

Appendix 5: Planon's template Product Terms and Conditions (PTC)

This Product Terms and Conditions (PTC) is made by and between Ubigreen SAS ("**Supplier**") and the legal entity which has ordered the Products, Related Services and/or the Supplier Software under an Order Form ("**Customer**"), each a "**Party**", and jointly the "**Parties**". This PTC shall be effective upon delivery of the Products, Related Services and/or the Supplier Software ("**Effective Date**").

1. DEFINITIONS

- 1.1 Where capitalized in this PTC, capitalized terms shall have the meanings as set forth within the body of the PTC or as set forth in this article.
- a. "**Affiliate**" means 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.
 - b. "**Customer Data**" means any data submitted by or for Customer to the Products and/or Related Services and all results from processing such data, including derivative works thereof.
 - c. "**Product Specification**" means the documentation of the Products, Related Services and/or the Supplier Software made accessible by Supplier, as updated or amended from time to time, including without limitation the description of the Supplier Software including the related support services and the user guides.
 - d. "**Excluded Events**" means Planned Maintenance Times and issues (i) caused by factors outside of Supplier'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 Supplier Software, (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 Supplier's direct control) and/or (iv) arising from Supplier's suspension and termination of Customer's right to use the Supplier Software in accordance with this PTC.
 - e. "**Order Form**" means an ordering document specifying the Products, Related Services and/or the Supplier Software to be provided thereunder that is entered into between Customer and the applicable Planon entity or any of its authorized reseller(s).
 - f. "**Planned Maintenance Times**" means maintenance times in minutes in each 12 consecutive months period during the Subscription Period (each a "**12 Months Period**"), which are set by Supplier by means of an advance notice at five (5) business days before. Supplier 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.
 - g. "**Planon**" means either 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 the trade register under number 09102087 or its applicable Affiliate which has entered into the Order Form with Customer.
 - h. "**Product(s)**" means the hardware product(s) provided by the Supplier as set forth in the Order Form.
 - i. "**Related Services**" means all services, support, maintenance and updates rendered or to be rendered and activities and tasks performed or to be performed by or on behalf of Supplier to Customer under this PTC and as set forth in the Order Form.
 - j. "**Service Availability**" means the availability of the Supplier Software in production environment essentially for the usage of Supplier Software 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.
 - k. "**Supplier Software**" means the software as a services and related support services thereto as part of the Product that are provided by Supplier and/or its licensors as more specifically defined and set forth in this PTC, including associated offline components, as described in the Product Specification.
 - l. "**Total Minutes**" mean the total minutes of the respective 12 Months Period.

2. SPECIFIC CONDITIONS FOR PRODUCTS

- 2.1 **Product warranty.** Supplier warrants for a period of twenty four (24) months from the delivery date ("**Product Warranty Period**") that the Products conform to the specifications in the Product Specification. Customer shall always examine the Products upon delivery and shall notify Supplier immediately in writing if any defects are found. If during the warranty period a Product becomes defective, Supplier may choose to repair the defective products or deliver new and substituting products. Supplier shall inform the Customer about the applicable return procedures and shall cover the transportation costs for the return of the defective products from the location of delivery as stated in the Order Form. This product warranty doesn't apply in case the use of the Products deviates from user instructions and guidelines as included in the relevant Product Specification, lack of maintenance, repair or modification undertaken without prior written consent of Supplier, adjustments and/or replacements of the Products due to circumstances outside the control of Supplier which may impair the usability of the Products.
- 2.2 **Installation and maintenance of Products.** Products shall be delivered ready for installation. Unless otherwise agreed in writing, installation of the Product(s) and/or Related Services are not included. Supplier may choose to provide this under a separate agreement or refer Customer to a third-party able to provide such services to Customer.

