15.4 Planet IT shall be entitled to assign the benefit of the indemnity at clause 15.3 to any of its contractors or sub-contractors to which any person who has been employed or engaged by the Client transfers or claims to have transferred without the need for consent from the Client.
- 15.5 If on termination of any Contract, any Planet IT Personnel claims or it is determined that their contract of employment or engagement has been transferred to the Client or any supplier providing services similar to those set out in the terminated Contract (**replacement supplier**) pursuant to TUPE then:
 - (a) The Client shall, within 7 days of becoming aware of that fact, give Planet IT notice in writing;
 - (b) Planet IT may offer employment to such person(s) within 14 days of the notification or take such others steps as it considers appropriate to deal with the matter;
 - (c) If such offer is accepted (or if the situation has otherwise been resolved by Planet IT) the Client or the replacement supplier shall release the person(s) from its employment.
- 15.6 In this clause 15, **Employee Liabilities** means all claims (including without limitation any claim for notice, a payment in lieu of notice, breach of contract, redundancy payments (whether pursuant to statutory requirements or otherwise), wrongful dismissal, unfair dismissal (including constructive unfair dismissal), discrimination on the grounds of sex, race, disability, religion, belief, age, gender reassignment, marital or civil partnership status, pregnancy, maternity, or sexual orientation, compensation for less favourable treatment of part-time workers or fixed-term employees, claims for failure to inform and consult pursuant to TUPE and any claims whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality & Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation) and any expenses and legal costs on an indemnity basis.
- 16. **FORCE MAJEURE**
- 16.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:



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- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, denial of service attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts; and
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility or electronic communications service.

16.2 Provided it has complied with clause 16.4, if a party to this agreement or a Contract is prevented, hindered or delayed in or from performing any of its obligations under this agreement or any Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or any Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

16.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement or Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the party not affected by the Force Majeure Event may terminate this agreement or any Contract by giving 2 weeks' written notice to the Affected Party.

17. NON SOLICITATION

The Client shall not, without the prior written consent of Planet IT, at any time from the date on which any Services commence to the expiry of 6 months after the completion of such Services, 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 such Services.

18. ASSIGNMENT AND OTHER DEALINGS

18.1 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement or any Contract.

18.2 Planet IT may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement or any Contract, provided that Planet IT gives prior written notice of such dealing to the Client.



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19. VARIATION

- 19.1 Subject to clause 7 (Change control) and clause 19.2, no variation of this agreement or any Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.2 Planet IT has the right to vary the Contract Conditions from time to time on giving the Client at least 30 days' notice in writing.

20. WAIVER

- 20.1 A waiver of any right or remedy under this agreement, a Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 20.2 A failure or delay by a party to exercise any right or remedy provided under this agreement, a Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement, a Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.3 A party that waives a right or remedy provided under this agreement, a Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

21. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement or a Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

22. SEVERANCE

- 22.1 If any provision or part-provision of this agreement or a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 22.2 If any provision or part-provision of this agreement or a Contract is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. ENTIRE AGREEMENT

- 23.1 This agreement and each Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement or any Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement or Contract.

25. NO PARTNERSHIP OR AGENCY

- 25.1 Nothing in this agreement or any Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26. THIRD PARTY RIGHTS

- 26.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement or a Contract.
- 26.2 The rights of the parties to rescind or vary this agreement or any Contract are not subject to the consent of any other person.

27. NOTICES

- 27.1 Any notice given to a party under or in connection with this agreement or a Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to Planet IT at legal@planet-it.net or any other address specified by Planet IT from time to time or to the email address specified in the Order by the Client or any other address notified by the Client in writing from time to time.
- 27.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service if earlier; and
 - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 27.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28. COUNTERPARTS

- 28.1 This agreement and any Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement or Contract.
- 28.2 Transmission of the executed signature page of a counterpart of this agreement or a Contract by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement or Contract (as applicable). If either method of delivery is adopted, without prejudice to the validity of the agreement or Contract thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 28.3 No counterpart shall be effective until each party has executed at least one counterpart.

