



## FACTSHEET

Revised: 30 March 2009

# Fixed Satellite Services Terms and Conditions

## Russia

The following terms and conditions ("Terms and Conditions") apply to end-users ("Customer(s)") using fixed satellite services, including but not limited to SCPC, StratosITek®, HughesNet® and SkyWAN services ("Services") and/or associated sale or rental of equipment ("Equipment") provided by Plenexis GmbH, a company organized and existing under the laws of Germany ("Plenexis").

### 1. PROVISION OF SERVICES AND EQUIPMENT BY PLENEXIS

- (A) These Terms and Conditions, a Plenexis approved Subscriber Application and Services Agreement ("Subscriber Application") and/or Customer's written acceptance of a Plenexis quotation, when taken together, will govern the provision by Plenexis of Services and/or Equipment (collectively referred to as "Network Services") to Customer. There are no other oral or implied agreements, warranties or understandings, and from time to time, Plenexis may, at its sole discretion, add, delete or modify the portfolio of Network Services made available to Customer under these Terms and Conditions. Unless otherwise stated on the quotation, all quotations are issued subject to space segment availability. Any terms and conditions (pre-printed or otherwise) on Customer's standard forms (including without limitation, a Customer purchase order) will be null and void, without effect, and will not add to, delete from or change any of these Terms and Conditions. Customer's acceptance of a Plenexis written quotation shall confirm its acceptance of these Terms and Conditions, which shall be deemed incorporated therein by reference. Notwithstanding the absence of any separate written documentation between the parties, acceptance of such Plenexis written quotation and/or these Terms and Conditions by electronic means (including facsimile or electronic mail) shall create a binding contract. Customer agrees to confirm such acceptance by a separate, duly-signed written communication, to be sent to Plenexis by recognized international air courier service or first class airmail, upon the request of Plenexis.
- (B) Customer is responsible for notifying Plenexis, in writing, of any requirement to permanently deactivate or suspend Network Services. Permanent deactivation or suspension of Network Services will be effective only after Plenexis' receipt and written acknowledgement of Customer's written request. If applicable, and at Plenexis' sole discretion, Customer may be liable for early termination fees if Network Services are terminated prior to the contracted term (as defined in Article 13(E)) of such Network Services. Furthermore, Customer may continue to be liable for payment of Network Services that are suspended by Customer, during the period of suspension, unless otherwise agreed in writing by Plenexis.

### 2. SERVICE SPECIFIC TERMS AND CONDITIONS

- (A) Customer understands and acknowledges the following: (a) Plenexis and its parent and affiliated companies do not own or operate their own satellite communication system, (b) Plenexis and its parent and affiliated companies are resellers of Network Services, and (c) Plenexis purchases Network Services from third party suppliers (collectively the "Supplier(s)"), under strict contractual terms and conditions required of all resellers.
- (B) Services may be temporarily unavailable or limited because of capacity limitations, network equipment failures, distress or any other emergency pre-emption as required by Plenexis or a Supplier. Services may also be temporarily interrupted or curtailed due to modifications, upgrades, repairs or similar activities of Plenexis' Supplier. The use and restoration of certain space segment is governed by Part 64, Subpart D of the FCC's Rules and Regulations, which specify the priority system for such activities. Plenexis has no liability for any Supplier networks.



BEYOND THE HORIZON®

- (C) The obligations of Plenexis and the terms for the sale and provision of Network Services are subject to the terms of the agreements under which Plenexis purchases the Network Services from its Suppliers (each an "Other Contract"). To the extent fulfillment of any obligation of Plenexis under these Terms and Conditions is not permissible or possible under an Other Contract, the Other Contract will prevail and such obligation will be suspended or modified to the extent required by the Other Contract.
- (D) **Improper Illumination.** "Improper Illumination" is defined as any of the following: (a) transmissions other than as specified in writing by Plenexis, or (b) transmissions of an incorrect frequency, or (c) transmissions at excessive power levels, or (d) any illumination that could cause harm to or interference on any transponder or space segment on any satellite utilised to provide the Services. If Plenexis detects or is informed of any Improper Illumination of any Service provided under these Terms and Conditions, Plenexis will immediately notify Customer. Customer will take immediate corrective action to stop the Improper Illumination. If capable, and as soon as capable, Plenexis will temporarily suspend, with no liability to Customer, any affected Services should Customer be unable to rectify the Improper Illumination within four (4) minutes from notification of the Improper Illumination to Customer as set forth in the preceding sentence. Such affected Services will be suspended until Customer demonstrates to Plenexis' sole satisfaction that the Improper Illumination is rectified. Customer will be charged and will pay any amount that Plenexis is required to pay to its Suppliers or other telecommunications service provider(s) under any Other Contract due to any Improper Illumination attributable to Customer. Plenexis will timely inform Customer in writing of any liability Plenexis incurs as a result of such Improper Illumination. It is Customer's responsibility to provide Plenexis, on or before the Due Date, with a telephone number(s) at which Plenexis can contact Customer twenty-four hours per day, seven days per week, 365/366 days per year. In addition, Plenexis has the right, in its sole discretion, to take immediate action, including but not limited to suspending or terminating any affected Service(s), in order to protect Plenexis' services and/or interests.
- (E) **StratosITek® Services.** StratosITek is a contended service, for which a contention ratio is applicable. Customer will adhere to Plenexis' fair access policy, a copy of which is available upon written request to Plenexis. Plenexis implements weight-based fair queuing algorithms to give all customers equal and fair access to network resources if no Customer specific QoS is implemented.
- (F) **Terrestrial Services.**
- (i) Customer understands and acknowledges the following: (a) Plenexis and its parent and affiliated companies do not own or operate their own terrestrial network, (b) Plenexis and its parent and affiliated companies are resellers of Network Services, and (c) Plenexis purchases Network Services from third party suppliers (collectively the "Supplier(s)"), under strict contractual terms and conditions required of all resellers.
- (ii) The obligations of Plenexis and the terms for the sale and provision of terrestrial Network Services are subject to the terms of Other Contract(s). To the extent fulfillment of any obligation of Plenexis under these Terms and Conditions is not permissible or possible under an Other Contract, the Other Contract will prevail and such obligation will be suspended or modified to the extent required by the Other Contract. **PLENEXIS MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE AVAILABILITY OF TERRESTRIAL NETWORK SERVICES.**

