

## INTRODUCTION

These Planet Terms of Service set out the terms and conditions that apply in respect of the Services that Planet provides to Merchant, which Services are selected in the Order Form and described more fully in the schedules (“**Service Schedules**”), namely:

- Gateway Services
- PCI Proxy Services
- Acquiring Services
- Currency Conversion Services
- VAT Refunding Services
- Equipment Rental Services
- Equipment Purchase Services
- Retail Software Services
- Hospitality Software Services

## GENERAL TERMS AND CONDITIONS

### 1. Our Agreement

1.1. Our agreement with you is made up of:

- a) the Order Form (which includes the Fees)
- b) the Onboarding Forms
- c) these Planet Terms of Service
- d) the Merchant Operating Instructions, and
- e) any Direct Debit Instruction

(the “**Agreement**”).

1.2. These Planet Terms of Service are comprised of:

- a) the General Terms and Conditions
- b) the Service Schedules
- c) the Data Protection Addendum
- d) any Merchant Adherence Addendum and
- e) any Organisational Authorisation Addendum.

(the “**Terms**”).

1.3. In the event of a conflict between the General Terms and Conditions and any schedule or appendix of these Terms, the General Terms and Conditions will prevail.

### 2. Interpretation

2.1. The following definitions apply in these Terms:

**Affiliate:** means any individual, corporation, partnership, association or business that directly or indirectly through one or more intermediaries, controls, or is controlled by or is under common control of a party as applicable, or their respective successors. The term “control” including the terms “controlling,” “controlled by,” and “under common control with” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, association or business, whether through the ownership of voting shares, by contract or otherwise. Affiliates shall include such entities whether now existing or later established by investment, merger or otherwise, including the successors and assigns of such entities.

**Agreement:** has the meaning given in clause 1.1.

**Applicable Laws:** means any and all laws, regulations, government mandated decisions, which has relevant standing in the relevant jurisdiction, as well as any decision made by relevant and competent government entities, in all relevant jurisdictions to this Agreement and including but not limited to regulations governing the banking intermediary profession and any Monetary and Financial codes applicable in relevant countries, legislation on anti money laundering (AML), counter terrorist financing (CTF), embargos, sanctions,

bribery, misconduct, Confidential Information (including intellectual property and trade secrets), behaviour of financial institutions and Data Protection Laws.

**Business Day:** any weekday other than a Saturday, Sunday or bank or public holiday in the territory of the Services.

**Card:** any valid physical or virtual representation of a payment card issued by an Issuer, or any other cards notified by us to you from time to time.

**Cardholder:** any individual issued with a Card for their use.

**Commencement Date:** the date on which you first use the Services.

**Competent Authority:** any relevant regulator, supervisory authority, law enforcement agency, court or other supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs, border or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over the Merchant or having responsibility for the regulation or governance of any aspect of the performance of the Agreement;

**Confidential Information:** all confidential information (however recorded, preserved or disclosed) including but not limited to the provisions of the Agreement and any other information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers and plans of the disclosing party and the operations, processes, product information, know-how, designs, trade secrets, software or documentation of the disclosing party, but not the existence of the Agreement nor any information that:

- is in the public domain other than as a result of breach of the Agreement; or
- the receiving party received, free of any obligation of confidence, from a third party which itself was not under any obligation of confidence in relation to that information; or
- was developed or created independently by or on behalf of the receiving party or its Affiliates; or
- the disclosing party confirms in writing is not required to be treated as Confidential Information.

**Data Controller:** has the meaning given to the term 'controller' where it determines the purposes of any personal data and the means of processing it (GDPR Article 4).

**Data Processor:** has the meaning given to the term 'processor' where any other body who processes personal data on behalf of a data controller (GDPR Article 4).

**Data Protection Laws:** the General Data Protection Regulation 2016/679 ("GDPR") (EU), the New Swiss Federal Act on Data Protection (nFADP), the UK Data Protection Act 2018, the UK Privacy and Electronic Communications Regulations 2003, the French law n°78-17 of 6 January 1978 on information technology, files and freedoms, and all other Applicable Laws, relating to the processing of Personal Data, each as may be amended or superseded from time to time.

**Early Termination Fee:** an amount equivalent to the unpaid Fees due for the unexpired Term of the Agreement for the terminated Service and/or Services (as applicable) calculated using the highest monthly Fee invoiced for the said Services over the preceding 12 (twelve) months multiplied by the number of months remaining of the unexpired term or if the Agreement is in place for less than 12 (twelve) months, the highest monthly Fee invoiced prior to termination of the Services multiplied by the number of months remaining of the unexpired term.