3. SPECIFIC CONDITIONS FOR SUPPLIER SOFTWARE AND RELATED SERVICES

- 3.1 **Supplier Software.** In case Supplier provides Supplier Software to Customer as part of the Product, this will be indicated in an Order Form. In such case Supplier grants Customer the right to access and use the Supplier Software pursuant to this PTC, the Product Specification and the applicable Order Form for the duration as agreed in the Order Form. The foregoing grant of rights applies to Affiliates of Customer as well provided that Customer is responsible for compliance by its Affiliates with this PTC and any breach thereof by an Affiliate shall constitute a breach of this PTC by Customer. Supplier expressly reserves all rights in its Supplier Software. 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 Supplier (or third party supplier(s) or licensor(s), if applicable) and that the Supplier Software is provided to Customer on a "Software as a Service" basis only and not sold, assigned or transferred to Customer. Customer shall prevent any unauthorized access to, or use of, the Supplier Software and Customer will promptly notify Supplier of any such unauthorized access or use. Customer shall be responsible for its users in compliance with this PTC, for the accuracy, quality, integrity and legality of Customer Data. Customer shall not (i) use the Supplier Software 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 Supplier Software 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 Supplier Software 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 Supplier Software has been introduced in backend systems; or (iv) attempt to gain unauthorized access to the Supplier Software or to related systems or networks.
- 3.2 **Supplier Software warranty.** During the Subscription Period Supplier ensures that (a) the Supplier Software will operate in accordance with this PTC, the Order Form(s) and the Product Specification and that; (b) the Supplier Software will be free from Malicious Code; provided, that (i) Customer has implemented and used the Supplier Software in accordance with all instructions supplied; (ii) Customer notifies Supplier in writing of any defect within three (3) business days after the appearance thereof; (iii) Customer has, if applicable and/or if requested by Supplier, installed all updates/upgrades, new versions, and new releases made available by Supplier with respect to the Supplier Software, and all updates/upgrades recommended by Supplier with respect to any third party software products that may materially affect the performance of the Supplier Software on the Devices used; and (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 Supplier Software; (vi) Customer is not in material default of any provision of the PTC.
- 3.3 **Supplier Software Subscription.** The term of a subscription to the Supplier Software shall as specified in the applicable Order Form. Except as otherwise specifically specified in an Order Form, such subscription shall continue for an initial term of twelve (12) months (the "**Initial Subscription Period**"); thereafter, the subscription term shall be automatically extended for successive twelve (12) months periods (each an "**Extended Subscription Period**"), unless either Customer or Planon have terminated the subscription in accordance with the Order Form, in which case the subscription to the Supplier Software shall terminate upon the expiry of the applicable Initial

Subscription Period or Extended Subscription Period (all together the “**Subscription Period**”). Upon the effective date of termination of the subscription for any reason, Customer shall cease any use whatsoever of the Supplier Software and all other information and materials provided to Customer.

3.4 **Software Availability.** Supplier shall provide Customer a Service Availability of 99,5% per 12 Months Period and Supplier shall regularly update the software made available to Customer.