### 3. EQUIPMENT

#### (A) Purchased Equipment.

- (i) Subject to clause 3(A)(ii) below, risk of loss in Equipment purchased by Customer will transfer upon delivery to Customer and delivery will take place when such Equipment is shipped by Plenexis. Unless otherwise agreed in writing, Plenexis will ship all Equipment EXW (Ex-Works as per the Incoterms 2000) Plenexis' facility in the United Kingdom or Germany to Customer's designated location, and all shipping costs will be to Customer's account. In no event will Plenexis have any liability in connection with any shipment, nor will the carrier be deemed to be an agent of Plenexis. Unless otherwise agreed in a quotation, Customer agrees to accept partial shipments.
- (ii) If Customer is unable to accept shipment/delivery of Equipment for any reason, Plenexis will store such Equipment, subject to availability of space and free of charge, for a period of thirty (30) days from notification to Customer that the Equipment is ready for shipment. If Customer is still unable to accept shipment/delivery of Equipment after the aforesaid thirty (30) day period, then Plenexis will charge Customer, and Customer will pay, a storage fee for such Equipment at a rate of One Hundred (\$100.00) United States Dollars, per month, for each 4 ft x 4 ft x 4 ft pallet space, or fraction thereof, required to store the Equipment. Customer will be solely responsible for risk of loss or damage in any Equipment stored by Plenexis pursuant to this clause.



- (iii) Title to Equipment purchased by Customer will transfer from Plenexis to Customer upon Plenexis' receipt of the full sale price and any applicable taxes, fees, and freight charges. Until such time, Customer will keep Equipment that is owned by Plenexis free from any liens, claims or encumbrances.
  - (iv) Plenexis warrants that new Equipment delivered to Customer will perform substantially in accordance with the specifications contained in the technical documentation accompanying the Equipment for a period of one (1) year/(365 days) from the date of delivery. All refurbished or used Equipment or accessories sold hereunder will be free from defects in workmanship and material for a period of thirty (30) days from the date of delivery. All repairs covered by such warranty will be performed at no charge to Customer. For any repairs requested after the warranty period, Plenexis will provide a quotation for such repairs and if the quotation is accepted and the work authorised by Customer, the repairs will be performed at Customer's expense. In the event of a warranty claim, Plenexis will, at its sole option: (a) repair the Equipment so that it performs as set forth above, (b) replace the nonconforming Equipment with Equipment which performs as set forth above, or (c) if Plenexis determines that neither of the foregoing is commercially reasonable, upon return of the Equipment to Plenexis, refund all sums paid to Plenexis by Customer with respect to the nonconforming Equipment. The foregoing Equipment warranty is Customer's sole remedy in the event of a warranty claim, and is a 'back-to-base' warranty, such that Customer will bear the transportation cost of returning any nonconforming or defective Equipment to Plenexis' designated premises in the United States, United Kingdom or Germany and also the transportation cost of returning the Equipment following a repair from Plenexis' premises to Customer's premises. If Customer requires a Plenexis technician to travel to Customer's location to perform warranty services, Customer is responsible for all costs associated with the travel including, but not limited to, transportation costs, living expenses, etc. Plenexis will provide Customer a written estimate of such costs upon request.
  - (v) The foregoing warranty does not extend to Equipment which is altered, improperly installed by a third party or which fails or is damaged after delivery due to accident, act of God, shipment or handling, or due to storage, operation, use, or maintenance in a manner or environment which does not conform to the Equipment manufacturer's instructions or specifications provided by Plenexis at the time of delivery to Customer.
  - (vi) There will be no refunds for used Equipment returned to Plenexis. If Customer returns unused Equipment to Plenexis in its original package, in its original condition, and within thirty (30) days of delivery, Plenexis will refund to Customer eighty five percent (85%) of the purchase price, the remaining fifteen percent (15%) of the purchase price representing a restocking fee. Customer will bear all shipment and insurance costs related to such return shipment.
  - (vii) All Equipment returned to Plenexis must have a Plenexis-issued Returned Merchandise Authorisation ("RMA") number prominently displayed on the packaging and must be returned to the Plenexis facility as directed by Plenexis. An RMA number may be obtained by calling Plenexis' Customer Care at +44 134 658 5900 or by email at [csc.mormond.hill@Plenexisglobal.com](mailto:csc.mormond.hill@Plenexisglobal.com). Equipment returned without an RMA number will be returned to Customer at Customer's expense.
- (B) Rental Equipment. Plenexis will retain title to any and all Equipment that is rented to Customer. Unless otherwise agreed, all rental Equipment will be shipped EXW Plenexis' facility in the United Kingdom or Germany, to Customer's designated premises. Risk of loss in the Equipment will transfer to the Customer upon delivery of the Equipment, and delivery will have deemed to take place when the Equipment is loaded onto the carrier's vehicle. Customer agrees, at Customer's sole expense, to (i) insure such Equipment against loss by fire, theft and any other casualty covered by standard fire and extended coverage insurance, for the full current replacement value, (ii) keep the Equipment free and clear from all adverse liens, security interests and encumbrances, (iii) provide a proper and suitable environment (including adequate power and appropriate temperature control) for the Equipment, in accordance with Plenexis and/or the manufacturer's specifications, (and any failure to provide such proper and suitable environment will void any warranty on the Equipment), (iv) keep the Equipment clearly labelled as property of Plenexis, in good order and repair and comply with any maintenance instructions given by Plenexis, (v) not transfer these Terms and Conditions, the Equipment or all or part of Customer's interest therein, and (vii) return the Equipment to Plenexis at the end of the rental term in good condition, normal wear and tear excepted. Plenexis may charge Customer and Customer will pay Plenexis for the fair market value of the Equipment, in its reasonable determination, if Customer fails to return

