

# Data Processing Addendum

## *Based on the General Data Protection Regulation (GDPR)*

This Data Processing Addendum ("**Addendum**") forms part of your relevant Planet eStream terms and conditions, defined as an existing Licence Agreement (incorporating cloud platform terms), the accompanying Licence Schedule and the Planet eStream Connect Agreement ("**Principal Agreement**") (or other such titled written or electronic agreement addressing the same subject matter) between: (i) **Planet Enterprises Ltd ("Supplier")** acting on its own behalf; and (ii) the **Licensed Organisation ("Customer")** acting on its own behalf and as agent for each Customer Affiliate.

The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalised terms not otherwise defined herein shall have the meaning given to them in the Principal Agreement. Except as modified below, the terms of the Principal Agreement shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement. Except where the context requires otherwise, references in this Addendum to the Principal Agreement are to the Principal Agreement as amended by, and including, this Addendum.

### **1. Definitions**

1.1 In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1 "**Applicable Laws**" means (a) European Union or Member State laws with respect to any Customer Personal Data in respect of which any Customer Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Customer Personal Data in respect of which any Customer Group Member is subject to any other Data Protection Laws;

1.1.2 "**Customer Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership of the Customer, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;

1.1.3 "**Customer Group Member**" means Customer or any Customer Affiliate;

1.1.4 "**Customer Personal Data**" means any Personal Data Processed by a Contracted Processor on behalf of a Customer Group Member pursuant to or in connection with the Principal Agreement;

- 1.1.5 **"Contracted Processor"** means Supplier or a Sub-processor;
- 1.1.6 **"Data Protection Laws"** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 1.1.7 **"EEA"** means the European Economic Area;
- 1.1.8 **"EU Data Protection Laws"** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
- 1.1.9 **"GDPR"** means EU General Data Protection Regulation 2016/679;
- 1.1.10 **"Processor"** means an entity that processes Personal Data on behalf of a Controller
- 1.1.11 **"Restricted Transfer"** means:
- 1.1.11.1 a transfer of Customer Personal Data from any Customer Group Member to a Contracted Processor; or
- 1.1.11.2 an onward transfer of Customer Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,
- in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under section 1.1.13 below;
- 1.1.12 **"Services"** means the services and other activities to be supplied to or carried out by or on behalf of Supplier for Customer Group Members pursuant to the Principal Agreement;
- 1.1.13 **"Standard Contractual Clauses"** means the contractual clauses adopted by the European Commission for the transfer of personal data from data controllers in the EU to data processors in jurisdictions outside the European Economic Area (EEA) (Decision 2010/87/EU)
- 1.1.14 **"Sub-processor"** means any person (including any third party, but excluding an employee of Supplier or any of its sub-contractors) appointed by or on behalf of Supplier to Process Personal Data on behalf of any Customer Group Member in connection with the Principal Agreement; and

- 1.2 The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

The word "**include**" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly

## **2. Processing of Customer Personal Data**

### 2.1 Supplier shall:

2.1.1 comply with all applicable Data Protection Laws in the Processing of Customer Personal Data; and

2.1.2 not Process Customer Personal Data other than on the relevant Customer Group Member's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case Supplier shall to the extent permitted by Applicable Laws inform the relevant Customer Group Member of that legal requirement before the relevant Processing of that Personal Data.

### 2.2 Each Customer Group Member:

2.2.1 instructs Supplier (and authorises Supplier to instruct each Sub-processor) to:

2.2.1.1 Process Customer Personal Data; and

2.2.1.2 in particular, transfer Customer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with the Principal Agreement; and

2.2.2 warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 2.2.1 on behalf of each relevant Customer Affiliate.

2.3 Appendix 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Customer Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Customer may make reasonable amendments to Appendix 1 by written notice to Supplier from time to time as Customer reasonably considers necessary to meet those requirements. Nothing in Appendix 1 (including as amended pursuant to this section 2.3) confers any right or imposes any obligation on any party to this Addendum.

## **3. Supplier Personnel**

Supplier shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Customer Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

#### **4. Security**

##### **4.1 Security Measures by Supplier**

4.1.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Supplier shall in relation to the Customer Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4.1.2 In assessing the appropriate level of security, Supplier shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

##### **4.2 Security Measures by Customer**

4.2.1 Customer is responsible for using and configuring the Services in a manner which enables Customer to comply with Data Protection Laws, including implementing appropriate technical and organisational measures.

#### **5. Sub-processing**

5.1 Each Customer Group Member authorises Supplier to appoint (and permit each Sub-processor appointed in accordance with this section 5 to appoint) Sub-processors in accordance with this section 5 and any restrictions in the Principal Agreement.

5.2 Supplier may continue to use those Sub-processors already engaged by Supplier as at the date of this Addendum. Sub-processors engaged are:

5.2.1 As at the date of this Addendum, Supplier engages Microsoft Corporation to provide Services to Supplier and Customer Group Members and therefore Microsoft Azure acts as a Sub-processor in this respect. These Services are hosted within the EEA.