**Effective Date:** the date on which the Order Form is signed by you and us.

**Extended Term:** the period of twelve (12) months.

**Fees:** the fees and charges contained in the Order Form, or as otherwise notified to you from time to time by us.

**Franchisee or Licensee:** a company, business or association which has entered into an agreement with the Merchant whereby the Franchisee or Licensee may operate under the brand or style of the Merchant but it is a separate and distinct entity that is not an Affiliate of the Merchant.

**Initial Term:** the period of three (3) years commencing on the Effective Date.

**Insolvency Event:** in relation to either party:

- a) that party becomes unable to pay its debts, admits its inability to pay its debts or becomes insolvent;
- b) a petition is presented, an order made, or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of that party;
- c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to that party and/or over all or any part of the assets of that party;
- d) that party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or
- e) anything equivalent to any of the events or circumstances stated in (a) to (d) above occurs in any applicable jurisdiction.

**Intellectual Property Rights:** all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

**Issuer:** an organisation that issues Cards to Cardholders subject to Scheme Rules.

**Merchant:** the merchant defined in the Order Form.

**Merchant Operating Instructions:** the documentation, operating manuals, user instruction guides, websites and technical literature in human-readable and/or machine-readable forms made available by us to you, in your capacity as Merchant, relating to the operation of the Services, as updated from time to time and including the instructions contained here: <https://www.weareplanet.com/customer-resources>.

**Onboarding Forms:** the forms containing information about the Merchant, including but not limited to its Business Scope (as defined in the Onboarding Forms), management and ownership and information commonly referred to as Know Your Customer (“KYC”).

**Order Form:** the form (together with any addendums) executed by Planet and the Merchant detailing the specific Services provided.

**PCI DSS:** a worldwide information security standard defined by the Payment Card Industry Security Standards Council that applies to all organisations, which hold, process, or exchange Cardholder information from any Card.

**Personal Data:** any personal data that identifies an individual person (as set out in Data Protection Laws) which is processed in connection with the Agreement.

**Planet:**

- a) for all Services except as otherwise set out below, Planet Payment Group Holdings Limited, a limited liability company with a registered office at Martin House, IDA Business Park, Dangan, Galway, H91 A06C, Ireland acting in its own capacity or as agent for its Affiliates;
- b) for Services described in the Acquiring Services Schedule:
  - i. for Acquiring Services provided in the EEA, Planet Merchant Services SAS, a simplified joint-stock company under the Nanterre company register, number 878 394 949, 3authorized by the French *Autorité de Contrôle Prudentiel et de Résolution* as a payment institution, number 83991, with a registered office at 1 Terrasse Bellini, Puteaux, 92919, Paris La Défense Cedex, France (“**Planet France**”); and/or
  - ii. for Acquiring Services provided in the UK, Planet Merchant Services Limited, a limited liability company, number 08791017, 3authorized by the FCA as a payment institution, number 815854, with a registered office at 4<sup>th</sup> Floor, Ilona Rose House, Manette Street, London, England, W1D 4AL (“**Planet UK**”);
- c) for Services described in the Currency Conversion Services Schedule:
  - i. for Currency Conversion Services provided in the EEA, Planet France;
  - ii. for Currency Conversion Services provided in the UK, Planet UK;
  - iii. for Currency Conversion Services provided in the United States of America, Canada, the Latin America region and/or the Asia Pacific region, Planet Payment Inc., a company registered in the United States with company number 13-4084693, with a registered office at 600 Old Country Road, Suite 207, Garden City NY 11530, United States (“**Planet US**”);
- d) for all other Services provided in the United States of America, Canada, the Latin America region and/or the Asia Pacific region, Planet US.

**Proprietary Information:** has the meaning given in clause 8.1.

**Services:** the services that comprise the Service Schedules.

**Software:** (i) any and all software we provide you with under the Agreement, including without limitation, all updates, revisions, bug fixes, upgrades and enhancements thereto; and (ii) any software programs proprietary to third parties, including any Open Source software.

**Term:** the term of the Agreement as set out in clause 14.

**Wholly Owned Subsidiary:** a company that is 100% owned and controlled by the Merchant.

2.2. In this Agreement unless we state otherwise:

- a) the singular includes the plural and the other way around;
- b) words denoting the masculine gender include the feminine and neuter genders;
- c) a reference to writing or written includes email;
- d) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- e) headings are used for convenience only and shall not affect the interpretation of this Agreement;
- f) references to these Terms include references to these Terms as validly varied from time to time (references to clauses and Schedules are to clauses of and Schedules to the Terms and reference to paragraphs are to paragraphs of the Schedules);
- g) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to it as amended, extended or re-enacted from time to time, and to any subordinate legislation or regulations made under it;
- h) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation” and the words “written” or “in writing” means by post or by email; and
- i) the words “us/we/our” refer to Planet and the words “you/your/yours” refer to Merchant and if applicable your Wholly Owned Subsidiaries, Affiliates, Franchisees or Licensees.