the Equipment to Plenexis within thirty (30) days of the end of the rental term. Breach by Customer of any of the foregoing provisions regarding rental Equipment will entitle Plenexis or its representatives to enter Customer's premises where the Equipment is reasonably believed to be located, and remove such Equipment without any legal process or notice, and without being liable for trespass or damage, and to declare all amounts remaining unpaid to be immediately due and payable by Customer.

- C) Floor Space, Conduit Access, and Electrical Power – Customer must provide the following to Plenexis, at its own expense; the proper environment, lightning protection, crane (if necessary), space, electrical power, and telecommunications connections, equipment space, supporting structures, lighting, inside wiring, and unimpeded access to and egress from its premises required to install, operate, repair, maintain, inspect, re-provision, disconnect and remove any Equipment utilised in the provision of Services. Detailed installation requirements are set forth in Appendix B hereto. These provisions must be made available to Plenexis in sufficient time to permit the installation, maintenance or disconnection of any Equipment in accordance with the Due Date (as defined in Article 4). Plenexis' obligations to perform installation, maintenance or disconnection will be amended accordingly if these conditions are not satisfied by Customer.
- (D) Use of Customer Equipment – Title to all equipment and facilities that Plenexis uses to provide the Network Services will remain with Plenexis. If Customer connects its own equipment to Plenexis' network, Customer must ensure that such equipment is compatible with and does not harm, impair or interfere with the technical integrity of the Network Services, Plenexis' network or its Suppliers network(s), or any other services or customers of Plenexis. Customer is responsible for the compatibility of its equipment with the network and failure to do so will constitute breach by Customer of these Terms and Conditions. Customer will provide and pay for all equipment and services required to connect Customer-provided equipment to the Services.

#### 4. INSTALLATION AND MAINTENANCE

- (A) Plenexis and Customer will agree on a mutually convenient date for provision of the Network Services ("Due Date"). In the event the Due Date is delayed, Plenexis and Customer will agree upon a new Due Date. Customer will adhere to the Installation Guidelines set forth in Appendix B hereto. In no event will Plenexis be liable for failure to meet the Due Date when such failure is due to an act or omission by Customer. Customer will reimburse Plenexis for all out-of-pocket expenses incurred by Plenexis in relation to a failure to meet the Due Date caused by Customer. Customer's sole remedy for a failure by Plenexis to either provide Services by the Due Date or to provide Services during the contracted term for such Services, will be for the Customer to request an Outage Credit, as defined in Article 6.
- (B) If stated on the quotation, and unless otherwise agreed, installation services will be provided by Plenexis or its subcontractors, on a time and materials basis at Plenexis' then current rates for labour, or at the rates set forth in the applicable quotation.
- (C) If stated on the quotation, Plenexis will provide maintenance services in relation to the Network Services. On-site maintenance will be made available on a time and materials basis at Plenexis' then current rates for labour, or at the rates set forth in the applicable quotation. Customer agrees to comply with all reasonable instructions that Plenexis may give, from time to time, and to provide all necessary assistance to Plenexis in diagnosing any Network Service faults.
- (D) Plenexis offers a tiered service level agreement to its Customers ("SLA"). If Customer has purchased a SLA, the appropriate level of purchase will be set forth in the applicable quotation. In such case, Customer and Plenexis agree to the applicable terms of the SLA, as set forth in Appendix A hereto. Notwithstanding anything to the contrary in these Terms and Conditions or in a quotation, the SLA in Appendix A will ONLY apply to SkyWAN, HughesNet and SCPC (provided out of Plenexis' Hamelin facility).
- (E) Where required by law or regulations or at the request of Plenexis, Customer will install, maintain and/or pay reasonable expenses incurred by Plenexis to provide special facilities and protective apparatus at locations involving high voltage power and/or hazardous materials.

#### 5. STAND-BY TIME

Notwithstanding anything to the contrary in these Terms and Conditions, and regardless of whether related to any warranty in these Terms and Conditions, under all circumstance Customer will bear the cost of: (a) all



transportation expenses related to the provision of Network Services, and (b) all Stand-By time incurred by Plenexis or its contractor personnel that is caused by or attributed to Customer, including without limitation, where caused by delays to or untimely cancellation of service calls. For the purposes of this Article, Stand-By time means the amount of hours, or portion thereof, incurred by Plenexis while waiting for (i) transport to a Customer location; or (ii) access to the Customer's premises if required hereunder. Standby time incurred by Customer will be charged at Plenexis' then current rates for labour.

