

## Supplemental Terms for the supply of Subscription Services

The Services set out in these Supplemental Terms shall be supplied by TMB to the Customer on the terms and conditions set out in TMB's General Terms and Conditions and those of these Supplemental Terms.

### 1. SUPPLEMENTARY DEFINITIONS

- 1.1 'Domain Name' means a unique name that identifies a website or other services that communicate via the Public Internet.
- 1.2 'End User' means a user of the Subscription Services.
- 1.3 'Microsoft' means Microsoft Corporation, a vendor of subscription-based services.
- 1.4 'Network' means the Vendor's network infrastructure which is used to deliver the Subscription Services.
- 1.5 'Public Internet' means the world-wide collection of private and public router-based networks that are interconnected via gateways and exchange points.
- 1.6 'Registrar' means an organisation which manages the assignation and reservation of Domain Names.
- 1.7 'Service Desk' means TMB's team of dedicated support technicians.
- 1.8 'Service Request' means the Customer's report of an Issue or request for assistance.
- 1.9 'Subscription' means a subscription to a single licence to use the Subscription Services.
- 1.10 'Subscription Services' means services and / or Software that is provided on a subscription basis.
- 1.11 'Third-Party Vendor' means a vendor (other than Microsoft) of subscription-based services.
- 1.12 'Vendor' means Microsoft and / or Third-Party Vendor and / or a Registrar.

### 2. TERM

- 2.1 This Agreement will be deemed to come into effect on the Commencement Date and shall run for the Minimum Term as set out in the Order and thereafter for Additional Terms of one year's duration until terminated by either party.
- 2.2 TMB shall not less than thirty days prior to the end of the Minimum Term or any Additional Term thereafter, notify the Customer of changes to charges and any other changes to the terms of this Agreement. In the event that:
  - 2.2.1 The Customer serves notice to terminate this Agreement in accordance with clause 11 of the General Terms and Conditions or clause 9 hereof, this Agreement shall terminate at the end of the Minimum Term or any Additional Term; or
  - 2.2.2 The Customer notifies TMB of acceptance of changes, the Agreement shall continue in force for the duration of an Additional Term; or
  - 2.2.3 The Customer fails to notify TMB of acceptance of changes and fails to serve notice to terminate, such failures to notify TMB shall imply that the changes have been accepted and the Agreement shall continue in force for the duration of an Additional Term.

### 3. SUBSCRIPTION TO AND PROVISION OF SERVICES

- 3.1 The Subscription Services comprise the following Service Components:
  - 3.1.1 Microsoft 365 desktop / server applications;
  - 3.1.2 Third-Party Vendor desktop / server applications (collectively, the 'Subscription Software'); and
  - 3.1.3 Microsoft 365 online applications;
  - 3.1.4 Microsoft 365 online services;
  - 3.1.5 Third-Party Vendor online vendor applications;
  - 3.1.6 Third-Party Vendor online services (collectively the 'Hosted Services'); and
  - 3.1.7 Warranty uplift / extended warranty services;
  - 3.1.8 Software Assurance Services;
  - 3.1.9 Domain name registration services.
- 3.2 The Service Components to be provided under the terms of this Agreement are set out on the Order.

- 3.3 The Customer acknowledges that the Hosted Services will be provided directly to the Customer by the Vendor.
- 3.4 The Customer hereby appoints TMB as its agent for the purposes of registering the Customer's subscription to the Subscription Services, maintaining the Customer's subscription to the Subscription Services and billing the Customer for the subscription to the Subscription Services; and
- 3.4.1 Authorises TMB to subscribe to the Subscription Services set out on the Order and described in the Service Schedule, on its behalf; and
- 3.4.2 Agrees to at all times comply with and be legally bound by the terms of the Vendor's prevailing licence and / or service terms for the use of the Subscription Services; and
- 3.4.3 Acknowledges that it is the Customer's sole responsibility to obtain a copy of such terms and conditions and to comply therewith; and
- 3.4.4 Agrees that any breach by the Customer of the Vendor's terms and conditions shall be deemed a breach of this Agreement.
- 3.5 In respect of any Domain Name that the Customer supplies to be linked with email hosting components of the Subscription Services, the Customer confirms and warrants that it is the owner of or that it has been licensed by the owner to use, any relevant trademark or name as the domain name and indemnifies TMB against all claims and proceedings arising from infringement of any Intellectual Property rights of any third party in relation to the Domain Name.
- 3.6 TMB does not make any representations as to the accuracy, comprehensiveness, completeness, quality, currency, error-free nature, compatibility, security or fitness for the Customer's purpose of the Subscription Services.