### 3. Forms

- 3.1. Before Planet can provide certain Services to Merchant, Merchant must have an authorized representative complete, sign and deliver to us, and Planet must approve, an Order Form. Additionally, if Planet is providing certain Services to your Wholly Owned Subsidiaries, Affiliates and/or Franchisees or Licensees such parties must comply with the requirements in clause 4.
- 3.2. You acknowledge that we must complete a review of the information in the Onboarding Forms before providing certain Services and from time to time during the Term.
- 3.3. You acknowledge that we will not provide you, or where applicable, your Wholly Owned Subsidiaries and/or Affiliates and/or Franchisees or Licensees with any Service until we have completed any such review to our satisfaction. This review includes conducting checks to comply with applicable legal and regulatory requirements (such as but not limited to those directed at anti-money laundering, prevention of fraud, counter-terrorism financing and sanctions) and other third party rules applicable to a Service. We reserve the right to conduct further checks during the Term of the Agreement and by contracting with us, you agree to promptly deliver any updated and/or refreshed and/or additional information as required during the Term.
- 3.4. You understand the legal basis for us retrieving information about you from, and provide information about you to, third parties, including credit reference agencies and our service providers or Affiliates in performance of a contract. This includes retrieving or processing personal or business information about you and or people connected to you including but not limited to: owners, officers, shareholders, partners, proprietors, managing agents, Affiliates or guarantors connected with you. This clause 3.4 applies (where applicable) to your Wholly Owned Subsidiaries and/or Affiliates and/or Franchisees or Licensees also.
- 3.5. In addition to general information about your company and business and specific information about your owners, etc., we may also ask you for pictures of your premises and information on the products you sell. You also agree to inform us of any external supplier that you contract with in connection with the provision of the Services such as a Digital Wallet Operator, payment solution provider or a gateway service.
- 3.6. Notwithstanding our right to request further/additional information, you shall immediately tell us of any actual or impending:

- a) change in your business circumstances, trading terms, business or trading name, legal status, business or trading address, regulatory status and any other information that you have provided to us;
- b) change in your ownership or control, such as a change in directors, authorized signatories, substantial shareholdings or beneficial owners;
- c) Insolvency Event in respect of you;
- d) investigation or enforcement action by a regulator or law enforcement, or you receive a judgment, writ or warrant of attachment or execution, lien or levy against 25% or more of your total assets; and
- e) sale or other disposal of all or any material part of your assets which may result in a change to your business.

**4. Wholly Owned Subsidiaries, Merchant Affiliates, Franchisees or Licensees**

- 4.1. If requested by Merchant, Planet may provide the Services to your designated:
  - a) Wholly Owned Subsidiaries who are listed in the Order Form or who sign a completed Merchant Adherence Addendum to these Terms and who have completed all necessary KYC/AML checks and/or any additional checks determined by us in order to onboard the Wholly Owned Subsidiary; and/or
  - b) Affiliates (“**Merchant Affiliates**”) who sign a completed Merchant Adherence Addendum to these Terms and who have completed an Order Form and Onboarding Forms to our satisfaction; and/or
  - c) Franchisees or Licensees who sign a completed Merchant Adherence Addendum to these Terms and who have completed an Order Form and Onboarding Forms to our satisfaction.
- 4.2. The form of the Merchant Adherence Addendum is set forth in the Merchant Adherence Appendix.
- 4.3. Unless otherwise agreed to by us, Merchant shall be jointly and severally liable for their Wholly Owned Subsidiaries’ and/or Merchant Affiliates’ obligations to Planet under the Agreement and/or the Merchant Adherence Addendum.
- 4.4. Merchant will promptly provide information as we may request in order to complete the screening process in clause 3.1.
- 4.5. As determined by us, we may require that the Merchant Affiliate and/or Franchisee or Licensee and/or Wholly Owned Subsidiary contracts with our local affiliate for the provision of Services.
- 4.6. Merchant further confirms that any amendment to the Agreement entered into by the Merchant shall apply to [Wholly Owned Subsidiary]/ [Merchant Affiliate] / [Franchisee or Licensee] and confirms that it has agreed with [Wholly Owned Subsidiary]/ [Merchant Affiliate] / [Franchisee or Licensee] that Merchant will notify [Wholly Owned Subsidiary]/ [Merchant Affiliate] / [Franchisee or Licensee] of any such amendments.

