

# SOFTWARE AS A SERVICE (SaaS) AGREEMENT

This software as a service (SaaS) agreement (including its Annex(es)) (the “**Agreement**”) contain the terms and conditions that governs the grant of access and use right of the Planon SaaS Services, the provision of Consultancy Services and/or Training Services (each as defined below) from **Planon International B.V.**, a private limited liability company, duly incorporated and existing under the laws of the Netherlands, with its principal office at Wijchenseweg 8, 6537 TL Nijmegen, the Netherlands, registered with trade register under number 09102087 (“**Planon**”) to the legal entity as identified as “**Customer**” in the order form (“**POF**” or “**Order Form**”) referring to this Agreement (“**Customer**”) and is an agreement between Planon and the Customer. This Agreement takes effect as of the (effective) date as identified in the (initial) Order Form referring to this Agreement (“**Effective Date**”). The person signing the Order Form on behalf the Customer represents that he or she has the legal authority to bind that legal entity. Where capitalized in this Agreement, capitalized terms shall have the meanings as set forth within the body of the Agreement, in the applicable Order Form or as set forth in article 1 below.

## 1. DEFINITIONS.

“**Affiliate**” shall mean any entity controlled by, controlling, or under common control with a Party hereto. For this purpose, the term “control” shall mean the direct or indirect ownership of more than 50% of the voting stock or other ownership interests of that entity.

“**Asset Lease Contracts Bundle**” means an active contract line in the Planon Lease Management Solution as part of the Planon SaaS Services linked to an asset. The hit count will be increased by one with every contract line in the system status ‘Precalculated’ or ‘Active’. The hit count will be decreased by one with every contract line in the status ‘Expired’ or ‘Terminated’.

“**Customer Data**” means any data submitted by or for Customer to the Planon SaaS Services and all results from processing such data, including derivative works thereof.

“**Devices**” means mobile phones PC’s, laptops, tablets, kiosk devices and other devices that are authorized to process Customer Data in the Planon SaaS Services.

“**Documentation**” means the documentation of the Planon SaaS Services accessible in Planon’s online environment, as updated or amended from time to time, including without limitation the description of the Planon SaaS Services and the user guides as available within the Planon SaaS Services.

“**Order Form**” means an ordering document specifying the Planon SaaS Services to be provided hereunder that is entered into between Customer and Planon or, if applicable and subject to article 2.2 below, between Planon and any Affiliate of Customer, including any addenda and supplements thereto.

“**Planon Lease Accounting Base Package**” means access to the business logic in the Planon Lease Management Solution as part of the Planon SaaS Services for lease accounting calculations.

“**Planon SaaS Cloud**” means middleware consisting of both software and hardware providing a gateway operated by Planon and/or its licensors.

“**Planon SaaS Services**” means the software as a services and related support services thereto that are ordered by Customer under an Order Form and provided by Planon and/or licensors as more specifically defined and set forth in this Agreement, including associated offline components, as described in the Documentation.

“**Property Lease Contracts Bundle**” means an active contract line in the Planon Lease Management Solution as part of the Planon SaaS Services linked to a property. The hit count will be increased by one with every contract line in the system status ‘Precalculated’ or ‘Active’. The hit count will be decreased by one with every contract line in the status ‘Expired’ or ‘Terminated’.

“**Named User**” means a unique identifiable person that is authorized to access and consume the Planon SaaS Services. For the avoidance of any doubt, a Named User account may only be used by that specific unique identifiable person and not be shared among other person(s).

“**Transaction**” means a successful modification of an order or visitor in Planon Self-Service. After a successful modification, the hit count will be incremented by one.

“**Measure Point**” means a connection with one or more physical or virtual sources of data input like, but not limited to, sensors, which provide location-based information like, but not limited to, occupancy, temperature or air quality.

## 2. PLANON SAAS SERVICES. FREE TRIAL TO ADDITIONAL FUNCTIONALITY OR BETA FUNCTIONALITY.

**2.1** Subject to Customer’s compliance with the Agreement, Planon grants Customer the limited and revocable right to access and use the Planon SaaS Services pursuant to this Agreement, the Documentation and the applicable Order Form for the duration of the Subscription Period, unless otherwise agreed in Order Form(s). Customer’s access and use of the Planon SaaS Services is subject to compliance by Customer with the terms and conditions of this Agreement and granted for use by Customer in the country in which Customer has its principal office (“**Territory**”) for Customer’s own internal use and benefit, in its normal course of business, and for the number and type of authorized Named Users, Transactions, Measure Points, Planon Lease Accounting Base Package(s), Property Lease Contracts Bundle(s), Asset Lease Contracts Bundle(s) and/or Devices agreed and paid for in accordance with the Order Form(s).

**2.2** If agreed upon in Order Form(s), the foregoing grant of rights applies to Affiliates of Customer as well provided that one (1) database instance is used and that Customer is responsible for compliance by its Affiliates with this Agreement and any breach thereof by an Affiliate shall constitute a breach of this Agreement by Customer. Orders for such use and access for the benefit of an Affiliate of Customer shall be provided through Customer and Customer shall pay Planon the related fee due. If an Affiliate of Customer enters with Planon directly into an Order Form, such Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**2.3** Planon may make available to Customer a trial of (i) additional functionality and/or (ii) beta functionality in addition to already purchased Planon SaaS Services in a separate environment free of charge for a duration ending the earlier of (a) the end of the free trial period agreed in a specific agreed Order Form or (b) thirty (30) days after access to the additional or beta functionality of the Planon SaaS Services. Additional trial terms and conditions may appear in the Order Form or upon access to the additional or beta functionality of the Planon SaaS Services. Acceptance of the Order Form or continued use of the additional or beta functionality of the Planon SaaS Services by Customer is deemed its acceptance of such additional terms and conditions. Notwithstanding anything to the contrary in this Agreement, Planon Universe Play and the additional functionality and beta functionality during the free trial are provided on an “as-is” and “as-available” basis without giving any warranty and without accepting any responsibility or liability whatsoever. Beta functionality are for evaluation purposes only and not for production use, are not considered “Planon SaaS Services” under this Agreement, are not supported, and may be subject to additional terms. Planon may discontinue beta functionality at any time in its sole discretion and may never make them generally available. Planon will have no liability for any loss, harm or damage arising out of or in connection with any additional functionality or beta functionality.

**2.4** Planon expressly reserves all rights in its Planon SaaS Services and any functionality made available in accordance with article 2.3 above. It is acknowledged that all right, title and interest and all intellectual property rights inherent therein and/or related thereto are and will remain with Planon (or third party supplier(s) or licensor(s), if applicable) and that the Planon SaaS Services are provided to Customer on a “Software as a Service” basis only and not sold, assigned or transferred to Customer. Planon does not grant to Customer any rights in and to the Planon SaaS Cloud used by Planon in the performance of the Planon SaaS Services other than expressly set forth herein.

**2.5** Customer grants Planon and its Affiliates a perpetual, irrevocable, royalty-free license to use and incorporate into the Planon SaaS Services any suggestion, enhancement request, recommendation, correction or other feedback.

**2.6** If agreed in an Order Form, Planon shall provide Customer with certain separate consultancy services (“**Consultancy Services**”) and/or training services (“**Training Services**”) as agreed in such Order Form under terms and conditions as set forth in Annex A of this Agreement.

## 3. FEES AND PAYMENTS.

**3.1** Customer shall pay Planon the fees in the amounts specified in the Order Form(s) (the “**Fees**”). Unless otherwise agreed in an Order Form, (i) Fees are based on Planon SaaS Services purchased and not actual usage and (ii) payment obligations are non-cancellable and Fees paid are non-refundable. Fees for Planon SaaS Services are due and to be paid for 12 months periods as of the Effective Date and each anniversary thereof (each a “**12 Months Period**”), unless otherwise agreed.