3.5 **Support.** The following applies to the support services as provided by Supplier related to Products and/or Supplier Software. For the Product during the Product Warranty Period and for the Supplier Software during the Subscription Period, one or more application managers, as designated by Customer and agreed between Customer, Supplier and/or Planon (each a “**Customer Application Manager**”), are granted access to technical support as set forth in this article. Supplier shall respond to the request within the response time periods provided below. Such request or issue, will be provided by the Customer Application Manager with a clear description thereof, if applicable with a Customer request number and an indication of the urgency level (together “**Incident**”) to the Planon support desk (“**Planon 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. Only Customer Application Managers may report Incidents to the Planon Support Desk. The Planon Support Desk shall assess the Incident and if validated assign the Incident to the Supplier. The support desk of the Supplier (or the Planon Support Desk on Supplier’s behalf (herein after the “**Supplier Support Desk**”) shall respond to Customer 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 Products and/or Supplier Software used in production environment only. The Planon Support Desk and Supplier Support Desk are available on business days (excluding bank and public holidays) during business hours as further detailed in the most current version of the Planon Support Handbook. Supplier will respond to Customer to an Incident within the response time provided in Table 1 below. Five (5) Incident types and related support services are identified in table 1 as follows: “**Service Availability Incident**” is an Incident which has direct impact on the availability of the Product and/or Supplier Software. The Supplier 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 Products and/or Supplier Software. 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 Products and/or Supplier Software. An Enhancement Request will be noted by the Supplier Support Desk and included in the Supplier 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 Supplier Products and/or Supplier Software. The Supplier 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 Products and/or Supplier Software. The Supplier 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 / STAND-STILL / P1 | The highest urgency level; only assigned in very exceptional circumstances; to be reported by phone. | The Supplier Product and/or Supplier Software is seriously disrupted, with the majority of users down | 15 minutes |
| | | There is limited functionality of the Supplier Products and/or Supplier Software, rendering Customer incapable of fulfilling important internal needs in the short term. | |
| | | The Supplier 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 Supplier Product and/or Supplier Software is disrupted at a level to cause inconvenience for a number of users but not all users | 4 hours |
| | | There is partial limited functionality of the Supplier Product and/or Supplier Software, but Customer is still able to fulfil its own needs, and/or Supplier 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 |

4. MISCELLANEOUS

4.1 **Confidential Information.** 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 PTC 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.

4.2 **Privacy.** Supplier guarantees and warrants that no personal data within the meaning of GDPR will be processed in the Products, Related Services and/or the Supplier Software. If the Products, Related Services and/or the Supplier Software process personal data, Supplier shall inform Customer about such processing and shall enter into a data processing agreement.

4.3 **Indemnification.** Supplier 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 Supplier Products, Supplier Software and/or Related Services infringes any intellectual property rights from a third party and Supplier shall indemnify and hold harmless Customer and Planon from damages, costs, and reasonable attorneys’ fees, if any, finally awarded in such suit or the amount of the settlement thereof; provided that (a) Supplier shall have the right to replace or modify the alleged infringing Supplier Products, Supplier Software and/or Related Services with a non-infringing version under the condition that Customer shall use this replaced or modified version; (b) Supplier is promptly notified in writing of such claim or suit, (c) Supplier shall have the sole control of the defence and/or settlement thereof, and (d) Customer furnishes to Supplier, on request, all relevant information available to Customer and reasonable cooperation for such defence.

4.4 **Liability.** 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. Supplier’s aggregate liability with respect to any matters whatsoever arising under or in connection with this PTC (including non-contractual claims) shall not exceed EURO 100,000 or the amounts for which Supplier is insured.

4.5 **General.** This PTC executed by the Parties is the entire agreement between the Parties regarding the subject matter hereof. This PTC The rights and obligations of each Party under this PTC 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. 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 PTC. If any provision of this PTC 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. This PTC will be governed exclusively by the laws of the Netherlands. If Supplier and Customer are located in the European Union the parties irrevocably consent to the exclusive jurisdiction of the competent court in Arnhem, the Netherlands in connection with any dispute or action arising out of or in connection with this PTC, the overall relationship between the parties (if any), as well as any tort claims related to the PTC. If Supplier and/or Customer is/are located outside the European Union the Parties irrevocably consent to settle any dispute or action arising out of or in connection with this PTC, the overall relationship between the Parties (if any), as well as any tort claims related to the PTC, in accordance with the Arbitration Rules of the

Netherlands Arbitration Institute. The place of arbitration shall be Nijmegen, the Netherlands and the proceedings shall be conducted in the English language. The Parties agree that the United Nations Convention of Contracts for the International Sale of Goods shall not apply to this PTC. Neither Party shall be liable for non-performance or delay caused by wars, riots, strikes, fires, floods, earthquakes, government restrictions, failure or errors of the internet or causes beyond its reasonable control, together: "Force Majeure".