**5. Obligations**

- 5.1. Planet and/or its Affiliates will perform the Services as set forth in the Service Schedules.
- 5.2. Parties agree that Planet will be the exclusive provider of the Services described in each Service Schedule.
- 5.3. You agree to comply with these Terms and the Agreement, provide us accurate and complete documents, information, items and materials in any form (whether owned by you or a third party) reasonably required by us in connection with the Services and co-operate with us in all matters relating to the Services.
- 5.4. We are required to regularly monitor compliance with the terms of the Agreement, and you agree that we may from time-to-time, but only if the need arises, conduct financial and procedural audits in respect of you and your business. While we will endeavour to minimize any disruption such audits may cause, you agree to permit us to have access to your business premises and all relevant devices, systems, networks, equipment, and data used for the Services for the purpose of carrying out such monitoring or audits. You agree to provide us with any information we reasonably request to conduct an audit and allow us to inspect and take/make copies of relevant records and other documents as necessary to verify your compliance with the Agreement. We may appoint an agent or third party, who in any case will be bound by confidentiality restrictions at least as stringent as that set forth herein, to conduct an audit on our behalf and at our expense, except where the audit reveals any non-compliance with the Agreement. Notwithstanding, you also agree to co-operate with any Competent Authority as is required to comply with Applicable Laws and the Agreement.

## 6. Fees

- 6.1. You agree to pay us the fees set out in the Order Form or as otherwise agreed with us. You agree we may charge for any non-specified service we provide and expenses we incur at your request or on your behalf and you agree to pay for such services and expenses as provided in this Section.
- 6.2. On each anniversary of the Commencement Date, Planet reserves the right to apply an annual indexation of the Fees (save as otherwise agreed) based on the Eurozone Consumer Price Index. Planet will provide Merchant with sixty days' notice of the change to the Fees.
- 6.3. If we have agreed with you that Fees can be paid in multiple local currencies you acknowledge that we may periodically apply an increase of Fees in some or all of these local currencies to offset currency fluctuation risk. We will provide you with sixty (60) days' notice of the change to the Fees for the specific currency.
- 6.4. We will invoice you for recurring Fees monthly in arrears by the 5<sup>th</sup> Business Day following the end of each month. You must pay any invoice you are provided with under the Agreement within fourteen (14) days of when you receive it or as otherwise agreed with us in writing. You acknowledge that you may receive an invoice for certain Services you receive from an Affiliate of Planet. All invoices are payable without set-off or deduction of any kind. We may, in our sole discretion, require you to pay your Fees by way of Direct Debit and you shall provide us with a Direct Debit Instruction upon request and maintain such Direct Debit Instruction with us during the Term of the Agreement and until all monies due to us under the Agreement have been paid in full. You expressly authorise us to use the Direct Debit Instruction (as applicable) to debit from your bank account all the sums due to us under the Agreement and you undertake to maintain sufficient funds in your bank account to meet any payment that falls due under the Agreement which you have authorised to be paid under the Direct Debit Instruction. Direct Debit Instruction shall mean an instruction with your bank in a form acceptable to us that allows us to debit any amount you owe us (including the Fees and any other sums owing under this Agreement) under or in connection with the Agreement.
- 6.5. If you do not pay us any amount under the Agreement we will be entitled to charge you interest at a rate applicable under the respective governing law in the event of default, accruing from the date that payment was due until the date of actual payment.
- 6.6. We reserve the right to temporarily suspend the provision of or access to the Services (including Software) for failure to pay an invoice on time.
- 6.7. Value added, goods and services, sales, use, gross receipts, business, consumption and other similar taxes, levies and charges (each a "Tax" and collectively, "Taxes") shall be added to the amounts invoiced pursuant to this Agreement as required by Applicable Law.
- 6.8. In the event of any amendment to Tax legislation or an amendment to our Tax treatment of the Services or for any other reason the sums invoiced without Tax in accordance with this Agreement become subject to Tax, then the applicable invoices shall be deemed to be exclusive of Tax (if any) and you shall, in addition to the sums payable, pay on receipt of a valid Tax invoice, the full amount of Tax chargeable thereon.
- 6.9. For the avoidance of doubt, you shall be responsible for all Taxes imposed by applicable taxing authorities attributable to the provision of the Services to you or any payment made under or in connection with this Agreement, whether or not such Taxes are shown on any invoices.
- 6.10. If we are required to pay any part of such Taxes, you shall reimburse us for such Taxes.

## 7. Set-off

- 7.1. We may, at any time, set-off any liability of yours to us against any liability of ours to you, whether the liability is present or future, liquidated or unliquidated, and whether or not the liability arises under the Agreement. If the liabilities to one another are in different currencies, we may convert either liability at a market rate of exchange in our usual course of business for the purpose of the set-off.
- 7.2. You may not set off any liability we may have to you against any liability you may have to us.