**3.2** In the event of ordering of any additional authorized Named Users, Devices, Transaction bundles, Planon Lease Accounting Base Package(s), Property Lease Contracts Bundle(s), Asset Lease Contracts Bundle(s) or Measure Points during the course of the Subscription Period, related Fees are calculated pro-rata and separately for the remainder of the then-current 12 Months Period and each subsequent 12 Months Period thereof and are due in full as of the moment of acceptance by Planon of such ordering. Customer may appoint in Planon’s online environment one or more application owner(s) (“**Application Owner**”) who is entitled to order on behalf of Customer additional Named Users, Devices, Transaction bundles, Measure Points, Planon Lease Accounting Base Package(s), Property Lease Contracts Bundle(s), Asset Lease Contracts Bundle(s), functionality and/or services (such as e-learning) under the same terms and conditions as agreed in this Agreement in Planon’s online environment. Parties agree that the Application Owner may authorize Named Users to order on behalf of Customer additional Named Users, Devices, Transaction bundles, Measure Points, Planon Lease Accounting Base Package(s), Property Lease Contracts Bundle(s), Asset Lease Contracts Bundle(s), functionality and/or services. Upon acceptance by Planon of additional orders, Planon will either send a confirmation of the order to the designated email address of the Application Owner or submit to Customer an Order Form reflecting the order for execution by Customer. Customer is entitled to decrease the respective initial agreed number of Named Users, Devices, Transaction bundles, Measure Points, Planon Lease Accounting Base Package(s), Property Lease Contracts Bundle(s) and Asset Lease Contracts Bundle(s) with a maximum of each 25% per 12 Months Period during the three (3) years Initial Subscription Period. Upon acceptance by Planon of such decrease, the Fees will be pro rata modified.

**3.3** Invoicing by Planon will be done by providing Customer solely digital invoices in PDF format by email to the email address specified in writing by Customer. Changes in said e-mail address shall be reported in written to Planon in advance. If for processing purposes it is required for Customer that an invoice refers to an order number from Customer, Customer shall provide the correct order number timely in writing to Planon, by default of which the invoice amount is payable from the date of invoice. Fees shall be paid within thirty (30) days from the invoice date, unless otherwise agreed. All Fees are (a) quoted and payable in local currency and exclusive of sales tax, value added tax, other government levies and out-of-pocket-expenses and

(b) non-refundable, may not be applied to any other period, may not be credited because of none or partial use and may not be credited towards fees or other charges due under a different agreement with Planon. Any payment not received from Customer by the due date shall accrue interest, at the applicable statutory interest rate from the date such payment is due until the date paid. Customer shall also pay all sums incurred in collecting overdue payments, which is set at a minimum of 1.5% per month of the total amount due, subject to the maximum amount allowed by law.

**3.4** Planon may charge Customer additional amounts as set out in Planon's standard price list in the event that the file storage provided in respect of the agreed optional additional file storage or the standard free 10 Giga Byte per environment is regularly exceeded. Planon may revise the Fees once per calendar year with a minimum of 3%, provided that Planon shall notify Customer in writing one (1) month in advance.

**4. CUSTOMER DATA.** Customer owns all Customer Data. Customer is solely responsible for the quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data. Customer is responsible that Customer Data is in a proper format, as specified by the Documentation. Customer authorizes Planon to process Customer Data as contemplated herein, and that such use will not infringe any third party rights or laws. Planon applies industry practices in relation to the processing of Customer Data in conjunction with the Planon SaaS Services. Planon assumes no responsibility, and shall have no liability, for the deletion, correction, destruction, loss, infringement or failure of any Customer Data as a result of actions from Customer and/or third parties. Planon and its licensors take technical measures to protect the Planon SaaS Services and may access Customer's account and Customer Data from time to time as Planon reasonably deems necessary or appropriate for purposes of performing under this Agreement, including, without limitation, providing support and maintenance services, performing account administration, generating invoices with respect to Customer's use of the Planon SaaS Services and verifying Customer's compliance with this Agreement. Planon implements industry standard security precautions intended to prevent unauthorized access to Customer Data. Customer acknowledges that, notwithstanding such security precautions, use of, or connection to, the internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Planon SaaS Services and/or Customer Data. Accordingly, Planon cannot and does not guaranty the privacy, security, integrity or authenticity of any information so transmitted over or stored in any system connected to the internet or that any such security precautions will be adequate or sufficient.

#### **5. CUSTOMER'S DUTIES AND OBLIGATIONS.**

**5.1** Planon will provide Customer with the tools (for example user names and passwords) to access the Planon SaaS Services and any access to the Planon SaaS Services through such provided tools will be deemed access to the Planon SaaS Services by Customer. Customer shall use reasonable endeavors to prevent any unauthorized access to, or use of, the Planon SaaS Services and notify Planon promptly of any such unauthorized access or use. Customer may not resell space within its account. Each account is for the sole use of Customer. Evidence that space is being resold may be reason for termination of the execution of the Planon SaaS Services. Customer shall provide Planon in time with all data or information useful or required for the proper execution of this Agreement by both Parties and Customer, including but not limited to if required, granting access to Customer's premises and/or Customer Data. If Customer in the execution of this Agreement employs its own employees, the latter will have the required knowledge, experience, capacity and quality.

**5.2** Customer shall be responsible for its use of the Planon SaaS Services and the manner in which the results are obtained through its use of the Planon SaaS Services. Customer shall also be responsible for training given to and use by Named Users. Customer shall be responsible for the Named Users compliance with this Agreement, for the accuracy, quality, integrity and legality of Customer Data, and the transfer of data between (a) Customer's backend system and the Planon SaaS Cloud (if any), and (b) the Devices and the Planon SaaS Cloud.

**5.3** Customer shall not (i) use the Planon SaaS Services to store or transmit infringing, libellous or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (ii) use the Planon SaaS Services to store or transmit any malicious code such as but not limited to cancelbots, back doors, easter eggs, time bombs, trap doors, trojan horses viruses, worms, files, scripts, agents or programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information ("Malicious Code"); (iii) intentionally interfere with or disrupt the integrity or performance of the Planon SaaS Services or third party data contained therein, and shall make reasonable efforts to ensure that no other software, data or equipment having an adverse impact on the Planon SaaS Services has been introduced in its backend systems; or (iv) attempt to gain unauthorized access to the Planon SaaS Services or to related systems or networks operated by Planon. Planon may log all information which Planon deems necessary to calculate the Fees and other charges due.

#### **6. PERFORMANCE OF THE PLANON SAAS SERVICES**

**6.1** During the Subscription Period Planon will make commercially reasonable efforts to ensure that (a) the Planon SaaS Services will operate substantially in accordance with this Agreement, the Order Form(s) and the Documentation and that; (b) the Planon SaaS Services will be free from Malicious Code; provided, that (i) Customer has implemented and used the Planon SaaS Services in accordance with all instructions supplied by Planon; (ii) Customer notifies Planon in writing of any defect within five (5) business days after the appearance thereof; (iii) Customer has, if applicable and/or if requested by Planon, installed all updates, new versions, and new releases made available by Planon with respect to the Planon SaaS Services, and all updates recommended by Planon with respect to any third party software products that may materially affect the performance of the Planon SaaS Services on the Devices

used; (iv) Customer has maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards; (v) Customer has not introduced other equipment or software creating an adverse impact on the Planon SaaS Services; (vi) Customer has paid all Fees due hereunder and is not in material default of any provision of the Agreement; (vii) any legacy software with respect to which the Planon SaaS Services is to operate contains clearly defined interfaces and correct integration code, and (viii) Customer has made no changes (nor permitted any changes to be made other than by or with the express approval of Planon) to the Planon SaaS Services delivered by Planon.