## 6. OUTAGE CREDITS

- (A) Subject to Clause 6(B) below and unless otherwise stated in a quotation, a pro rata credit allowance ("Outage Credit") will be given to Customer for the total Outage period(s) during any given twelve (12) month period, not including the period permitted under the service availability commitment (e.g. for a service availability commitment of 99.5% in any given twelve (12) month period, Outages totaling 0.5% would not be subject to an Outage Credit). An Outage is defined as a complete loss of the ability to originate or receive voice or data communications causing the service availability to fall below 99.5% in any twelve (12) month period.
- (B) For terrestrial (e.g. backhaul) services, Plenexis will pass through to the Customer the service availability that it receives from its suppliers, if any. In the event of failure or degradation of a terrestrial service, Plenexis will pass through and credit Customer's account with a rebate equal to the rebate that Plenexis receives from its suppliers, if any.
- (C) An Outage Credit, if any, will be applied against the charges payable to Plenexis under these Terms and Conditions and will be expressly indicated on the final invoice to Customer of the calendar year in which Outage Credit applies, for the period of the Outage, or prorated portion thereof, after written request to Plenexis. No other liability may in any event attach to Plenexis on account of interruption or failure to provide Network Services. All Outage Credit(s) will be treated as liquidated damages and not as penalties. Outage Credit(s) do not apply to Outages, (i) caused by Force Majeure, (ii) caused by the negligence of Customer or others authorized by Customer when using Equipment related to the Network Services, (iii) caused by power failures or similar occurrences, such as perforation activity, not provided by or attributable to Plenexis, (iv) occurring during periods when Customer has elected not to allow for testing or repair, (v) caused by rain fade, solar outages or flares, extreme weather, or damage to satellites, or (vi) caused by the failure of equipment or facilities not provided by Plenexis.

## 7. SOFTWARE LICENSE

If applicable, upon installation of Equipment, Plenexis grants to Customer a fully paid, non-exclusive, non-sublicensable and non-transferable license and/or sublicense to use the software provided with the Equipment, including any third party software (the "Software"), for as long as Customer is entitled to use the Equipment. Customer may use the Software only in machine-readable, object code form. Third party software may be subject to additional terms and conditions described in the applicable third party software user documentation, and to the extent that those terms conflict with the terms of these Terms and Conditions, the third party terms will control. Customer may use the Software only for internal business purposes and only in connection with the Equipment. Customer may not assign, transfer, pledge, rent, share, copy or sublicense any of the Software. Customer further agrees not to reverse engineer, decompile or otherwise attempt to discover the source code of the Software, unless explicitly permitted by the relevant copyright law.

## 8. INTELLECTUAL PROPERTY

Other than as specifically set forth in Article 7 above, no licenses or any rights of any kind under any patent, copyright and rights to create derivative works, trademark, trade secret, service mark, mask works or other form of intellectual property (collectively "Intellectual Property Rights") are granted by either Party or are to be implied by these Terms and Conditions or arisen by estoppel.

## 9. IMPLIED WARRANTIES

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS, ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE OR OTHERWISE, IN RESPECT OF THE NETWORK SERVICES OR THE PLENEXIS FACILITIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.



## 10. USE OF NETWORK SERVICES

Customer will use the Network Services only in accordance with all applicable U.K., U.S. and foreign rules, laws and regulations. Customer will be liable for all use or misuse of the Network Services hereunder, irrespective of whether such use or misuse was authorized, fraudulent or otherwise. Customer will not resell or rent the Services or any rental Equipment. Customer will not use Network Services in an abusive or fraudulent manner, including, but not limited to the following:

- (i) accessing or attempting to access Network Services by using an unauthorised device or by tampering with or altering Equipment;
  - (ii) obtaining or attempting to obtain permission to use Network Services by providing false or misleading information;
  - (iii) obtaining Network Services without having the intent to pay charges incurred;
  - (iv) intentionally interfering with or causing disruption in the provision of Network Services to other Customers;
  - (v) using Network Services to further criminal activity;
  - (vi) using Network Services to make obscene or illegal communications, to impersonate another person with fraudulent or malicious intent or to call another person so frequently or at such times of day or in any other manner with the intended effect of annoying, threatening or harassing such other persons;
- or
- using Network Services in a manner that interferes unreasonably with the use of services or equipment by one or more other Plenexis customers.

## 11. PAYMENT TERMS

- (A) **Acceptance.** Billing for Services (or any part thereof) will commence upon the Acceptance Date for each network site, which is defined as follows: the earlier of (i) Customer's signature of the Acceptance Certificate or (ii) forty-eight (48) hours from installation of the Network Services, provided that Customer does not provide Plenexis with written notice that the Network Services fail to perform in accordance with the specifications in a material aspect, within the aforementioned 48-hour time period.
- (B) **Services.** Unless otherwise agreed in writing by the parties or stated in a quotation, Plenexis will invoice and Customer will pay, monthly in arrears for the Network Services provided by Plenexis, including all applicable federal, state, provincial, local and other taxes, including value added tax and fees, including, if applicable, any fees established by a regulatory authority for the provision of telecommunication services, which may be attributable to the sale or use of Network Services.
- (C) **Equipment.** Unless otherwise agreed in writing by the parties or stated in a quotation, invoices for Equipment will be sent on or after the date of shipment and will include all applicable federal, state, provincial, local, VAT and other taxes that may be levied upon the Equipment. Payment for rental Equipment is due as agreed in accordance with the foregoing, regardless of whether or not an invoice is sent to Customer by Plenexis.
- (D) **Payment terms.**
  - (i) Customer will pay all invoices within thirty (30) days of the date of invoice, and in accordance with the instructions as stated on the invoice. If Customer's choice of currency is different from that stated on the invoice, then Customer will pay to Plenexis any shortfall in the invoiced amount and the received amount, caused by any exchange rate fluctuation. For the purposes of this clause, the exchange rate used will be that prevailing on the day that Plenexis receives payment.
  - (ii) Amounts not paid within thirty (30) days of invoice date will be subject to an interest charge of the lesser of, (i) one and one-half percent (1.5%) per month, or (ii) the highest rate permitted by law.
  - (iii) Customer will pay for any and all collection or litigation expenses, including reasonable legal fees, incurred by Plenexis in collecting any late payments or late payment fees.
- (D) Plenexis may require Customer to provide a third party guarantee, deposit, letter of credit, or other credit facility deemed by Plenexis, in its sole discretion, necessary to provide adequate assurance of payment. The provision of such third party guarantee, deposit, letter of credit, or other credit facility does not relieve Customer of its payment obligations specified herein.
- (E) All charges will be in accordance with the applicable quotation provided to Customer for the applicable Network Services. Upon expiration of the term of the Network Services (as stated in a quotation), Plenexis reserves the right to revise such charges upon notice to Customer.