## 8. Intellectual property rights

- 8.1. As between the parties, Planet will and does retain all proprietary and intellectual property rights, title and interest (including, without limitation, all Intellectual Property Rights) in and to:

- a) the Services (including our business model, contractual structure and all Software code) and
  - b) all Software and Equipment used in the provision of the Services (“**Proprietary Information**”).
- 8.2. No rights are granted to you hereunder other than as expressly set forth herein.
- 8.3. You shall not, and shall not permit any third party to:
- a) reproduce, copy, adapt, reverse engineer, reverse compile, disassemble, duplicate, frame, mirror, manipulate, republish, download, display, transmit, modify, adapt or otherwise create derivative works from or improvements, distribute, or otherwise reduce to human-perceivable from any Proprietary Information, or any part thereof, unless expressly authorised under the terms of the Agreement or with our prior written consent;
  - b) sell, resell, assign, license, lease, rent, loan, lend, transmit, network or otherwise distribute or transfer rights to the Services or the Proprietary Information, or any part thereof, in any manner to third parties, or embed any part of the Software forming part of the Proprietary Information, or any part thereof, into any other product or software, without our prior written consent.
  - c) use the Proprietary Information to access, store, distribute upload or transmit any device or any material that:
    - i. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, racially or ethnically offensive, abusive, or otherwise damaging to Planet’s and/or its Affiliate’s reputation;
    - ii. facilitates illegal activity;
    - iii. depicts sexually explicit images;
    - iv. promotes unlawful violence;
    - v. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, nationality, ethnicity, age or in a manner that is otherwise illegal or causes damage or injury to any person or property;
    - vi. infringes the rights of, or restricts or inhibits the use of the Services by any third party infringes the Intellectual Property Rights of any person; or
    - vii. could interfere with, damage, or disrupt the Services, the Proprietary Information or any equipment, systems or networks owned or used by Planet or its Affiliates in delivering the Services.
- 8.4. You shall give us prompt written notice of any actual, threatened, or suspected infringement of our Intellectual Property Rights or Proprietary Information.
- 8.5. We agree to indemnify, defend you from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney’s fees and related court costs and expenses) incurred or suffered by you which directly relate to or directly arise out of the violation or infringement of any third-party intellectual property rights by your authorized use of the Services.
- 8.6. To obtain indemnification, you shall:
- a) give us prompt written notice of any claim;
  - b) give us, at our option, sole control of the defence and settlement of such claim;
  - c) provide us with all available information and assistance; and
  - d) not take any action that might compromise or settle such claim.
- 8.7. Should the Services or any part thereof become, or in our reasonable opinion be likely to become, the subject of a claim for infringement of a third-party intellectual property right, then we may:
- a) modify or replace the infringing or potentially infringing item(s) of the Services with a non-infringing substitute otherwise materially complying with the functionality of the replaced system; or
  - b) Procure for you the right to use and access the infringing or potentially infringing item(s) of the Software free of any liability for infringement; or
  - c) conduct or settle all negotiations and claims with such third party.
- 8.8. The remedies set forth in this section shall be exclusive with respect to any infringement claim hereunder.
9. **Software**
- 9.1. We grant to you, and you accept a limited, non-exclusive, non-transferable, revocable, non-sublicensable license to use the Software and content from time to time provided under this Agreement, subject to the Term and Terms of this Agreement.

9.2. We will always retain exclusive title to the Software, including without limitation, any materials delivered to you hereunder and any invention, development, product, content, trade name, trademark, service mark, software program application, or derivative thereof, developed in connection with providing the Services or during the term of this Agreement.

## 10. Marketing and Communications

10.1. Merchant hereby expressly authorises Planet, free of charge:

- a) to quote, reproduce and mention Merchant and/or its Affiliate's name, brand and/or logo on all our communication, marketing and sales media, whether online or in print, both for internal and external use, worldwide;
- b) to mention the purpose of the Agreement on the aforementioned media and throughout the world, as an exception to clause 11 (Confidential Information).

10.2. Merchant agrees to our use of its trademarks and logos in our promotional and marketing products. In consideration of this we will not

- a) allow any third party to use Merchant's trademarks and logos without its consent; or
- b) use Merchant's trademarks and logos in any manner that would diminish their value or harm your reputation.

10.3. Merchant agrees to cooperate in the creation of brief testimonials and interviews as reasonably requested by Planet's marketing department. Such cooperation shall be requested no more than once a year.

## 11. Confidential Information

11.1. Except to the extent set out in this clause, the parties shall each:

- a) treat as confidential all Confidential Information obtained from the other under the Agreement;
- b) use the other's Confidential Information solely for the specific purposes for which it is disclosed;
- c) not publish or otherwise disclose the other's Confidential Information without the prior written approval of the other; and
- d) take all action reasonably necessary to secure the other's Confidential Information against theft, loss or unauthorised disclosure.