**6.2** Customer shall at all times act as and maintain the role of the controller of such data, and (ii) Planon shall at all times act as and maintain the role of the processor and shall only process such personal data as instructed in writing by Customer and subject to the terms and conditions as set forth in the data processing addendum attached hereto in Annex B.

#### **7. SUBSCRIPTION PERIOD AND TERMINATION.**

**7.1 Subscription Period.** Unless otherwise agreed in the initial Order Form, this Agreement shall commence on the Effective Date and, unless terminated sooner in accordance with the terms of this Agreement, shall continue for an initial term of three (3) years (the "Initial Subscription Period") and thereafter, the term of this Agreement shall be automatically extended for successive twelve (12) months periods (each an "Extended Subscription Period"), unless either Party notifies in writing the other Party of its intention to terminate this Agreement at least ninety (90) days before the end of the Initial Subscription Period or any Extended Subscription Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Period or Extended Subscription Period (all together the "Subscription Period").

**7.2 Breach and Insolvency.** Either Party may terminate this Agreement by written notice (a) immediately upon material breach by the other Party if such breach cannot be remedied, or (b) if the other Party fails to cure any material remediable breach within thirty (30) days of receipt of written notice. Planon may terminate this Agreement immediately if any of the following events occur affecting Customer: (a) voluntary bankruptcy or application for bankruptcy; (b) involuntary bankruptcy or application for bankruptcy not discharged within sixty (60) days; (c) appointment of receiver or trustee in bankruptcy for all or a portion of Customer's assets; (d) appointment of an administrator in respect of Customer or (e) an assignment or arrangement for the benefit of creditors.

**7.3 Failure by Customer.** Planon may suspend access to the Planon SaaS Services or, if applicable, provision of Consultancy Services and/or Training Services at its sole discretion, with prior written notice to Customer if: (a) any payment is delinquent by more than five (5) days and if such default is not remedied within fifteen (15) days after written notice, (b) Customer materially breaches any provision of this Agreement (for a breach that can be remedied but that is not remedied: within fifteen (15) days after written notice), or (c) Customer fails to perform its obligations under the Agreement (for a failure that can be remedied but that is not remedied: within fifteen (15) days after written notice), such suspension to continue until such payment is made or breach or failure is cured.

**7.4 Effect of Termination.** Planon shall [not be liable to Customer or any third party for termination of this Agreement in accordance with its terms or any suspension of Customer's access to, and/or right to use, the Planon SaaS Services under this Agreement in accordance herewith. If this Agreement is terminated for any reason or no reason, Customer will remain obligated to pay all Fees incurred prior to termination. Upon the effective date of termination of this Agreement for any reason, whether by Customer or Planon, Customer shall cease any use whatsoever of the Planon SaaS Services and all other information and materials provided by Planon to Customer under this Agreement. The definitions and the rights, duties and obligations of the Parties that by their nature continue and survive shall survive any termination of this Agreement for any reason. Planon shall make available to Customer a copy of Customer Data in Planon's format upon request by Customer within two (2) months after termination of the Agreement. If and when Planon has not received such request within said period, then Planon is entitled to destroy or otherwise dispose of any Customer Data.

**8. CONFIDENTIALITY.** Each Party agrees that all business, technical, financial and other information that it obtains from the other is the confidential property of the disclosing Party ("Confidential Information" of the disclosing Party). Except as expressly and unambiguously allowed herein, the receiving Party will hold in confidence and not use or disclose any Confidential Information of the disclosing Party and shall similarly bind its employees in writing. Each Party may disclose Confidential Information of the other to the receiving Party's parent company and Affiliates, provided that employees receiving such Confidential Information are bound by confidentiality obligations at least as restrictive as those contained herein. Upon termination of this Agreement or upon request of the disclosing Party, the receiving Party will return to the disclosing Party or destroy (and certify in writing such destruction) all Confidential Information of such disclosing Party, all documents and media containing such Confidential Information and any and all copies or extracts thereof. The receiving Party shall not be obligated under this article with respect to information the receiving Party can document: (a) is or has become readily publicly available without restriction through no fault of the receiving Party or its employees or agents; or (b) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or (c) was rightfully in the possession of the receiving Party without restriction prior to its disclosure by the other Party; or (d) was independently developed by employees or consultants of the receiving Party without access to such Confidential Information; or (e) is required to be disclosed by law or order of court of competent jurisdiction. Notwithstanding the foregoing, Customer provides the right to Planon and its affiliates to use Customer's logo, name and reference, in marketing collateral, including but not limited to websites.

## 9. WARRANTY.

**9.1** Planon warrants that the Planon SaaS Services will operate during the Subscription Period subject to and in the manner as provided in article 6.1.

**9.2** Except as provided in article 9.1 above and to the maximum extent permitted by law, Planon expressly disclaims any warranties or conditions of any kind, including, without limitation, any (implied) warranty, guarantee or condition in respect of quality, title, performance, merchantability, fitness for a particular purpose or non-infringement. Planon does not warrant that the Planon SaaS Services, Consultancy Services or Training Services meet requirements other as warranted hereunder or that the provision of the Planon SaaS Services will be uninterrupted or that the Planon SaaS Services will be error-free. Further, Planon does not warrant that all errors in the Planon SaaS Services are correctable or will be corrected.

## 10. INDEMNIFICATION.

**10.1** Subject to Customer's performance of its obligations under this Agreement, Planon shall at its sole option defend or settle at its expense any claim or suit against Customer arising out of or in connection with a third party claim assertion that the Planon SaaS Cloud infringes any copyrights in the country where the Planon SaaS Cloud is operated and Planon shall indemnify and hold harmless Customer from damages, costs, and reasonable attorneys' fees, if any, finally awarded in such suit or the amount of the settlement thereof; provided that (a) Planon shall have the right to replace or modify the alleged infringing Planon SaaS Cloud with a non-infringing version under the condition that Customer shall use this replaced or modified version; (b) Planon is promptly notified in writing of such claim or suit, (c) Planon shall have the sole control of the defence and/or settlement thereof, and (d) Customer furnishes to Planon, on request, all relevant information available to Customer and reasonable cooperation for such defence. The foregoing in this provision shall be the sole obligation of Planon and the exclusive remedy of Customer with respect to any alleged infringement by the Planon SaaS Services of any third party's intellectual property rights. Planon shall have no obligation under this provision if and to the extent that such claim or suit arises from: (i) compliance by Planon with Customer's specifications, (ii) modification of the Planon SaaS Services other than by Planon, (iii) the combination of the Planon SaaS Services with products or services other than those supplied by Planon, (iv) Customer continuing any use of the Planon SaaS Services after being notified of any allegedly infringing activity or after being informed of or provided with modifications that would have avoided the alleged infringement, (v) Customer's use of the Planon SaaS Services that is not strictly in accordance with this Agreement, or (vi) Customer's actions or omissions.

**10.2** Except to the extent that Planon is obligated to indemnify Customer pursuant to article 10.1 above, Customer shall indemnify and hold harmless Planon and its Affiliates from and against any and all liability of Planon to a third party and all costs incurred by Planon in defending against or settling any claim by a third party which arise from any cause or event which is attributable to (a) any use of the Planon SaaS Services or Customer Data by Customer or any third party that uses the Planon SaaS Services and/or any information derived there from as a result of the rights granted to Customer hereunder, or (b) Customer's failure to perform or comply with or breach by Customer of any term of this Agreement.