- 5.3 Supplier shall give Customer prior written notice of the appointment of any new Sub-processor, including full details of the Processing to be undertaken by the Sub-processor. If, within 30 days of receipt of that notice, Customer notifies Supplier in writing of any objections (on reasonable grounds) to the proposed appointment:
- 5.3.1 Supplier shall work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Sub-processor; and
  - 5.3.2 where such a change cannot be made within 30 days from Supplier's receipt of Customer's notice, notwithstanding anything in the Principal Agreement, Customer may by written notice to Supplier with immediate effect terminate the Principal Agreement to the extent that it relates to the Services which require the use of the proposed Sub-processor.
- 5.4 With respect to each Sub-processor, Supplier shall:
- 5.4.1 ensure that the arrangement between on the one hand (a) Supplier, or (b) the relevant intermediate Sub-processor; and on the other hand the Sub-processor, is governed by a written contract including terms which offer at least the same level of protection for Customer Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;

## **6. Data Subject Rights**

- 6.1 Taking into account the nature of the Processing, Supplier shall assist each Customer Group Member by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer Group Members' obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
- 6.2 Supplier shall:
- 6.2.1 promptly notify Customer if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Customer Personal Data; and
  - 6.2.2 ensure that the Contracted Processor does not respond to that request except on the documented instructions of Customer or the relevant Customer Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case Supplier shall to the extent permitted by Applicable Laws inform Customer of that legal requirement before the Contracted Processor responds to the request.

## **7. Personal Data Breach**

- 7.1 Supplier shall notify Customer without undue delay upon Supplier or any Sub-processor becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information to allow each Customer Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- 7.2 Supplier shall co-operate with Customer and each Customer Group Member and take such reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **8. Data Protection Impact Assessment and Prior Consultation**

Supplier shall provide reasonable assistance to each Customer Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required of any Customer Group Member by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

## **9. Deletion or return of Customer Personal Data**

Following expiration or termination of the Principal Agreement and cessation of any Services involving the Processing of Customer Personal Data, Supplier will delete or return to Customer all Personal Data in Supplier's possession as provided in the Principal Agreement, except to the extent Supplier is required by applicable law to retain some or all of the Personal Data (in which case Supplier will archive the data and implement reasonable measures to prevent the Personal Data from any further processing). The terms of this Addendum will continue to apply to such Personal Data.

## **10. Audit Reports**

10.1 Subject to section 10.2, Supplier shall make available to each Customer Group Member on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Customer Group Member or an auditor mandated by any Customer Group Member in relation to the Processing of the Customer Personal Data by the Contracted Processors.

10.2 Information and audit rights of the Customer Group Members only arise under section 10.1 to the extent that the Principal Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

**11. Restricted Transfers**

11.1 Supplier does not perform International transfers of Customer Personal Data to countries outside of the EEA, as part of the provision of Services to the Customer.

**12 Severance**

12.1 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Principal Agreement with effect from the date first set out below.

On Behalf of **Customer**

Name of Organisation .....

Signature .....

Name .....

Title .....

Date Signed .....

On Behalf of **Planet Enterprises Ltd**

Signature ..... 

Name ..... John Stowe

Title ..... Senior Technical Advisor

Date Signed ..... 11/04/2018

## **APPENDIX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA**

This Appendix 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

### ***Subject Matter and Duration of the Processing of Customer Personal Data***

The subject matter and duration of the Processing of the Customer Personal Data are set out in the Principal Agreement and this Addendum.

The subject matter of the processing under the Principal Agreement is the Customer Personal Data.

The duration of the processing under the Principal Agreement is determined by Customer and as set forth in the Principal Agreement.

### ***The Nature and Purpose of the Processing of Customer Personal Data***

Planet Enterprises Ltd and its Sub-processors are providing Services or fulfilling contractual obligations to the Customer as described in the Principal Agreement. These Services may include the processing of Personal Data by Planet Enterprises Ltd and its Sub-processors on systems which may contain Personal Data.

### ***The Types of Customer Personal Data to be Processed***

Personal Data that is submitted to the Services by the Customer may include by design, but is not limited to:

Names	(First Name, Last Name, Initials, Title, User Account login Name)
Email Address	(Contact Information)
IP Address	(Connection Data)
Passwords	(‘Built-In’ Planet eStream User Accounts Only)

Other types of Personal Data submitted by Customer are at its sole discretion. Planet eStream software applications and related systems are acting only as a data processor under the instruction of the data controller (Customer). It is essential that Customer acting as the data controller establishes Lawful Basis for processing of all Personal Data submitted to the Planet eStream Services.

### ***The Categories of Data Subject to whom the Customer Personal Data Relates***

The data subjects of Customer may include Customer’s end users, employees, contractors, suppliers, and other third parties.

### ***The Obligations and Rights of Customer and Customer Affiliates***

The obligations and rights of Customer and Customer Affiliates are set out in the Principal Agreement and this Addendum.