- (F) Customer must pay all undisputed amounts when due. If any portion of an amount due is in dispute, Customer must, within thirty (30) days of the invoice date containing such disputed amount, give notice to Plenexis of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. For the avoidance of doubt, claims of unauthorised use, fraudulent use or any other misuse will not constitute a valid basis for dispute of an invoice. If the Disputed Amount is resolved in favour of Plenexis, Customer must pay the Disputed Amount with appropriate late charges, if applicable, upon final determination of such dispute. Plenexis will issue credits to Customer upon resolution of any disputed amounts in favour of Customer. An invoice is deemed to be accepted if no written notice of a dispute is provided before the date the payment is due.

## 12. INDEMNITY AND LIMITATION OF LIABILITY

- (A) Subject to Article 12(D) below, Customer agrees to indemnify and defend and hold harmless Plenexis and its affiliates, directors, officers, agents, employees, assigns and Suppliers from and against any and all liability, claims, actions, losses, damages (including damage to property and personal injury) and expenses (including attorneys' fees) arising out of or relating to (i) Customer's use or misuse of the Network Services, and/or (ii) installation, maintenance and/or removal of such Network Services provided by Plenexis and/or its subcontractors, and/or (iii) Customer's breach of these Terms and Conditions, except to the extent such claims are based upon the gross negligence or willful misconduct of Plenexis, and/or (iv) any claims or actions for libel, defamation, slander, invasion of privacy, patent, copyright or trademark infringement, or the violation of any third-party Intellectual Property Rights, arising in connection with the use or misuse of the Network Services and/or (v) any claim or action for patent infringement resulting from Customer's use (or use by any of its affiliates or use by any of its affiliates, agents, subcontractors, employees, assigns or otherwise) of the Network Services in combination with the equipment, hardware, software, systems, cabling, facilities or services not provided hereunder by Plenexis.
- (B) SUBJECT TO ARTICLE 12(D) BELOW AND EXCEPT FOR ANY INDEMNITY OBLIGATIONS OR A BREACH THEREOF, THE TOTAL, AGGREGATE LIABILITY OF PLENEXIS TO CUSTOMER FOR ANY AND ALL CLAIMS WHATSOEVER RELATED TO THE NETWORK SERVICES OR THESE TERMS AND CONDITIONS FOR DAMAGES TO CUSTOMER (OR TO ANY AFFILIATE OF CUSTOMER) FOR ANY CLAIMS WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, HOWSOEVER ARISING SHALL BE LIMITED TO DAMAGES ACTUALLY PROVEN AS DIRECTLY ATTRIBUTABLE TO PLENEXIS, AND FURTHER LIMITED TO AN AMOUNT EQUAL TO THE LAST THREE (3) MONTHS OF PAYMENTS MADE BY CUSTOMER TO PLENEXIS UNDER THESE TERMS AND CONDITIONS PRECEDING THE DATE OF ANY CLAIM MADE AGAINST PLENEXIS.
- (C) EXCEPT FOR OUTAGE CREDITS AS SET FORTH IN ARTICLE 6, NEITHER PLENEXIS NOR ANY OF ITS SUPPLIERS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, INSURERS, SUBSIDIARIES AND AFFILIATED (INCLUDING PARENT) COMPANIES, AND THEIR EMPLOYEES, REPRESENTATIVES, OFFICERS AND DIRECTORS, WILL BE LIABLE ON ANY BASIS WHATSOEVER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, LOSS ARISING FROM OR ATTRIBUTABLE TO FAILURE TO REALIZE ANTICIPATED SAVINGS, OR LOSS OF PRODUCTION, EQUIPMENT OR DATA) EVEN IF A PARTY KNEW OR HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES, IN CONNECTION WITH THE PROVISION OR FAILURE TO PROVIDE THE NETWORK SERVICES, FOR ANY REASON WHATSOEVER AND HOWSOEVER ARISING. PLENEXIS' LIABILITY IN CONTRACT, TORT OR OTHERWISE, INCLUDING ANY LIABILITY FOR NEGLIGENCE, HOWSOEVER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF PLENEXIS' OBLIGATIONS UNDER THIS AGREEMENT WILL BE LIMITED TO THE REMEDIES PROVIDED HEREIN.
- (D) Notwithstanding anything to the contrary in these terms and conditions, neither party excludes, restricts or limits its liability for death or personal injury resulting from its own negligence.

## 13. TERMINATION

- (A) The occurrence or happening of any one or more of the following events will constitute an event of default if not remedied within ten (10) days after notice from Plenexis:
- (i) use of the Network Services in any manner or for any purpose contrary to law (see Article 10);