29. DISPUTE RESOLUTION

- 29.1 If a dispute arises out of or in connection with this agreement or a Contract or the performance, validity or enforceability of either of them (**Dispute**) then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Client's manager appointed under clause 6.2 and Planet IT's account manager shall attempt in good faith to resolve the Dispute;

- (b) if the Client's manager and Planet IT's account manager are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to any of the Client's director and a Director of Planet IT who shall attempt in good faith to resolve it; and
- (c) if the director of the Client and Planet IT's Managing Director are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the dispute shall be finally resolved by the courts of England and Wales in accordance with clause 30.

30. GOVERNING LAW & JURISDICTION

- 30.1 This agreement, any Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 30.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement, any Contract or their subject matter or formation.

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

Appendix – Remote Managed IT Support Fair Usage Policy

The Fair Use policy is a set of guidelines for use of the remote managed IT support service (**The Service or Service**) and is designed to allow all users to gain the most from the service while maintaining a clear defined usage policy which allows for Planet IT to correctly resource for all our clients. By using the Services, the Customer, agrees to comply with the Supplier's fair use policy. In the unlikely event that you consistently breach this policy without taking steps to remedy it, we will have the option to charge for the additional time spent in providing the Services to you. We will always give you the opportunity to remedy your breach and will give you plenty of notice before additional charges are made.

(1) The Service – fair use limits and assumptions

The fair use policy is applicable to our Service where we provide a unlimited use model defined as per user per month.

(2) User assumptions & definition

For the purposes for of our Service, the definition of a user is anyone who will have access to use your IT infrastructure and our Service. This includes employees, agents, contractors or freelancers you may have within the business unless otherwise agreed within the proposal and sales order. This will include any furloughed staff or those on any form of short or long term leave.

We will ask for a full list of users on onboarding the Service at the start of the agreement. This will then be reviewed every 90 days from the start of the agreement and the list of active users for the agreement will be agreed with the primary contact at the client. We may review these numbers before the 90 day period should it be reported that the number of active users far exceeds that on the agreement or provided in the previous review.

(3) Usage assumptions

In order to provide a fixed cost per user, per month we will use the following industry guidelines to ascertain fair use of our Service.

1. We assume that you would raise 1 ticket, per billable user, per month on average.
2. We assume that we would take no longer than 1 hour per ticket to resolve the issue.

We would therefore take these assumptions above and review the totals across the business for both tickets raised and total hours used.

Given the above rationale for example a 10-user business;



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1. 10 Users – benchmark of 10 tickets per month / 30 tickets per 90 days
2. 10 Users – benchmark of 10 hours per month / 30 hours per 90 days

We appreciate that months may also fluctuate and as such we also consider a total across a 90 day period as part of the review following the same assumption guidelines above, to allow for unusually high monthly usage to be evened out over the 90-day period.

(4) Ongoing monitoring of fair use and remediation.

We will periodically perform Service review meetings where the above usage assumptions will be tracked against your usage and the information will be shared with you.

If you have gone over the assumptions provided above across a 90 day period:

Planet IT Responsibilities

We will:

3. Understand if we have missed active users for the period and adjust where appropriate
4. Analyze the ticket types and understand any underlying persistent issues caused by inappropriate infrastructure or software. Where this is highlighted we will make recommendations to make improvements for these issues and at the time we will agree on a reasonable timeframe for these improvements to be implemented to improve these issues.

Client Responsibilities

You will:

5. Ensure disclosed active IT support users is correct as advised by Planet IT
6. Review and implement any suggested changes put forward by Planet IT within a reasonable timeframe of initial suggestion.

If you have exceeded the assumptions provided above across a 90 day period and we have recommended ways to improve these issues and the assumptions continue to be exceeded in the following 90 day period we reserve the right to:

7. Charge you for any time spent by our personnel (at a rate of £80 plus VAT per hour) in providing the Service which exceeds the assumptions set out in this fair usage policy providing we give you at least 30 days written notice; or
8. such amendment to the contract charges to take effect on the expiry of the 30 days' notice
9. increase the Contract Charges set out in our original Proposal providing we give you at least 30 days written notice.
10. Terminate our contract with you.

Any specific questions about our fair use policy should be directed to: legal@planet-it.net



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