## 11. LIMITATION OF LIABILITY.

**11.1** Notwithstanding anything to the foregoing and to the maximum extent permitted by law, neither Party shall be liable whether in tort or contract for (i) lost profits, (ii) lost savings, (iii) reduced goodwill, (iv) damage caused by interruption of business operations, (v) lost or damaged data, or (vi) any incidental or consequential, special or punitive damages, even if a Party has been notified of the possibility of such damage. Planon's aggregate liability and indemnification with respect to any matters whatsoever arising under or in connection with this Agreement (including non-contractual claims) shall not exceed an amount equivalent to the Fees paid to Planon in the prior twelve months immediately preceding the relevant matter. Customer understands that Planon is not responsible for and will have no liability for hardware, software or other items or any services provided by any persons other than Planon.

**11.2** Planon's liability on account of breach in performance of the Agreement arises only if Planon is given prompt and proper written notice of default by Customer, with a reasonable term to remedy the breach and Planon is still in breach of its obligations after that term. The notice of default should contain an as detailed as possible description of the breach so that Planon could respond adequately.

## 12. GENERAL.

**12.1** **Entire Agreement.** This Agreement executed by the Parties is the entire agreement between the Parties regarding the subject matter hereof. It supersedes all prior oral or written communications, representations, undertakings and agreements of the Parties relating thereto and prevails over any conflicting or additional terms of any quote, acknowledgement or similar communication between the Parties. Unless Parties agree differently in writing, Customer agrees for now and then that current and future orders regarding the Planon SaaS Services,

Consultancy Services and/or Training Services placed through other means than an Order Form are also subject to the terms of this Agreement, even if such other order form references terms and conditions of Customer, or even if Planon actually delivers the deliverables ordered through such other order form. In all cases, Parties agree that purchasing terms of Customer are not applicable to such current and future orders or deliveries. This Agreement may be modified or amended only by a written instrument duly executed by the Parties. This Agreement and any related Order Form may be executed as attachment (in a standard readable format, such as pdf or jpg) to email, and in counterparts, each of which shall constitute an original, and which taken together shall constitute the same agreement. The rights and obligations of each Party under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of the other Party. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the Parties hereto. Planon hereby reserves the right to modify the products and services and related terms agreed upon or deviate from them on the basis of technical reasons only, provided that the products and/or the services will meet all service level agreed upon.

**12.2** **Waiver and Severability.** No waiver will be deemed effective unless set forth in writing and signed by the Party charged with such waiver, and no waiver of any right arising from any breach will be deemed to be a waiver or authorization of any other breach or of any other right arising under this Agreement. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall be unaffected thereby and remain valid and enforceable as if such provision had not been set forth herein. The Parties agree to substitute for such provision a valid provision that most closely approximates the intent of such severed provision.

**12.3** **Governing Law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be construed and governed by the substantive laws of the Netherlands, without giving effect to the conflict of law provisions. The applicable court of The Hague, The Netherlands is at all times exclusively competent to hear and decide on all disputes between Planon and Customer, on the understanding that Planon remains authorized to institute legal proceedings against Customer before a court that without the above choice of forum would have had jurisdiction to decide on disputes between Customer and Planon. The Parties agree that the United Nations Convention of Contracts for the International Sale of Goods shall not apply to this Agreement.

**12.4** **Notices.** All notices under this Agreement must be in writing and delivered by hand or nationally recognized overnight courier addressed if to Planon and if to Customer at the Planon address and Customer address, respectively, set forth on the first page, or at such other address as either Party shall have furnished to the other in writing. Such notices shall be effective (a) if sent by overnight courier, two (2) business days after mailing, and (b) if sent otherwise, upon receipt.

**12.5** **Force Majeure.** Neither Party shall be liable for non-performance or delay caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, failure or errors of the internet or causes beyond its reasonable control, together: "Force Majeure". Force Majeure also includes force majeure on the part of Planon's suppliers, inadequate compliance by suppliers with obligations, as well as defective goods, materials, software of third parties that Planon uses or is required to use by Customer.

**12.6** **Independent Contractor.** This Agreement is between Planon and Customer. No third party beneficiaries are intended. In connection with this Agreement each Party is an independent contractor and as such does not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership or agency relationship between the Parties for any purpose.

**12.7** **Subcontractors and Third-Party Products.** Planon reserves the right to use third parties (e.g. subcontractors) for the providing of any product or service to be provided under this Agreement, and Customer hereby consents to such use and if applicable any (additional) terms and conditions imposed by any of such third parties.

**12.8** **Planon Affiliate.** Planon and Customer acknowledge and agree that certain products and/or services under Order Form(s) may also be provided by a Planon Affiliate to Customer. In such case, the applicable Planon Affiliate shall execute an Order Form directly with Customer which shall form a separate agreement between the Planon Affiliate and customer only. The terms and conditions of this Agreement shall apply to such Order Form provided that reference in this Agreement to "Planon" shall in such case deemed to be reference to the applicable Planon Affiliate, unless the context in the Agreement and/or Order Form clearly indicates otherwise. If the provisions of an Order Form conflict with the provisions of this Agreement, the provisions of the Order Form will prevail, unless the provisions the Agreement clearly indicate otherwise.

**Annex A**  
**SERVICE AVAILABILITY AND SUPPORT SERVICES - CONSULTANCY SERVICES - TRAINING SERVICES**

**1 DEFINITIONS.**

“**Customized Software**” means software, not being the standard software modules that belong to the software as part of the Planon SaaS Services included in Planon’s list of products, which has been or is developed specifically for Customer by or by order of Planon or its licensor(s) and as such is identified by Planon.

“**Excluded Events**” means Planned Maintenance Times and issues (i) caused by factors outside of Planon’s reasonable control, including denial of service or similar attacks, mail bombs, DNS resolution, Domain Name expiration, Internet availability, SYN attacks, and other events or Force Majeure event or internet access or related problems beyond the demarcation point of the Planon SaaS Services, (ii) that result from any actions or inactions of Customer or any third party, (iii) that result from Customer’s equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Planon’s direct control) and/or (iv) arising from Planon’s suspension and termination of Customer’s right to use the Planon SaaS Services in accordance with this Agreement.

“**Java Runtime Environment**” or “**JRE**” is also known as Java Runtime, is part of the Java Development Kit (JDK), a set of programming tools for developing Java applications. The Java Runtime Environment provides the minimum requirements for executing a Java application; it consists of the Java Virtual Machine (JVM), core classes, and supporting files.

“**Planned Maintenance Times**” means maintenance times in minutes in each 12 Months Period, which are set by Planon by means of an advance notice at five (5) business days before. Planon will, if possible, perform Planned Maintenance between Monday to Friday outside 08.00 am through 6.00 pm local Datacentre location time; however, only the first four (4) incidents of planned maintenance per month will be regarded as Planned Maintenance Times.

“**Service Availability**” means the availability of the Planon SaaS Cloud in production environment essentially for the usage of Planon SaaS Services by Customer. Failures affecting not essential features or features that are not used by Customer do not count. Service Availability is calculated per 12 Months Period as follows: (Total Minutes – Excluded Events – unavailability in minutes) / (Total Minutes – Excluded Events) x 100.

“**Total Minutes**” mean the total minutes of the respective 12 Months Period.

**2 SERVICE AVAILABILITY.**

**2.1 Service Availability.** Subject to compliance by Customer’s performance of its obligations under this Agreement, Planon shall use commercially reasonable efforts to provide Customer an average Service Availability of 99,5% per 12 Months Period.