- (ii) abuse or fraudulent use of the Network Services (see Article 10);
  - (iii) failure to make any payments when due;
  - (iv) discovery by Plenexis that any representation or warranty made by Customer in any document furnished by Customer to Plenexis is incorrect;
  - (v) breach or violation of any of these Terms and Conditions by the Customer; or
  - (vi) commencement of any proceeding, whether voluntarily or involuntarily, relating to the Customer under any law relating to insolvency, bankruptcy or the protection of creditors' rights generally.
- (B) Subject to Article 10, in the event of default, Plenexis may, at Plenexis' sole option and without in any way limiting any other rights and remedies it may have, suspend or terminate the Network Services without notice. Plenexis will bill Customer and Customer will pay Plenexis, in accordance with Article 11, for all outstanding charges accrued up to and outstanding on the date of such termination. In all such cases, Plenexis will incur no liability whatsoever. Customer will be liable for all costs and expenses incurred by Plenexis due to default by a Customer, including but not limited to legal costs.
- (C) IN THE EVENT THAT PLENEXIS TERMINATES THESE TERMS AND CONDITIONS AND THE NETWORK SERVICES FOR A FAILURE TO PAY OR ANY OTHER BREACH, CUSTOMER AGREES TO PAY PLENEXIS IMMEDIATELY A TERMINATION FEE, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, EQUAL TO THE NUMBER OF MONTHS REMAINING IN THE TERM TIMES THE AVERAGE MONTHLY CHARGE PRIOR TO TERMINATION. CUSTOMER ACKNOWLEDGES THAT THE PRECISE AMOUNT OF PLENEXIS' DAMAGES WOULD BE EXTREMELY DIFFICULT TO CALCULATE AND THAT SUCH PAYMENT REPRESENTS A REASONABLE ESTIMATE OF PLENEXIS' ACTUAL DAMAGES.
- (D) Plenexis may, with no liability whatsoever, suspend or terminate Network Services to Customer if lawfully ordered to cease operation of such Network Services by the Federal Communications Commission or a state or federal court of law, or any other lawful federal, state or local governmental authority. If at any time during the term of these Terms and Conditions any equipment, facilities, or property used by Plenexis to provide Network Services to Customer are taken for a public or quasi-public purpose by a lawful power or authority under the exercise of right of condemnation or eminent domain, Plenexis will have the right, upon written notice to Customer, to terminate Network Services affected by the taking.
- (E) Early Termination. Unless otherwise stated on the quotation, the minimum term of Service and rental of any Equipment is twelve (12) months from the Acceptance Date. For StratosITek maritime services, the minimum term of Service is twelve (12) months from the Acceptance Date, in any fifteen (15) month period, i.e. Customer may suspend Network Services without penalty for up to three (3) months. Notwithstanding the foregoing, Customer may terminate early at any time, upon thirty (30) days notice to Plenexis. HOWEVER, IF CUSTOMER DOES SO TERMINATE EARLY, CUSTOMER WILL PAY TO PLENEXIS IMMEDIATELY AN EARLY TERMINATION FEE, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, EQUAL TO THE BALANCE OF THE REMAINING TERM MULTIPLIED BY THE MONTHLY FEE FOR THE SERVICES AND ANY RENTAL EQUIPMENT. CUSTOMER ACKNOWLEDGES THAT THE PRECISE AMOUNT OF PLENEXIS' DAMAGES WOULD BE EXTREMELY DIFFICULT TO CALCULATE AND THAT SUCH PAYMENT REPRESENTS A REASONABLE ESTIMATE OF PLENEXIS' ACTUAL DAMAGES.
- (F) Cancellation. Customer may, at any time up until ninety (90) days before the Due Date (as defined in Article 4(A)), cancel the requested Network Services. If Customer does so cancel, Customer shall reimburse Plenexis for all out-of-pocket expenses incurred by Plenexis (including any penalties imposed on Plenexis by its suppliers) at cost plus fifteen percent (15%).
- (G) The rights of termination, restriction or suspension set forth in this Article are in addition to any other remedies available to Plenexis under these Terms and Conditions, or at law or in equity.

#### 14. INDEPENDENT CONTRACTOR

These Terms and Conditions do not create any partnership, joint venture, agency or employee/employer relationship of any kind between the Plenexis and Customer. Plenexis is an independent contractor with respect to performance under these Terms and Conditions; all persons employed by each party are, and will remain, the employees and agents of that party and are not, and will not become, the employees or agents of the other party. It is expressly understood that neither party's employees may participate in or receive any benefits from the other party's employee benefit plans.



## 15. CONFIDENTIALITY

- (A) Unless Customer consents in writing, or disclosure is made pursuant to a legal proceeding, Plenexis shall keep confidential all information or data furnished by Customer or otherwise acquired by Plenexis through performance. Such information will not be released by Plenexis to anyone other than: (i) Customer; (ii) a person who in the reasonable judgment of Plenexis is acting as an agent of Customer; (iii) to the commissioning entity or supplier or another telecommunications service provider provided that the information is to be used for the provision of Services and disclosure is made on a confidential basis with the information to be used solely for that purpose; (iv) an agent retained by Plenexis to collect outstanding balances owed to Plenexis by Customer; or (v) to a law enforcement agency whenever Plenexis has reasonable grounds to believe that Customer has knowingly supplied Plenexis with false or misleading information or is otherwise involved in unlawful activities.
- (B) Each party will comply fully with all applicable privacy and data protection laws and regulations, and will provide such assistance to the other party as is reasonably necessary to assist the other party in complying with such laws and regulations. Customer will indemnify Plenexis against claims by third parties resulting from any breach or inadequate observance by Customer of the provisions of this Article 15(B).

## 16. FORCE MAJEURE

Plenexis will not be liable for any failure of performance hereunder due to causes beyond its reasonable control ("Force Majeure"), including without limitation, acts of God, strikes, lockouts or other labour disputes, acts of public enemy, governmental orders, preemption of existing services to restore service in compliance with Part 64, Subpart D, of the Federal Communications Commission's Rules and Regulations, satellite failure or loss, refusal, revocation or termination by a licensing authority regarding a license applicable to the Network Services, wars, riots, terrorist activities, epidemics, unusually severe weather, earthquakes, fires, floods, civil disturbances, explosions, train derailments, failure of or accidents to machinery, pipeline, or materials, and delay in delivery of Equipment, to the extent all such occurrences are beyond the reasonable control of Plenexis or Customer, delay in performance by subcontractors to the extent such delay is beyond Plenexis' reasonable control, and other delays incurred for reasons beyond Plenexis' reasonable control, which, by the exercise of reasonable diligence, they are unable to prevent or avoid. Plenexis' obligation to perform will be suspended for the duration of a period of Force Majeure and will resume as soon as reasonably possible, upon the cessation of the event of Force Majeure.

