

**BETWEEN:**

- (1) **PLANET FIRST LIMITED, trading as Planet Mark, a company incorporated and registered in England and Wales with company number 08472139 whose registered office is at 71-75 Shelton Street, London, England, WC2H 9JQ (the Supplier);**

- (2) **The company as named in the proposal (the Customer)**

**BACKGROUND:**

- (A) The Supplier is in the business of providing the Available Services.  
(B) The Customer wishes to obtain and the Supplier wishes to provide the Available Services on the terms set out in this agreement.

**AGREED TERMS****1 INTERPRETATION**

- 1.1 The definitions and rules of interpretation apply in this agreement:

**Applicable Data Protection Laws:**

To the extent the UK GDPR applies, the law of the United Kingdom or part of the United Kingdom which relates to the protection of personal data.

To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

**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.

**Business Hours**

the period from 9.00 am to 5.00 pm on any Business Day.

**Change Order**

has the meaning given in clause 5.1

**Control**

has the meaning given in section 1124 of the Corporation Tax Act 2010, and controls, controlled and the expression change of control shall be construed accordingly.

**Customer's Equipment**

any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Proposal.

**Customer Materials**

all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Works.

**Customer Personal Data**

any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

**Deliverables**

any output of the Works to be provided by the Supplier to the Customer as specified in a Proposal (excluding the Supplier's Equipment).

**Milestone**

a date by which a part or all of the Works is to be completed, as set out in a proposal.

**Proposal**

a summary of available services to be undertaken by the supplier in agreement with the customer

**Reference Charges**

the standard charges for the Available Services or the framework for calculating them as set out in the rate card

**Proposal Charges**

the sums payable for the Works as set out in a Proposal.

**Supplier's Equipment**

any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Works, including any such items specified in a Proposal but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**VAT**

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

**Works**

the Available Services which are provided by the Supplier under a proposal.

- 1.2 Clause, Schedule 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.  
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 ensure 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 legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.  
1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.  
1.10 A reference to **writing** or **written** includes email (provided it is supported by a valid server delivery receipt).  
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 is a reference to this agreement or such other agreement or document, in each case as varied or novated 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 terminated earlier in accordance with clause 12 (Termination), until either party gives to the other party written notice to terminate. **Such notice shall be served before the first anniversary** of the commencement of this agreement and shall expire on the completion of all works entered into before the date on which it is served.  
2.2 If there are no uncompleted works as at the date notice to terminate is served under clause 2.1 such notice shall terminate this agreement with immediate effect.  
2.3 The Customer may procure any of the Available Services by agreeing a Proposal with the Supplier

- 2.4 The Supplier shall provide the Works from the date specified in the relevant proposal.

**3 SUPPLIER'S RESPONSIBILITIES**

- 3.1 The Supplier shall use reasonable endeavours to provide the Works, and deliver the Deliverables to the Customer, in accordance with a Proposal in all material respects.  
3.2 The Supplier shall use reasonable endeavours to meet the Milestones specified in a Proposal but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.  
3.3 The Supplier shall appoint a manager in respect of the Works to be performed under each Proposal, such person as identified in the Proposal. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing Change Orders). The Supplier may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.  
3.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 4.1.5, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.  
3.5 The Supplier:  
3.5.1 does not warrant that:  
3.5.1.1 the Customer's use of the Works will be uninterrupted or error-free; or  
3.5.1.2 the Works, the Deliverables and/or the information obtained by the Customer through the same will meet the Customer's requirements.  
3.5.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Works and Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:  
4.1.1 co-operate with the Supplier in all matters relating to the Works in conjunction with scheme rules, Planet Mark policies, processes and procedures.  
4.1.2 appoint a manager in respect of the Works to be performed under each Proposal, such person as identified in the Proposal. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Works (including by signing Change Orders);  
4.1.3 provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier including any such access as is specified in a Proposal;  
4.1.4 provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Proposal or otherwise reasonably required by the Supplier in connection with the Works and ensure that they are accurate and complete;  
4.1.5 inform the Supplier of all health and safety and security requirements that apply at [any of] the Customer's premises. If the Customer wishes to make a change to those requirements which will materially affect provision of the Works, it can only do so via the change control procedure set out in clause 5 (Change control);  
4.1.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;  
4.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Works, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Works are to start;  
4.1.8 keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions from time to time and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and  
4.1.9 comply with any additional responsibilities of the Customer as set out in the relevant Proposal.  
4.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

**5 CHANGE CONTROL**

- 5.1 Either party may propose changes to the scope or execution of the Works 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:  
5.1.1 the Works;  
5.1.2 the Proposal Charges;  
5.1.3 the timetable for the Works; and  
5.1.4 any of the other terms of the relevant Proposal.  
5.2 If the Supplier wishes to make a change to the Works it shall provide a draft Change Order to the Customer.  
5.3 If the Customer wishes to make a change to the Works:  
5.3.1 it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and  
5.3.2 the Supplier shall, as soon as reasonably practicable after receiving the information at clause 5.3.1, provide a draft Change Order to the Customer.  
5.4 If the parties:  
5.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Proposal; or  
5.4.2 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 14.  
5.4.3 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 5.3 on a time and materials basis at the Supplier's daily rates (rate card)