**3 SUPPORT SERVICE.**

The following applies to the support services as provided by Planon as part of the Planon SaaS Services:

**3.1 Support Desk.** During the Subscription Period, one or more Customer’s designated and agreed between Customer and Planon Customer application manager (each a “**Customer**

**Application Manager**”) is granted access to technical support as set forth in this article and all Named Users are granted access to Planon’s online interactive support environment. A Customer Application Manager may report a request or issue related to Planon SaaS Services in production environment as provided in article 3.5 below. Such request or issue, will be provided by the Customer Application Manager with a clear description thereof, a Customer request number and urgency level (together “**Incident**”) to the Planon support desk (“**Support Desk**”), either: a) by phone, b) by email, or c) via the Planon website as further detailed in the most current version of the Planon Support Handbook. Customer will receive a corresponding Planon incident number and an indication of when the feedback can be expected.

**3.2 Standard Support.** Under Standard Support, the Support Desk is available on business days (excluding bank and public holidays) during Planon business hours as further detailed in the most current version of the Planon Support Handbook. The Support Desk shall respond to an Incident within the response time periods provided in Table 1 below. The urgency levels and service windows for Incidents as provided in Table 1 apply to standard Software, and if agreed in an Order Form to Customized Software, in production environment only.

**3.3 Incident types and related support services.** Only those Customer Application Managers agreed between Customer and Planon may report Incidents to the Support Desk. A Customer Application Manager is required to have sufficient knowledge of the Planon SaaS Services and to have followed the necessary training for expert use of the Planon SaaS Services. Depending on the agreed type of Support Services, Planon will respond to an Incident within the response time provided in Table 1 below. The foregoing shall be the sole obligation of Planon and the exclusive remedy of Customer with respect to support services to the Planon SaaS Services. reserves the right to decline Support for Incidents outside of Customer’s production environment. Five (5) Incident types and related support services are identified in table 1 below:

“**Service Availability Incident**” is an Incident which has direct impact on the availability of the Planon SaaS Cloud in production environment. The Support Desk will assign to a Service Availability Incident one of three degrees of urgency, and will take the related actions, each as set forth in Table 1 below.

“**User question**” is an Incident related to a question regarding the use of the Planon SaaS Services. User questions qualify as “Level 3” urgency level Incidents (see Table 1 below).

“**Enhancement Request**” is an Incident related to a request for enhancements to standard functionality of the Planon SaaS Services. An Enhancement Request will be noted by the Support Desk and included in the Planon change management procedure. This procedure handles the acceptance, prioritization, and processing of enhancement requests. Enhancement Requests qualify as “Level 3” urgency level Incidents (see Table 1 below).

“**Loss of functionality**” is an Incident related to limited functionality of the Planon SaaS Service. The Support Desk will assign to a Loss of functionality Incident one of three degrees of urgency, and will take the related actions, each as set forth in Table 1 below.

“**Security Incident**” is an Incident related to a report by the Customer Application Manager of a security risk perceived to be caused by the Planon SaaS Services. The Support Desk will assign to a Security Incident one of three degrees of urgency levels, each as set forth in Table 1 below.

**Table 1: INCIDENT URGENCY LEVELS AND SERVICE WINDOWS**

Incident urgency level	Remark	Fulfills all criteria below:	Service window (response time)
Level 1 / STANDSTILL / P1	The highest urgency level; only assigned in very exceptional circumstances; to be reported by phone.	The Planon SaaS Services is seriously disrupted, with the majority of Named Users down	15 minutes
		There is limited functionality of the Planon SaaS Services, rendering Customer incapable of fulfilling important internal needs in the short term	
		The Support Desk is unable to offer a workaround (or partial workaround) to resolve the problem completely or partially within 1 business day	
Level 2 / URGENT / P2	A midlevel degree of urgency.	The Planon SaaS Services is disrupted at a level to cause inconvenience for a number of Named Users but not all Named Users	4 hours
		There is partial limited functionality of the Planon SaaS Services but Customer is still able to fulfil its own needs, and/or Support Desk is able to offer a workaround (or partial workaround) to resolve the problem completely or partially within 3 business days	
Level 3 / MINOR / P3	All Incidents that do not qualify as Level 1 or Level 2		1 business day

**3.4** if any of the following occurs, Planon will use commercially reasonable efforts to provide support but is not obligated to provide any support service if: (i) an error was caused by hardware problems with Customer’s backend system, hardware or software problems with the Devices (except software problems with the Planon client application, provided that such problems are not caused by changes in its code made by Customer), or any changes made by Customer to Planon SaaS Services connector software code, or due to any communication problems arising from Customer’s firewall and/or restrictions on the Devices; (ii) an error results from an operator error, errors in Customer Data, software not supplied by Planon, or use that is not in accordance with the Documentation; (iii) an error is corrected by an upgrade, a new version or release of the Planon SaaS Services connector application or Planon SaaS client application that Customer has failed to implement, provided Planon advised Customer via a notification that such upgrade, version or release corrected an error; (iv) an error was caused by defects within the service and under the control of the wireless provider and/or any other

provider in charge of the data transfer (a) between Customer’s backend system and the Planon SaaS Cloud, and/or (b) between the Planon SaaS Cloud and a Device; and/or (v) an error was caused by any issues rooted in generally available server hardware, the operating systems or the Java Runtime Environment used (Force Majeure).

**4 CONSULTANCY SERVICES.** Consultancy Services are not provided as part of the Planon SaaS Services. If Consultancy Services are explicitly agreed upon in an Order Form, the following applies:

**4.1** Customer will designate a technical contact that has the authority to represent Customer in all matters related to the Consultancy Services (“**Customer Consultancy Representative**”) on which Planon has the right to rely on all statements and communications of such Customer Consultancy Representative relating to the Consultancy Services, whether in verbal or written form. In order for Planon to be able to perform the Consultancy Services,

Customer shall provide on an "as needed" basis technical assistance that Planon reasonably determines to be necessary for Planon to perform the Consultancy Services. Such assistance may include, without limitation, access to engineers, hardware labs, and specialized testing equipment. Planon shall perform the Consultancy Services in a good and workmanlike manner and, where appropriate, in accordance with the agreements and procedures recorded in writing with Customer. All of Consultancy Services shall be performed on the basis of commercially reasonable efforts, unless otherwise agreed in an Order Form. Any agreements concerning a service level shall always be expressly agreed in writing. The Parties acknowledge that any target completion dates specified in an agreed Order Form are estimated dates and that time is not of the essence. Planon will promptly notify Customer if it determines that a target date for a deliverable needs to be modified. If an error is made due to incorrect or incomplete information provided by Customer, Planon shall not be liable for any damage or loss caused by such error. If it has been agreed that the Consultancy Services shall be provided in stages, with or without certain deliverables, Planon is entitled to postpone the start of the Consultancy Services which are part of a stage until Customer has approved the results of the preceding stage in writing. In performing the Consultancy Services, Planon shall only be obliged to follow timely and sensible instructions of Customer if this has been expressly agreed in writing. Planon shall not be required to follow instructions which change or supplement the substance or scope of the agreed Consultancy Services ("Change Requests"). Change Requests will be charged at separately to be agreed fees. If Planon has agreed that certain Consultancy Services will be performed by a particular person, Planon shall always be entitled to replace this person after consultation with Customer with one or more other persons with the same qualifications. Planon's liability for Consultancy Services shall be as set out in article 11 of the Agreement. Any work, including but not limited to, Customized Software, procedures, methods, techniques, advice and/or reports developed and/or provided by Planon to Customer under the Consultancy Services are subject to article 8 of the Agreement, all intellectual property rights thereto are reserved by Planon and Customer is granted a limited license of those rights for internal use only during the Subscription Period. Customized Software is subject to a mandatory separate maintenance and support contract as provided in the Documentation, except as agreed otherwise.