## 17. NOTICES

All notices, requests, demands and other communications hereunder will be effective upon delivery. Such notices will be in writing and will be sent by email, facsimile or nationally recognised overnight courier or delivered in person, addressed as set forth below. Plenexis may, at any time, amend the above addresses for notices upon written notice to Customer.

If to Plenexis:

6550 Rock Spring Drive, Suite 650

Bethesda, Maryland 20817 USA

ATTN: Contracts & Legal Dept.

Tel: +1 (301) 214-8800

Fax: +1 (301) 214-8801

Email: [Contracts.Legal@Plenexisglobal.com](mailto:Contracts.Legal@Plenexisglobal.com)

If to Customer: To the address as set forth on the Subscriber Application.

## 18. ASSIGNMENT

Plenexis may, without the consent of Customer, (a) assign its right to receive payment hereunder to a third party, or (b) assign its rights and obligations hereunder to a corporation, partnership or other business enterprise in which Plenexis has directly or indirectly, an ownership interest, or (c) assign its rights to a successor in the event of a merger, acquisition or consolidation, or to a purchase of all (or substantially all) of Plenexis' assets. These Terms and Conditions will inure to the benefit of, and will be binding on Customer's and Plenexis' respective successors and permitted assigns.



## 19. WAIVER OF COMPLIANCE

The waiver or the failure of Plenexis to enforce any of the provisions of these Terms and Conditions or to exercise any right or privilege hereunder, will not be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any provisions, rights or privileges hereunder.

## 20. ARBITRATION

FOR CUSTOMERS WHOSE PRINCIPLE PLACE OF BUSINESS IS IN RUSSIA, any dispute, controversy, or claim arising out of or relating to these Terms and Conditions, or the breach, termination, or invalidity thereof, shall be settled by binding arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC Rules"). The number of arbitrators shall be three (3). Each Party shall, within 15 days of receipt of the notice of the commencement of the arbitration proceeding, select one arbitrator and, within 30 days thereafter, the two arbitrators so selected shall meet and select the third arbitrator. In the event that one or the other Party does not select an arbitrator as provided herein, or in the event that the two arbitrators are unable to agree as to a third arbitrator, the ICC Rules shall be applied to select the required arbitrator. The place of arbitration shall be London, England. The arbitration shall be conducted in English. The decision of the arbitrators shall be final, binding and enforceable against the Parties, and a judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The losing Party shall pay all the costs of the arbitration including the reasonable attorney's fees of the other Party. This clause shall not preclude the Parties from bringing an action in any court of competent jurisdiction for injunctive relief or other provisional remedy in relation to any dispute arising in connection with these Terms and Conditions. For clarification, this Article will not apply to disputes between Plenexis and Customer whose principle place of business is located outside of Russia.

## 21. GOVERNING LAW/ RULES & REGULATIONS

- (A) These Terms and Conditions will be governed and construed in accordance with the laws of England and Wales. Unless Customer has its principal place of business in Russia (in which case Article 20 shall apply), Customer agrees that the English courts shall have non-exclusive jurisdiction in relation to any proceedings arising out of or in relation to the Terms and Conditions initiated by Customer. Plenexis shall be entitled to initiate any proceedings arising out of or in relation to these Terms and Conditions in any court having jurisdiction.
- (B) Both Plenexis and Customer will fully abide by all applicable laws, rules and regulations, including but not limited to all applicable anti-bribery or anti-corruption laws. Plenexis will not pay any commissions, fees or grant any rebates to any employee or officer of Customer, nor favor any employee or officer of Customer with gifts or entertainment of other than nominal value, nor enter into business arrangements with any employee or officer of Customer, other than as a representative of Customer, without the prior written approval of Customer.
- (C) Customer agrees to strictly adhere to the requirements and restrictions of the U.S. export and embargo laws and regulations, and any similar laws and regulations of other countries as applicable, in respect of the Network Services. Customer agrees to obtain, at Customer's sole expense, all necessary licenses, approvals, permits, consents and governmental authorisations that may be required for Customer's use of the Network Services. Customer may only use the Network Services in the region or with the satellite identified on the quotation. Customer may acquire the right to use the Network Services in other regions from Plenexis; however, an additional fee for reconfiguration of the Equipment and/or a different price for the Services may apply.
- (D) Plenexis will not be held responsible for any operational restrictions, customs, license or permit fees required for operation of the Network Services in the destination country. In addition, Plenexis will have no responsibility for fines associated with terminal seizure nor for legal ramifications of using Network Services in countries where it is prohibited. Customers are advised to contact the embassy or trade office of the destination country prior to entry into that country.
- (E) In the event that Plenexis agrees to obtain licenses on behalf of Customer, for operation of the Equipment, then such services will be agreed to in a quotation. Plenexis shall use commercially reasonable efforts to obtain such licenses, but makes no warranties or representations regarding its ability to do so.



## 22. THIRD PARTY RIGHTS

Each of Plenexis and Customer confirm that no term of these Terms and Conditions will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these Terms and Conditions.

## 23. SEVERABILITY

If any provision of these Terms and Conditions will be declared invalid, illegal or unenforceable by a court or regulatory agency of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby. In the event that any such provision will be declared invalid, illegal or unenforceable due to its scope, breadth or duration, then it will be modified to the scope, breadth or duration permitted by law and will continue to be fully enforceable as so modified.

## 24. SURVIVABILITY

All provisions which would naturally survive the expiration or termination of these Terms and Conditions will so survive, including but not limited to the Articles entitled "Services Specific Terms and Conditions", "Equipment", "Use of Network Services", "Payment Terms", "Indemnity & Limitation of Liability", "Termination", "Confidentiality", "Arbitration" and "Governing Law" and "Rules and Regulations".