**6 CHARGES AND PAYMENT**

- 6.1 In consideration of the provision of the Works by the Supplier, the Customer shall pay the Proposal Charges.  
6.2 Where the Proposal Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Proposal (subject to any adjustments allowed for under the relevant Proposal).  
6.3 The Proposal Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:  
6.3.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Works; and  
6.3.2 the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are set out in the Proposal.

- 6.4 The Supplier shall invoice the Customer for the Proposal Charges in annual intervals.
- 6.5 The Customer shall pay each invoice submitted to it by the Supplier within 30 days from the date of the invoice to a bank account nominated in writing by the Supplier from time to time.
- 6.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
- 6.6.1 the Customer 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 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 6.6.2 the Supplier may suspend part or all of the Works until payment has been made in full.
- 6.7 All sums payable to the Supplier under this agreement:
- 6.7.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 6.7.2 are, subject non-cancellable and non-refundable; and
- 6.7.3 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).
- 7 INTELLECTUAL PROPERTY RIGHTS**
- 7.1 In relation to the Deliverables:
- 7.1.1 the Supplier and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Customer Materials;
- 7.1.2 the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to use and reproduce the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Works and the Deliverables in its business; and
- 7.2 In relation to the Customer Materials, the Customer:
- 7.2.1 and its licensors shall retain ownership of all IPRs in the Customer Materials; and
- 7.2.2 grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Works to the Customer.
- 7.3 The Supplier:
- 7.3.1 warrants that the receipt and use of the Works and the Deliverables by the Customer shall not infringe any rights of third parties to the extent that the infringement results from copying;
- 7.3.2 shall, indemnify the customer 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 other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use of the Works and Deliverables.
- 7.3.3 shall not be in breach of the warranty at clause 7.3.1, and the Customer shall have no claim under the indemnity at clause 7.3.2 to the extent the infringement arises from:
- 7.3.3.1 the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Works or any Deliverable;
- 7.3.3.2 any modification of the Works or any Deliverable, other than by or on behalf of the Supplier; and
- 7.3.3.3 compliance with the Customer's specifications or instructions.
- 7.4 The Customer:
- 7.4.1 warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 7.4.2 shall indemnify the Supplier 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 or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.
- 7.5 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause, the Indemnified Party shall:
- 7.5.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 7.3.2 or clause 7.4.2 (as applicable) (**IPRs Claim**);
- 7.5.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 7.5.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- 7.5.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 8 COMPLIANCE WITH LAWS AND POLICIES**
- 8.1 In performing its obligations under this agreement, the Supplier shall comply with the Applicable Laws.
- 8.2 Changes to the Works required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 5 (Change control).
- 9 DATA PROTECTION**
- Both parties will comply with all applicable requirements of Applicable Data Protection Laws.
- 10 CONFIDENTIALITY**
- Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party
- 11 LIMITATION OF LIABILITY**
- References to liability in this clause (Limitation of liability) include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12 TERMINATION**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 12.1.2 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 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- 12.1.3 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;
- 12.1.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- 12.1.5 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 the other party (being a company, limited liability partnership or partnership) 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;
- 12.1.6 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, partnership or limited liability partnership);
- 12.1.7 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 12.1.8 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;
- 12.1.9 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;
- 12.1.10 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 12.1.2 to clause 12.1.9 (inclusive);
- 12.1.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 12.1.12 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
- 12.2.1 the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
- 12.2.2 there is a change of Control of the Customer.
- 13 OBLIGATIONS ON TERMINATION AND SURVIVAL**
- 13.1 Obligations on termination or expiry
- On termination or expiry of this agreement:
- 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 13.1.2 the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and
- 13.1.3 the Supplier shall on request return any of the Customer Materials not used up in the provision of the Works.
- 13.2 Survival
- 13.2.1 On termination or expiry of this agreement, all existing proposals shall terminate automatically.
- 13.2.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 13.2.3 Termination or expiry of 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.
- 14 VARIATION**
- No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15 ENTIRE AGREEMENT**
- 15.1 This agreement 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.
- 15.2 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 16 CONFLICT**
- If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.
- 17 NOTICES**
- 17.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing sent by email.
- 17.2 Any notice or communication shall be deemed to have been received.
- 17.3 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.
- 18 DISPUTE RESOLUTION PROCEDURE**
- If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the Planet Mark Complaints & Improvements Procedure.
- 19 GOVERNING LAW**
- This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 20 JURISDICTION**
- 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 or its subject matter or formation.