**4.2** Fees for Consultancy Services will be charged as agreed in the Order Form based on either (i) time and materials (actual days charged against agreed per day fees, plus additional costs and expenses) or (ii) a fixed fee basis. Invoices for Consultancy Services will be sent once a month, as applicable and the applicable Fees shall be due and paid within thirty (30) days from the invoice date, unless otherwise agreed. Fees for Consultancy Services on location will be charged on a per day basis (a business day contains 7,5 hours, with a minimum of a half day based on the assumption that the work is done within regular business times (business days between 9.00 am and 5.30 pm). The following Fees apply to overtime by Planon: (i) from 5.30 pm to 0.00: 150 % of the hourly Fee; (ii) from 0.00 to 06.00 am: 200 % of the hourly Fee; (iii) from 06.00 am to 09.00 am: 150 % of the hourly Fee; (iv) Saturdays: 150 % of the hourly Fee; and Sundays and Bank Holidays: 200 % of the hourly Fee. Fees for maintenance and support on Customized Software will be charged as agreed in the Order Form based on 20% of the total Fees for Consultancy Services related to Customized Software and are for (the remainder of) the then-current 12 Months Period (pro rata) due and to be paid as of the moment of granting access to the Customized Software and subsequently due and to be paid as of the commencement of each new 12 Months Period during the Subscription Period.

**4.3** Compensation for the additional availability of Planon employees, e.g. for standby services, will be agreed separately. 50% of the travel time will be charged based on the consultancy rate. Travel and lodging expenses are not included in the consultancy rates and will be invoiced at cost. In case an appointment for certain Consultancy Services is postponed or

cancelled by Customer, Planon is entitled to charge Customer with the following costs in this respect: (i) rescheduling or cancellation up to three weeks before the commencement date: free of charge; (ii) rescheduling or cancellation up to two weeks before the commencement date: 50% of the invoice amount; (iii) rescheduling or cancellation up to one week before the commencement date: 75% of the invoice amount; rescheduling or cancellation less than one week before the commencement date: 100% of the invoice amount.

**4.4** If, at the request of or with prior consent from Customer, Planon has performed work or rendered any other performances which go beyond the substance or scope of the agreed Consultancy Services, Customer shall pay for that work or performance according to Planon's then current rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. Planon shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded. Customer accepts that work or performance as referred to in the previous sentence may affect the agreed or expected time of completion of the Consultancy Services and the mutual responsibilities of Customer and Planon. The fact that additional work (or the demand for it) arises during execution of Consultancy Services shall never be a ground for Customer to rescind or terminate the Order Form for such Consultancy Services. Insofar as a set price has been agreed for the Services, Planon shall, upon request, inform Customer in writing in advance about the financial consequences of the extra work or performance.

**5 TRAINING SERVICES.** Training Services are not provided by Planon to Customer as part of the Planon SaaS Services. If Training Services are explicitly agreed upon in an Order Form, the following applies: Customer may attend the Training Services agreed upon in an Order Form. In addition, Planon organizes open training courses for individual registration. Training Services will be offered when updates, new versions, and new releases for the Planon SaaS Services are generally available. Planon will also make additional Training Services available for various topic-specific items, as determined by Planon in its sole discretion. If the number of registrations justifies doing so in Planon's judgment, Planon shall be entitled to combine the courses with one or more other courses, or to have them take place at a later date. This will be announced no later than seven (7) business days prior to the course date, after which Customer may cancel the course free of charge within two (2) business days. Customer may replace a participant in a Company Training Course by another Customer's employees. (Participation in) Training Services requires Customer to enrol at least six (6) participants, or to enrol less participants at a Fee for six (6) participants. Planon is entitled to set a maximum number of participants for a Company Training Course. For on-site Training Services Customer guarantees that the required facilities will be present. If such facility is, at Planon's sole discretion, not sufficiently present, Planon may suspend the course until the facility is available or cancel the course and may invoice the agreed Fee for such on-site Company Training Course. Cancellation of a participant of a Company Training Course per participant is possible only if the number of participants per Customer does not fall below six (6), or if Customer pays the Fee for a minimum of six (6) participants. Invoices for Training Services will be sent once a month, as applicable, and the applicable Fees shall be due and paid within thirty (30) days from the invoice date, unless otherwise agreed. Cancellation charges for a Company Training Course are as follows: (i) until one week before the course: free of charge; (ii) until the course day concerned: 25% of the invoice amount per cancelled participant; (iii) on the course day concerned: 100% of the invoice amount per cancelled participant. Planon may always demand payment of the amount owed before it begins to provide the Company Training Course.

**Annex B**  
**DATA PROCESSING ADDENDUM**

This Data Processing Addendum (this “**Addendum**”) is an addendum to the SaaS Agreement regarding the use and/or access to the Planon software and/or related services (the “**Agreement**”) between **Customer** (or “**controller**”) and **Planon** (or “**processor**”). This Addendum shall be effective as of the Effective Date. In consideration of the obligations of each party set out in this Addendum, the parties agree as follows:

**1. DEFINITIONS.**

Unless otherwise defined in the Agreement, all capitalized terms used in this Addendum will have the meanings given to them below:

- a. “**Planon Security Standards**” means the security standards attached to this Addendum as Annex 1;
- b. “**Personal Data**” means the “personal data” (as defined in the GDPR) that is uploaded by or on behalf of Customer to the Services and/or processed by Planon under the Agreement;
- c. “**Data Subject**” means identified or identifiable natural person to which the Personal Data are related.
- d. “**Documentation**” means the documentation of the Services accessible in Planon’s online environment, as updated or amended from time to time, including without limitation the description of the Services and the user guides as available within the Services;
- e. “**EEA**” means the European Economic Area;
- f. “**GDPR**” means the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679 of the European Parliament) and any national implementing laws as amended or updated from time to time. For Customers in the UK: Unless or until it is no longer directly applicable in the UK, thereafter any successor legislation to the GDPR or the Data Protection Act 1998;
- g. “**Processing**” has the meaning given to it in the GDPR and “process”, “processes” and “processed” will be interpreted accordingly;
- h. “**Standard Contractual Clauses**” means Annex 3 attached to this Addendum pursuant to article 46 of the GDPR on the basis of the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council;
- i. “**Services**” means the Planon SaaS Services provided by or on behalf of Planon under the Agreement.

**2. DATA PROCESSING.**

**2.1 Scope and Roles.** This Addendum applies when Personal Data is processed by Planon. In this context, Customer acts as “controller” and Planon acts as “processor” with respect to Personal Data (each term as defined in the GDPR).

**2.2 Compliance with Laws.** Each party will comply with all laws, rules and regulations applicable to it and binding on it in the performance of this Addendum, including all statutory requirements relating to data protection including GDPR.

**2.3 Instructions for Data Processing.** Planon will process Personal Data in accordance with Customer’s written instructions, unless required to do otherwise by applicable law, in which case Planon shall provide prior notice to Customer unless prohibited from doing so by law. Customer herewith instructs Planon to process Personal Data as required for the provision of Services in accordance with the provisions of the Agreement and this Addendum. Processing outside the scope of this Addendum will require prior written agreement between Planon and Customer on additional instructions for processing, including agreement on any additional fees Customer will pay to Planon for carrying out such instructions.

**2.4 Access or Use.** Planon will not access or use Personal Data, except as necessary to provide the Services to Customer, unless required to do otherwise by applicable law, in which case Planon shall provide prior notice to Customer unless prohibited from doing so by law.