11.2. Despite clause 11.1, you authorise us to disclose information (Confidential Information or not):

- a) to our officers and employees or the officers and employees of our agents or other persons appointed by us in connection with the Services we provide to you on a need-to-know basis on the understanding that they will keep such information confidential;
- b) to any third party we use or contract with to provide Services to you;
- c) to our professional advisers where reasonably necessary for the performance of their professional services on the understanding that they will keep such information confidential;
- d) to any relevant Competent Authority where disclosure is required or requested by them; and
- a) to any credit reference agency we use as a source of information.

## 12. Merchant's warranties and representations

12.1. You warrant and represent that:

- a) You will use the Services only in the context of your commercial, industrial or artisanal activity;
- b) You are validly existing under the laws of the jurisdiction of your incorporation and are properly registered to do business in all jurisdictions in which you carry on business;
- c) You have all necessary approvals, permits, licences and authorisations necessary for you to enter into this Agreement, conduct your business and sell your products and services;
- d) All the information you have supplied to us is complete and accurate and that you will tell us promptly if there is a material change to that information to include a change to the scope of your business activity;
- e) In using and availing of the Services, you will comply with all Applicable Laws; and
- f) An authorised signatory has signed the Order Form on behalf of the Merchant.

**13. Planet's warranties and representations**

13.1. We warrant and represent that:

- a) We are validly existing under the laws of the jurisdiction of our incorporation and are properly registered to do business in all jurisdictions in which we carry on business.
- b) We have all necessary approvals, permits, licences and authorisations necessary to enter into this Agreement, conduct our business and sell our products and services.

**14. Term**

14.1. The terms of this Agreement are effective on the Effective Date and we will provide you with the Services from the Commencement Date.

14.2. The Agreement shall continue for the Initial Term and shall automatically renew for additional, consecutive Extended Terms at the end of the Initial Term, unless either of us ends the Agreement earlier in line with the terms of the Agreement.

**15. Termination**

15.1. Without prejudice to any other remedies which the parties may otherwise have under this Agreement, either party shall be entitled to terminate this Agreement or specific Services by written notice to the other as follows:

- a) by not less than three (3) months prior written notice, such notice to expire at the end of the Initial Term or the Extended Term;
- b) by immediate notice when there is an Insolvency Event; and
- c) by immediate notice if the other party commits a material breach of any term of the Agreement, including without limitation a breach of Applicable Law and/or failure to pay any money you owe us and/or fails to remedy such breach within thirty (30) days after receiving notice from the other party requiring them to so remediate.

15.2. Without prejudice to any other remedies we may have under this Agreement, we shall be entitled to suspend (partially or otherwise) the Services and/or to terminate this Agreement on written notice to you, in the event that you have been or are in material breach of any regulation or in the event that we are required to do so by any payment method scheme owner (if applicable) or Competent Authority for whatever reason

15.3. Notwithstanding any other term of this Agreement, we may terminate without notice, or indefinitely suspend, this Agreement or any contractual provision hereon as required to fulfil our obligations to comply with sanctions.

15.4. Notwithstanding clause 15.1 above, you may terminate the Agreement or individual Services provided under the Agreement before the end of the Initial Term by giving us not less than three (3) months prior written notice, provided that you shall pay us the Early Termination Fee. You acknowledge and agree that the Early Termination Fee is an administrative charge only, payment and acceptance of which shall not amount to a waiver of any damages, compensation or other Fees due to us as a result of termination of the Agreement or some of the Services as applicable.

**16. Effect of Termination**

16.1. The termination of this Agreement or any individual Services, for whatever reason, shall not affect the rights of either of the parties:

- a) that may have accrued before the termination of this Agreement; or
- b) which expressly or by their nature are intended to survive the termination of this Agreement.

16.2. You also acknowledge that if a particular Service is terminated by you, that any related Services may also cease to be available to you from us.

16.3. Upon termination of this Agreement, both parties shall return and/or destroy (upon instruction) all Confidential Information within three months from date of termination and in the event of an instruction to destroy shall furnish, to the other party, a certificate of destruction. In the event that either party fails to instruct the other party, within three months from date of termination and/or early determination of the Agreement, to return the Confidential Information, the receiving party may destroy the Confidential Information without liability to the other party but agrees (if so requested) to provide a certificate of destruction of the Confidential Information.

**17. Mutual Indemnification**

- 17.1. Each party indemnifies and holds the other party harmless (including Affiliates and/or service providers involved in the provision and/or receipt of Services) in respect of any and all claims, losses, costs, expenses and liabilities which a party may suffer or incur, including any claims brought against Planet by any payment method issuer or scheme owner, third party acquirer or regulatory authority, to the extent that such claims, losses, costs, expenses, liabilities arise out of or in connection with:
- a) a material breach of the Agreement;
  - b) a Transaction, Refund, Assessment, Chargeback or Chargeback Cost (as these terms are defined in the Acquiring Schedule);
  - c) non-compliance with PCI DSS or Applicable Law;
  - d) a breach of the Data Protection Laws;
  - e) a claim by a third party that a party's intellectual property infringes third party Intellectual Property Rights;
  - f) an employee's, officer's, director's or agent's gross negligence, wilful misconduct or fraudulent activity.