## 25. EFFECTIVE DATE

These Terms and Conditions are effective as of 1st August 2007, and will remain in effect unless modified, revoked or terminated by Plenexis.

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## APPENDIX A Installation Guidelines

### Scope

These installation guidelines set forth the obligations of Customer with respect to installation of Equipment. Unless otherwise agreed to in a quotation, Customer is responsible for meeting the requirements of these guidelines, at its sole expense.

### Construction and Position of the Antenna

Customer is responsible for ensuring that the antenna has a clear and unrestricted view of the applicable satellite, at all times. Customer shall follow Stratos' reasonable instructions with respect to positioning of the antenna. Antennas should not be installed near traffic ways. Customer warrants that it will supervise all third party personnel requiring access to the antenna or the area surrounding it. In no event will Stratos be liable for damage to the antenna or failure of Network Services due to acts or omissions of third parties, or for any resulting health defects which may be incurred through such third party's proximity to the antenna.

### Installation Requirements

Customer shall ensure that Stratos has free and unimpeded access to and egress from the installation site. Customer shall obtain all necessary permits, consents and authorizations ("Authorizations") necessary for the placement of the antenna. Authorizations shall include but not be limited to consent from the building owner, licenses associated with use of the Equipment and any governmental consents or permits. The antenna shall be installed on a level surface. If roof installation is required, such requirements will be set forth in the site survey.

Unless otherwise agreed to in a quotation, Customer shall provide all equipment necessary for the installation. This may include, without limitation, use of a crane, scaffolding or hydraulic lifts.

Customer shall ensure that there is sufficient space for the antenna. The following table sets forth the area around the antenna, which must be kept free from all other objects, in order to ensure safe and proper operation of the antenna.



Antenna Diameter (Metres)	:0; 1.0	:0, 1.2	:0, 1.8	:0, 2.4	:0, 3.7
Surface Area for Antenna (Metres)	1 x 1	2 x 2	5 x 5	6 x 6	9 x 8

Customer shall make available to Stratos all technical description and other information required by Stratos relating to the construction of the antenna foundation. Stratos shall provide to Customer general static information for the antenna foundation. Customer shall construct the antenna foundation according to Stratos' specifications, at its sole expense. Customer is solely responsible for ensuring that the antenna foundation meets the requirements of any applicable law, rule, regulation, permit or Approval.

### Laying of Cables

Customer is solely responsible for the laying of any required 1F cables and power cables. The distance between the antenna and the internal equipment shall not exceed 150m. Cables should not be laid parallel to existing power lines, and should be protected against damage by vehicles, construction work, persons, etc.

### Safety Requirements

Stratos will perform all installations in accordance with all applicable health and safety laws, rules and regulations. Customer shall also comply with all applicable health, safety and environmental laws, rules and regulations.

### Environmental Requirements

The following table contains the environmental requirements for Equipment. To the extent that there is any conflict between the following table and the specifications set forth in the manufacturer's installation and/or operation guides, the manufacturer's documentation shall take precedence. Customer will ensure compliance with these requirements. Stratos shall not be responsible for any damage or failure of Equipment due to Customer's failure to comply with such requirements.

Condition	Operation Requirements	Storage/Transport
Temperature	0° C to 40° C	- 40° C to 70° C
Humidity	5 % to 95 % not condensate	
Shocks/Vibrations		As is usual with respect to commercial transportation

### Electric Power Supply

Customer shall provide, at its sole expense, an uninterruptible power supply of 230 V / 16A / 50Hz or 120 V / 20A / 60 Hz, depending upon the country, for installation and maintenance. If Customer does not provide power on an uninterruptible basis, then Customer shall be liable for any and all damages arising thereby.

If stated on a quotation, Stratos may provide an uninterruptible power supply, subject to availability. If Stratos does so provide such power, then Stratos will invoice Customer and Customer will pay for all costs associated therewith. Specifications for any power that Stratos may supply will be as follows, and as applicable depending upon the country where the installation is to be performed:

Input voltage (alternating current):	220 -240 V 115 – 125 V
Fluctuating range input voltage (alternating current):	190 – 250 V 115 – 125 V
Input frequency range:	50 Hz +/- 10% 60 Hz +/- 10%

Customer shall ensure that any electricity supply is shut down upon request by Stratos at any time, to the extent that it is necessary to avoid damage or interference to the Network Services. Customer shall provide the contact details of Customer's designated representative who has the authority to shut down electricity.



### Lightning Protection

If there is no lightning protection system at the installation site, or if an existing lightning protection system is more than 5m from the antenna location, then Customer shall arrange for the antenna and any other ancillary equipment to be connected to an appropriate lightning protection system and ground. Customer shall comply with all applicable laws, rules and regulations. Customer shall further ensure that the IDU has a potential equalization location with a response resistance of  $\leq 2$  Ohm. Customer shall also provide a cable trunk for the connection between the antenna and internal Equipment. The maximum distance for the lightning/grounding protection system is 5m for both the antenna and the internal Equipment. Cable specification should be Cu / Fe /  $\varnothing$  10mm.

### Fuses

Customer shall provide fuses in accordance with the following specifications:

For internal Equipment	230 V-	16 A	As separate circuits with safety sockets
For antenna heating (if applicable)	230 V-	10 A	As separate circuits with grounding
If antenna AC is used	230 V-	10 A	As separate circuits with grounding

### Services Not Included in Standard Installation

In addition to the other provisions of this Appendix A, the following are not included in the standard installation. If Customer requests Stratos to provide any of the following, then Stratos will issue a separate quotation for such services.

- Any preliminary work
- Laying of cable lines
- Construction work, e.g. laying of foundation
- Fencing of the antenna unit
- Assembly of lightning protection
- Use and operation of a crane
- Disassembly of any existing equipment
- Packaging and crating of any removed/de-installed equipment
- Any labour associated with the foregoing