**2.5 Subject matter and duration of the processing.** The subject matter and duration of the processing of Personal Data are as described in Annex 2 of the Addendum.

**2.6 Nature and purpose of the processing.** The nature and purpose of the processing of Personal Data are as described in Annex 2 of the Addendum.

**2.7 Description of Data Subjects, categories of data and processing operations.** Data Subjects, Categories of data, Special categories of data (if appropriate) and Processing operations are as described in Annex 2 of the Addendum.

**2.8 Disclosure.** Planon will not disclose Personal Data to any third party, except as necessary to comply with this Addendum, the law or a valid and binding order of a law enforcement agency (such as a subpoena, court order or order of a competent administrative authority). If a law enforcement agency or other third party sends Planon a demand for Personal Data, Planon will attempt to redirect the law enforcement agency or other third party to request that data directly from Customer. As part of this effort, Planon may provide Customer’s basic contact information to the law enforcement agency or other third party. If compelled to disclose Personal Data to a third party (including e.g. a law enforcement agency), then Planon will give Customer reasonable notice of the demand to Customer unless Planon is legally prohibited from doing so.

**2.9 Planon Personnel.** Planon restricts its personnel from processing Personal Data

without authorisation by Planon as described in the Planon Security Standards. Planon will impose appropriate contractual obligations upon its personnel, including relevant obligations regarding confidentiality.

**2.10 Datacentre locations.** Customer may specify the datacentre location(s) where Personal Data as part of Services under the Agreement will be processed (each location a “**Region**”). Once Customer has made its choice, Planon will not transfer Personal Data from Customer’s selected Region(s) except as necessary to comply with the Agreement, the law or a valid and binding order of a law enforcement agency as described in article 2.8 above.

**2.11 Application of Standard Contractual Clauses.** Planon warrants that the Standard Contractual Clauses will apply between an affiliate of Planon which is based outside the EEA and Customer, only if and to the extent that (i) Personal Data is transferred either directly or via onward transfer outside the EEA, subject to the data controller’s prior agreement, to any country not recognized by the European Commission as providing an adequate level of protection for personal data (as described in article 45 of the GDPR) and (ii) this data processing does not fall within the territorial scope of the GDPR (for example if Personal Data as part of Services under the Agreement will be processed by an affiliate of Planon which is based outside the EEA in a Region outside the EEA for and per instruction of a Customer located in the EEA. The Standard Contractual Clauses will also apply, to the extent applicable, to transfers from the UK to such a country if the UK is no longer a member of the EEA and no alternative basis for the transfer exists.

**3. SECURITY RESPONSIBILITIES OF PLANON**

**3.1** Planon shall take all measures required pursuant to Article 32 GDPR. The technical and organisational security measures currently implemented by Planon in this respect are described in Annex 1 of the Addendum.

**3.2** The technical and organisational measures include the following:

- (i) Planon has implemented and will maintain measures to maintain the security of the Services as set out in the Planon Security Standards;
- (ii) Planon has implemented and will maintain measures to control access rights for Customer employees and contractors in relation to the Services as set out in article 1.1 of the Planon Security Standards. Customer has implemented and will maintain measures to control access rights to Personal Data; and

**3.3** Planon shall maintain the record of all categories of processing activities carried out on behalf of Customer as provided by Article 30§2 of the GDPR.

**4. RESPONSIBILITIES OF CUSTOMER.** Customer is responsible for reviewing the Planon Security Standards relating to data security and making an independent determination as to whether the Services meet Customer’s requirements.

**5. CERTIFICATIONS.** Planon and/or its affiliate(s) hold a ISO 27001 certificate or such other alternative standards as are substantially equivalent to ISO 27001 and agree to maintain an information security program that complies with the ISO 27001 standards or such other alternative standards as are substantially equivalent to ISO 27001 for the establishment, implementation, control, and improvement of the Planon Security Standards.

**6. CUSTOMER AUDIT.**

**6.1** Planon uses external auditors to verify the adequacy of Planon Security Standards and this Addendum. This audit: (a) will be performed at least annually; (b) will be performed according to ISO 27001 standards or such other alternative standards that are substantially equivalent to ISO 27001; (c) will be performed by independent third party security professionals at Planon’s selection and expense; and (d) will result in the generation of a confidential audit report (“**Report**”), which will be Planon’s Confidential Information. If the Agreement does not include a provision protecting Planon Confidential Information, then Reports will be made available to Customer subject to a mutually agreed upon non-disclosure agreement covering the Report (an “**NDA**”).

**6.2** At Customer’s written request, Planon will provide Customer with a Report in order to enable Customer to reasonably verify Planon’s compliance with the security obligations under this Addendum.

**6.3** Customer agrees to exercise its audit right by instructing Planon to execute the audit as described in this article. With respect to requests for audits other than described in the previous sentence or other requests or instructions by Customer, Planon will respond with reasonable effort and provide Customer with information on Planon standard processes and an estimate of additional fees and costs that Customer would have to pay before Planon has to grant any requests or instructions that Planon does not offer as part of its standard services. Customer shall not be obligated to pay such additional fees or costs, unless and until Customer, at its sole discretion, agrees to such payment obligations in writing. Planon shall

not be obligated to meet Customer's requests or instructions until agreement on additional payments, if any, is reached, and Planon has received such payments, if any.

#### **7. DATA BREACH NOTIFICATION.**

**7.1** In accordance with article 33.2 of the GDPR, Planon shall notify the Customer without undue delay after becoming aware of a personal data breach (as defined in the GDPR).

**7.2** Customer agrees that:

(i) the Customer is responsible for notifying the data breach to the competent authority within 72 hours, if notification to the competent authority is necessary pursuant to article 33 paragraph 1 of the GDPR; and

(ii) Planon's obligation to report or respond to a personal data breach under this article is not and will not be construed as an acknowledgement by Planon of any fault or liability of Planon with respect to the personal data breach.

**7.3** Notification(s) of personal data breach, if any, will be delivered to one or more of Customer's administrators by any means Planon selects, including via email. It is Customer's sole responsibility that Customer has provided the accurate contact information of Customer's administrators.

#### **8. SUBCONTRACTING.**

**8.1 Authorised Subcontractors.** Customer agrees that Planon may use other processor(s) ("**Subcontractor**") to fulfil its contractual obligations under the Agreement. Customer hereby consents to Planon's use of the Subcontractors listed under Annex 4 hereto, and as described in this article. Planon shall inform Customer of any intended changes concerning the addition or replacement of any Subcontractor. The Customer shall be entitled to object to such changes – for a compelling reason – vis-à-vis Planon in due course.

**8.2 Subcontractor Obligations.** Where Planon engages a Subcontractor for carrying out specific processing activities on behalf of the Customer, similar data protection obligations as

set out in this Addendum shall be imposed in writing on that Subcontractor, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of this Addendum as well as generally the mandatory requirements for data processing agreements pursuant to Art. 28 GDPR. Planon will remain responsible for its compliance with the obligations of this Addendum and for any acts or omissions of a Subcontractor that cause Planon to breach any of Planon's obligations under this Addendum.

**9. LIABILITY.** The limitations on liability set out in the Agreement apply to all claims made pursuant to any breach of the terms of this DPA or the GDPR.

**10. CONFLICT.** Except as amended by this Addendum, the Agreement will remain in full force and effect. If there is a conflict between the Agreement and this Addendum on the subject matter of this Addendum, the terms of this Addendum will control.

**11. ASSISTANCE OBLIGATIONS.** Planon will assist Customer, at Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the GDPR with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, in each case to the extent relevant to the processing carried out by Planon.