However, Merchant acknowledges that Planet is not liable and this indemnity does not extend to third parties (such as Merchant vendors or other acquirer) who do not use Planet's Services.

- 17.2. You shall be liable and shall indemnify us in full and on demand, against all substantiated claims, loss and damage caused by your failure (and that of your employees, agents and service providers) to comply with where applicable (i) payment method scheme rules (including the rules of any buy now pay later service provider) and issuer rules; and/or (ii) a direction and/or rules of a supervisory and regulatory body and/or any reasonable steps we may undertake and/or request you undertake in the protection of our interests in connection with the Agreement; and/or (iii) your misuse of the Services. For the avoidance of doubt, this indemnity shall not apply if such a claim is caused by our fraud or material breach of the Agreement.

**18. Disclaimer**

- 18.1. Except as specifically provided to the contrary in this Agreement, the Services are provided "as is" and we disclaim all representations, warranties and conditions of any kind or nature, express or implied, including without limitations, representations, warranties or conditions of satisfactory quality, performance, merchantability, merchantable quality, durability, fitness for a particular purpose, non-infringement and title (whether arising by statute or otherwise in law or from a course of dealing or use of trade) of any Services or goods provided under this Agreement.

**19. Limitation**

- 19.1. Neither party shall be liable to the other for special, incidental, indirect or consequential loss or damage, lost business revenue, loss of profits, reputational loss, damages stemming from delay, loss of corruption of data, punitive or exemplary damages, failure to realise expected profits or savings, even if such losses or damages are foreseeable.
- 19.2. Planet shall not be liable to Merchant for any of the following types of loss or damage arising under the Agreement:
- a) 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 you acknowledge that your use of the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities); and
  - b) actions or omissions of any third parties not directly under our control.
- 19.3. Subject to clause 19.4 and Applicable Law, each party's entire liability to the other party shall in no event exceed an amount equal to the aggregate of all Fees paid and payable by you (less any fees or costs incurred by us in respect of Transactions) in the month preceding the date of the first claim, regardless of the number of subsequent claims, multiplied by twelve (12). The preceding sentence shall not be construed to limit:
- a) Either party's obligation to pay any sums due to the other party under this Agreement;
  - b) any damages due from Merchant related to an early termination of this Agreement; and/or
  - c) Either party's obligation to indemnify the other party hereunder.
- 19.4. Nothing in this Agreement shall operate so as to exclude or limit the liability of you or us to the other for any liability which cannot be excluded or limited by Applicable Law or case law (in particular in case of a breach due to gross misconduct or wilful misconduct or in case of a breach of an essential obligation of the contract) or death or personal injury.

## 20. Entire Agreement

20.1. The Agreement constitutes the entire agreement between you and us regarding its subject matter and it supersedes any earlier agreements that we may have had with you.

## 21. Amendments

21.1. We may make changes to the Agreement or to the Services based upon, but not limited to, technological developments, legislative, regulatory and/or Scheme Rule changes, or the introduction of new services by us.

21.2. We are only obliged to undertake adjustments or modifications of the Services only if these are required for the maintenance or repair of the Services provided or to safeguard the purpose defined in the Agreement, and additionally, if applicable, in the installation documents (in particular pre-setup checklists, installation protocols).

21.3. Where practicable, we will use reasonable efforts to notify you of any such changes to the Agreement and/or the Services that will materially affect you at least 30 days prior to the implementation date of any such change, and the change shall take effect immediately at the end of the notice period.

21.4. You can refuse the change during this notice period by notifying us. If we do not withdraw our change before the change becomes effective, you may terminate the Agreement by giving us two months' notice no later than the effective date of the change. If you terminate the Agreement, the change will not apply during the notice period to the extent permitted by Applicable Law.

21.5. If you do not terminate the Agreement, your continued use of the Services from the effective date of the change is your acceptance of the change.

21.6. Sometimes we may not be able to give you advance notice of a change, for example because we must make the change immediately for legal or regulatory reasons.

21.7. Any Merchant requested customisation, special programming, special hardware or software, or implementation of any other system, program or procedure shall be at our sole and complete discretion and at our standard fees for such efforts.

21.8. In the event that the Merchant requests changes to the scope of the Services provided for in the Agreement, the parties will set out in writing such changes in appropriate detail, including additional fees and such document will be signed by both parties.

