



## **TMB Systems Limited Software Subscription Schedule**

(A) This Software Subscription Schedule forms part of TMB System's Terms and Conditions and applies in addition to the General Terms for any Contract in respect of Subscription Services.

(B) Where not explicitly defined in this schedule all capitalised terms herein shall be interpreted in accordance with the definitions in the General Terms and Conditions. Where the General Terms and Conditions conflict with this schedule the latter shall take precedence.

(C) The Subscription Services incorporate software which the Supplier has agreed to licence to the Customer and the Customer has agreed to pay for as part of the Subscription Services under the General Terms and Conditions.

### **1. Interpretation**

**1.1** The definitions and rules of interpretation in this paragraph apply in this schedule.

**Authorised Users:** means Guest Users and those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Subscription Services and the Documentation, as further described in clause 2.2(d).

**Documentation:** the document made available to the Customer by such web address notified by the Supplier to the Customer from time to time which sets out a description of the Subscription Services and the user instructions for the Subscription Services.

**Guest Users:** means the guests of the Customer which are authorised by the Customer to use the Subscription Services subject to the AUP;

**Initial Subscription Term:** the initial term of this schedule as set out in the Acknowledgement.

**Renewal Period:** the period described in clause 12.1.

**Software:** the software applications provided by the Supplier as part of the Subscription Services.

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Fee Schedule.

**Subscription Term:** has the meaning given in clause 12.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** the Supplier's policy for providing support in relation to the Subscription Services as made available at such website address as may be notified to the Customer from time to time.



**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Subscription Services and the Documentation in accordance with this schedule.

**Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. User subscriptions

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with the General Terms and Conditions and this schedule (including but not limited to clause 3.3 and clause 8.1 and the restrictions set out in this clause 2) the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Subscription Services and the Documentation during the Subscription Term solely for the Customer's internal business operations and/or where specified in the Service Description for the benefit of their Guest Users.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
  - (a) the maximum number of Authorised Users that it authorises to access and use the Subscription Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
  - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Subscription Services and/or Documentation;
  - (c) each Authorised User shall keep a secure password for his use of the Subscription Services and Documentation, that such password shall be changed no less frequently than three months and that each Authorised User shall keep his password confidential;
  - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
  - (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Subscription Services in order to establish the name and password of each



Authorised User and the Supplier's data processing facilities to audit compliance with this schedule. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

- (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Fee Schedule within 10 Business Days of the date of the relevant audit.

**2.3** The Customer shall not, and shall make sure that Guest Users and other Authorised Users agree not to, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Subscription Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph.

**2.4** The Customer shall not, and shall make sure Guest Users and other Authorised Users agree they shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by schedule between the parties and except to the extent expressly permitted under this schedule:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any



portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Subscription Services and/or Documentation to provide services to third parties except where specified Guest Users under the term of this schedule; or
- (d) subject to **Error! Bookmark not defined.Error! Reference source not found.**, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or vulnerability into the Supplier's network and information systems.

**2.5** The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

**2.6** The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

**3. Additional user subscriptions**

**3.1** Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Acknowledgement**Error! Reference source not found.** and the Supplier shall grant access to the Subscription Services and the Documentation to such additional Authorised Users in accordance with the provisions of this schedule.

**3.2** If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request [(such approval not to be unreasonably withheld)]. Where the Supplier



approves the request, the Supplier shall activate the additional User Subscriptions within fourteen days of its approval of the Customer's request.

**3.3** If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in Acknowledgement and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

#### **4. Subscription Services**

**4.1** The Supplier shall, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Customer on and subject to TMB's General Terms and Conditions including this subscription schedule.

**4.2** The Supplier shall use commercially reasonable endeavours to make the Subscription Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

**4.3** The Supplier will, as part of the Subscription Services and in consideration of the support fees set out in the Fee Schedule, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Subscription Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

#### **5. Third party providers**

The Customer acknowledges that the Subscription Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any



transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Subscription Services.

## **6. Supplier's obligations**

- 6.1** The Supplier undertakes that the Subscription Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2** The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Supplier's instructions, or modification or alteration of the Subscription Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Subscription Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.3** The Supplier:
  - (a) does not warrant that:
    - (i) the Customer's use of the Subscription Services will be uninterrupted or error-free;
    - (ii) that the Subscription Services, Documentation and/or the information obtained by the Customer through the Subscription Services will meet the Customer's requirements;
    - (iii) the Software or the Subscription Services will be free from all vulnerabilities;
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Subscription Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4** This schedule shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing



documentation, products and/or services which are similar to those provided under this schedule.

**6.5** The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this schedule.

## **7. Customer's obligations**

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this schedule; and
  - (ii) all necessary access to such information as may be required by the Supplier;
- in order to provide the Subscription Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this schedule, comply with all applicable laws and regulations with respect to its activities under this schedule;
- (c) carry out all other Customer responsibilities set out in this schedule in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Subscription Services and the Documentation in accordance with the terms and conditions of this schedule and shall be responsible for any Authorised User's breach of this schedule;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this schedule, including without limitation the Subscription Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this schedule, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.



## 8. Charges and payment

- 8.1** The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and the support fees in accordance with clause 4.3 and the Fee Schedule.
- 8.2** The Customer shall on the Commencement Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
  - (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
    - (i) on the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
    - (ii) subject to clause 12.1, on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period;
  - (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
    - (i) on the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
    - (ii) subject to clause 12.1, at least 30 days prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 8.3** If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
  - (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Subscription Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4** All amounts and fees stated or referred to in this schedule:
  - (a) shall be payable in pounds sterling;



- (b) are, to the limitation of liability stated in the General Terms non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

**8.5** If, at any time whilst using the Subscription Services, the Customer exceeds the amount of disk storage space specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Commencement Date are set out in Fee Schedule.

**8.6** The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the excess storage fees payable pursuant to clause 8.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Fee Schedule shall be deemed to have been amended accordingly.

## **9. Proprietary rights**

**9.1** The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Subscription Services and the Documentation. Except as expressly stated herein, this schedule does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Subscription Services or the Documentation.

**9.2** The Supplier confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this schedule.

## **10. Indemnity**

**10.1** The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Subscription Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.



**10.2** The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Subscription Services or Documentation in accordance with this schedule infringes any patent Commencement as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

**10.3** In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Subscription Services, replace or modify the Subscription Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this schedule on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

**10.4** In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Subscription Services or Documentation by anyone other than the Supplier; or
- (b) the Customer's use of the Subscription Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Subscription Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

**10.5** The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

**10.6** This clause will survive termination.

## **11. Limitation of liability**

**11.1** In addition to the limitations of liability in the General Terms the following additional limitations apply to Subscription Services:

- (a) Except as expressly and specifically provided in this schedule the Customer assumes sole responsibility for results obtained from the use of the



Subscription Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Subscription Services, or any actions taken by the Supplier at the Customer's direction;

- (i) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this schedule; and
- (ii) the Subscription Services and the Documentation are provided to the Customer on an "as is" basis.

## 12. Term and termination

**12.1** This schedule shall commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this schedule shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this schedule shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this schedule or any other parts of the General Terms and Conditions (including but not limited to termination for convenience under the Managed Services Agreement);

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

**12.2** On termination of this schedule for any reason:

- (a) all licences granted under this schedule shall immediately terminate and the Customer shall immediately cease all use of the Subscription Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with the data protection provisions of the General Terms, unless the Supplier receives, no later than ten days after the Commencement date of the termination of this schedule, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver



the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the schedule which existed at or before the date of termination shall not be affected or prejudiced.