**12. DATA RETURN / DATA DESTRUCTION.** Upon the expiration or termination of the Agreement, unless otherwise instructed by Customer, Planon makes available to Customer data received from Customer and all data obtained or generated in connection with the Services (including Personal Data). After a prior agreed period, Planon will destruct all data of Customer, including files, databases and backups, and give proof of such destruction to Customer within thirty (30) days from such destruction.

**13. APPLICABLE LAW – DISPUTES.** This Addendum shall be subject to the same terms and conditions as the Agreement as regards the applicable law and the resolution of disputes.

## Annex 1 Planon Security Standards

This Annex describes the technical and organizational security measures and procedures that Planon shall, as a minimum, maintain to protect the security of personal data created, collected, received, or otherwise obtain. Planon will keep documentation of technical and organizational measures identified below to facilitate audits and for the conservation of evidence.

**1. Information Security Program.** Planon will maintain an information security program (including the adoption and enforcement of internal policies and procedures) designed to (a) secure Personal Data against accidental or unlawful loss, access or disclosure, (b) identify reasonably foreseeable and internal risks to security and unauthorized access to Personal Data, and (c) minimize security risks, including through risk assessment and regular testing. Planon will designate one or more employees to coordinate and be accountable for the information security program. The information security program will include (but not limited to) the following measures:

**1.1 Access control.** Planon's employees, contractors and any other persons entitled to perform the Services are only able to access the Personal Data within the scope and to the extent covered by its access permission (authorization). All services are secured with a login and a password. Customer has the possibility to adjust the password policy, e.g. the minimum password length and complexity of the password.

**1.2 Network security.** Planon's infrastructure will be electronically accessible to Planon's employees, contractors and any other persons as necessary to provide the Services. Planon will maintain access control and policies to manage what access is allowed to the infrastructure from each network connection and user, including the use of firewalls or functionally equivalent technology and authentication controls. Planon will maintain corrective action and incident response plans to respond to potential security threats.

**1.3 Encryption of all data.** Every data the Customer enter into Planon is fully encrypted (AES 256). In case of a data breach the data is not readable for a third party.

**1.4 Human resource.** Planon's employees who have access to the Personal Data will be submitted to a background check prior to access, must sign a confidentiality agreement and an annual awareness program is mandatory.

**1.5 Supplier relationship.** Planon will monitor its suppliers by reviewing the audit reports made available by the suppliers. When deemed needed by Planon other methods will be used to monitor the information security compliance. In case of non-compliance, the supplier will be contacted by Planon to address the issue and find a solution.

**1.6 Disaster Recovery.** Planon will maintain a disaster recovery plan for its Cloud solution in a way so it will limit the chance of downtime for the customer. The disaster recovery plan is tested regularly.

**2 Continued Evaluation.** Planon will conduct periodic reviews of the security of its infrastructure and adequacy of its information security program as measured against industry security standards of Planon's choice.

**3 Customer's responsibility.** Customer is responsible for the use of the application(s) made available by Planon. This includes (but not limited to) the use of the Cloud gadgets which enables the Customer to restore, restart or upgrade the application(s), and access to the application(s) using the access methods provided by Planon.

**4 Data Secrecy.** Planon shall commit staff entrusted with the processing of personal data hereunder in written form to keeping any personal data strictly confidential and not to use such personal data for any other purposes except for the provision of the Services to Customer. Planon will further instruct its staff regarding the applicable provisions on data protection.

**5 Data Breach Notice.** The Data processor shall notify the Data controller of any violations of the protection of personal data, providing at least the following information: A description of the nature of the violation, the categories concerned, and the approximate number of individuals and data sets affected;

- The name and contact details of a contact partner for further information;
- A description of the likely consequences of the violation;
- A description of the steps taken in order to rectify or alleviate the violation.



## **Annex 2 Description of Data Subjects, categories of data and processing operations / Subject matter, duration, nature and purpose of the processing of Personal Data**

### **Data Subjects**

Data Subjects include Customer's employees, agents, advisors, contractors and/or customers.

If applicable, additional Data Subjects must be additionally instructed by Customer and agreed between Planon and Customer in writing.

### **Categories of data**

The personal data relating to individuals which is uploaded onto the Services by Customer and/or processed by Planon and/or a Subcontractor under the Agreement:

- First name and surname;
- Telephone number;
- Gender;
- Email address;
- Password
- Profile picture

If applicable, additional categories must be additionally instructed by Customer and agreed between Planon and Customer in writing.

### **Processing operations**

Processing through or by the Services pursuant to the Agreement.

### **Subject matter, duration, nature and purpose of the processing of Personal Data.**

The subject matter, duration, nature and purpose of the processing of Personal Data as part of the Services are, but not limited to, as follows:

Subject matter: On-line access to Software hosted by Planon on behalf of Customer.

Duration: For 12 months periods, unless one of the Parties has terminated three (3) months before the end of the then current 12 months period or if agreed otherwise in the Agreement.

Nature: On-line access to Software hosted by Planon on behalf of Customer.

Purpose:

- To enable Customer access on-line the Software hosted by Planon on behalf of Customer;
- To conclude and carry out the contract between Planon and Customer;
- To comply with legal obligations of Planon.

### **Contact details of Processor:**

The contact details for privacy related issues are

Email:

[privacy@planonsoftware.com](mailto:privacy@planonsoftware.com)

Phone:

(+31) 24 6413135 (ask for security department)

### **Contact details of Controller:**

Name DPO (if applicable):

Email address:

(reporting) Data breach email address:

Phone:

Or as specified in the Order Form or other agreed in writing between the Parties.

## Annex 3 Standard Contractual Clauses

### Commission Decision C(2010)593 Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

The entity identified as "Customer" or "Planon" in the Addendum (the "data exporter")

and

The applicable Planon affiliate (the "data importer")

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

#### Definitions

For the purposes of the Clauses:

(a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) 'the data exporter' means the controller who transfers the personal data;

(c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) 'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### Clause 2

##### Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

#### Clause 3

##### Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the sub processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub processor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### Clause 4

##### Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

#### Clause 5

##### Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will

promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

- (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
- (ii) any accidental or unauthorised access, and
- (ii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement concludes under the Clauses to the data exporter.

#### **Clause 6 Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

#### **Clause 7 Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### **Clause 8**

##### **Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

#### **Clause 9**

##### **Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

#### **Clause 10**

##### **Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

#### **Clause 11**

##### **Subprocessing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

#### **Clause 12**

##### **Obligation after the termination of personal data processing services**

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

**Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

**Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

**Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

**Categories of data**

The personal data transferred concern the following categories of data (please specify):

**Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

The data exporter is the Legal entity identified as “Customer” in the Addendum. The data importer is the Legal entity identified as “Planon” in the Addendum and its affiliates thereto.

Data subjects, Categories of data, Special categories of data (if appropriate) and Processing operations are as described in Annex 2 of the Addendum.

**APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties. By signing the signature page on page 1 of this Addendum, the parties will be deemed to have signed this Appendix 2.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

The technical and organisational security measures implemented by the data importer are as described in Annex 1 of the Addendum.

**Annex 4**  
**Subcontractor(s) authorised by Customer**

The following entity acts as Subcontractor:

**Amazon Web Services, Inc**, with, unless agreed otherwise in the Agreement, data center at Frankfurt am Main, Germany.

If in the Agreement is **PMFS agreed**, then the following entities act as Subcontractor:

**QSC AG**, with, unless agreed otherwise in the Agreement, data center in Munich and Nuremberg (mirrored), Germany

**Movilizer GmbH**, data is (temporarily) stored at the data centers of **QSC AG**.