## 22. Assignment

22.1. You may not assign or transfer this Agreement or any of your rights, obligations, or benefits hereunder, by operation of law or otherwise, without our prior written consent (such consent not to be unreasonably withheld or delayed).

22.2. We may assign or transfer this Agreement or any of our rights, obligations or benefits hereunder, by operation of law or otherwise. You shall promptly enter into any documents we may require to effect such assignment or transfer.

22.3. This Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.

## 23. Force Majeure

23.1. With the specific exception of obligations respecting Fees hereunder, neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, insurrection or riots, embargoes, inability to obtain supplies and raw materials, epidemics or pandemics, requirements or regulations of any civil or military authority (an "Event of Force Majeure"). Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure. If a breach is due to an Event of Force Majeure and shall continue for more than four (4) weeks' then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

**24. Waiver**

24.1. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.

**25. Invalidity**

25.1. If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal, or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

25.2. If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**26. Translation**

26.1. If this Agreement is translated into a language other than English, the English version shall prevail in the event of any conflict or inconsistency.

**27. Survival**

27.1. The Agreement's clauses relating to intellectual property, confidentiality, liability and personal data will remain in force in the event of termination hereof for an additional period of five (5) years unless otherwise expressly stipulated or provided for by Applicable Law or by this Agreement.

**28. Governing Law & Jurisdiction**

28.1. This Agreement will be governed by and construed in accordance with the laws set out in the Notice and Governing Laws Schedule. The parties further irrevocably agree to submit to the exclusive jurisdiction of the courts set out in the same schedule.

**29. Independent contractors**

29.1. The parties acknowledge they are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between the parties. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.

**30. Notice**

30.1. Any notice or communication required or permitted to be given hereunder may be delivered by email (save for notice of termination), personal delivery, deposited with an overnight courier, sent by facsimile, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the time sent, if by email; the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of facsimile delivery (if followed up by such registered or certified mail); and five days after being so mailed.

30.2. All notices or communications pursuant to this Agreement shall be in English.

**31. Counterparts and execution**

31.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

32. **Organisational Authorization**

- 32.1. Where selected in the Order Form, the Merchant grants its Nominated Personnel the authority to instruct Planet to undertake, on its behalf and in its name, all activities selected in the Organisational Authorisation Appendix. On receipt of said instructions, Planet is duly authorised to undertake the required action.
- 32.2. The Merchant undertakes to ratify, be bound by and confirm (where necessary) the instruction issued by its Nominated Personnel.
- 32.3. In the event of a change to the Nominated Personnel, the Merchant will immediately notify Planet of such a change and the withdrawal of the authorisation.

33. **Sub-contractors**

We may engage subcontractors to perform certain work/services under this Agreement. We shall remain fully responsible for the performance of the work by any subcontractor, and for ensuring that the subcontractor complies with all terms and conditions of this Agreement. In the event that the Merchant objects to the use of any subcontractor, the Merchant accepts that we may not be able to provide certain Services.

## NOTICE, GOVERNING LAW AND JURISDICTION SCHEDULE

Services utilised by Merchant	Notice(s)	Governing law	Courts having exclusive jurisdiction
All Services except as set out below	Planet Payment Group Holdings Limited Email: Legalinbox@weareplanet.com Address: Martin House, IDA Business Park, Dangan, Galway, H91 A06C, Ireland	England & Wales	England & Wales
Acquiring Services in the UK	Planet Merchant Services Limited Email: Legalinbox@weareplanet.com Address: 4th Floor, Ilona Rose House, Manette Street, London, England, W1D 4AL	England & Wales	England & Wales
Acquiring Services in the EEA	Planet Merchant Services SAS Email: Legalinbox@weareplanet.com Address: 1 Terrasse Bellini, Puteaux, 92919, Paris La Défense Cedex, France	France	France
Currency Conversion Services in the UK	Planet Merchant Services Limited Email: Legalinbox@weareplanet.com Address: 4th Floor, Ilona Rose House, Manette Street, London, England, W1D	England & Wales	England & Wales
Currency Conversion Services in the EEA	Planet Merchant Services SAS Email: Legalinbox@weareplanet.com Address: 1 Terrasse Bellini, Puteaux, 92919, Paris La Défense Cedex, France	France	France
Currency Conversion Services in the United States of America, Canada, the Latin America region and/or the Asia Pacific region	Planet Payment Inc. Email: Legalinbox@weareplanet.com Address: 600 Old Country Road, Suite 207, Garden City NY 11530, United States	New York	New York
All other Services in the United States of America, Canada, the Latin America region and/or the Asia Pacific region	Planet Payment Inc. Email: Legalinbox@weareplanet.com Address: 600 Old Country Road, Suite 207, Garden City NY 11530, United States	New York	New York
Hospitality Software Services	Please refer to Hospitality Service Schedule		