#### **4. ACCEPTABLE USE**

- 4.1 The Customer agrees to use the Subscription Services in accordance with the provisions of this Agreement, any relevant service literature and all other reasonable instructions issued by TMB or the Vendor from time to time.
- 4.2 The Customer agrees to ensure that the Hosted Services are not used by its End Users to:
- 4.2.1 Post, download, upload or otherwise transmit materials or data which is abusive, defamatory, obscene, indecent, menacing or disruptive;
- 4.2.2 Post, download, upload or otherwise transmit materials or data uploads or make other communications in breach of the rights of third parties, including those of quiet enjoyment, privacy and copyright;
- 4.2.3 Send or knowingly receive data in such a way or amount so as to adversely affect the Network (or any part thereof) which underpins the Hosted Services, its suppliers or third parties;
- 4.2.4 Carry out any fraudulent, criminal or otherwise illegal activity;
- 4.2.5 Obtain access to restricted areas of the Network, data, systems or services;
- 4.2.6 In any manner which in TMB's reasonable opinion brings TMB's name into disrepute;
- 4.2.7 Knowingly make available or upload file that contain viruses, malware or otherwise corrupt data;
- 4.2.8 Falsify true ownership of software or data contained in a file that the Customer or End User makes available via the Hosted Services;
- 4.2.9 Falsify user information or forge addresses;
- 4.2.10 Act in any way which threatens the security or integrity of any computer system;
- 4.2.11 Violate general standards of internet use, including denial of service attacks, unauthorised IP or port multicasting, spoofing, broadcasting, translation, routing, web page defacement and port or number scanning;
- 4.2.12 Connect to the Hosted Services insecure machines or services able to be exploited by others to carry out actions which constitute a breach of this Agreement including the transmission of unsolicited bulk mail or email containing infected attachments or attempts to disrupt websites and/or connectivity or any other attempts to compromise the security of other users of the Network or any other third-party system;
- 4.2.13 Send email to anyone who does not wish to receive it.
- 4.2.14 Immediately notify TMB of such contravention.

- 4.3 The Customer acknowledges that it responsible for all data and/or traffic originating from the equipment and/or networks that it has connected to the Hosted Services.
- 4.4 If the Customer becomes aware that equipment under its control is generating data and/or traffic which contravenes this Agreement, the Customer agrees to:
  - 4.4.1 Immediately disconnect (and subsequently secure prior to reconnection) such equipment;
  - 4.4.2 Immediately notify TMB of such contravention.
- 4.5 The Customer acknowledges that it is solely responsible for its and its End User's use of the Public Internet and any web pages accessed using the Hosted Services.
- 4.6 The Customer agrees not use the any part of the Subscription Services to disrupt or attempt to disrupt another Public Internet user's internet experience.

## 5. THE CLIENT'S OBLIGATIONS

- 5.1 During the term of this Agreement, and subject to the performance by TMB of its obligations hereunder, the Customer:
- 5.2 Shall use the Subscription Services in accordance with the provisions of the Vendor's terms and conditions of use, this Agreement, any relevant service literature and all other reasonable instructions issued by TMB or the Vendor from time to time.
- 5.3 Shall ensure that user-names, passwords and personal identification numbers are kept secure and:
  - 5.3.1 On a regular basis, change access passwords for all equipment that in the Customer's reasonable opinion, may be liable to access by unauthorised persons;
  - 5.3.2 Change passwords as appropriate when employees leave;
  - 5.3.3 Use strong passwords;
  - 5.3.4 Immediately notify TMB in the event that, or there is reasonable suspicion that such information has become known to any unauthorised person;
  - 5.3.5 Acknowledge that TMB shall be entitled to temporarily suspend the Hosted Services and / or change the Customer's passwords in the event that in TMB's reasonable opinion, unauthorised persons may have access to the Hosted Services.
- 5.4 Accepts that is the Customer's sole responsibility to take all reasonable steps to prevent the introduction of viruses into the Hosted Services via the Customer's equipment or software.
- 5.5 Shall be solely responsible for the configuration of its internal local area network, and connection to the Public Internet and agree that any interruption in or to the Hosted Services which result from the configuration of the Customer's local area network or connection to the Public Internet shall not be regarded as interruption in or suspension of the Hosted Services provided by TMB.
- 5.6 Promptly report to TMB any Issue that arises in the Hosted Services.

## 6. TMB'S OBLIGATIONS

During the term of this Agreement, and subject to the performance by the Customer of its obligations hereunder, TMB shall:

- 6.1 Register and maintain the Customer's subscription to the Subscription Services set out in this Agreement, subject to any service limitations set out in the Order and Service Schedule.
- 6.2 Provide a Service Desk which shall respond to and make reasonable endeavours to repair any availability-related Issues that arise within the Hosted Services.

## 7. INDEMNITIES

- 7.1 The Customer agrees to indemnify TMB from and against any liabilities, actions, losses damages, judgements, costs, fines, claims or expenses incurred by TMB or legal proceedings which are brought or threatened against TMB by a third party in the event of:
  - 7.1.1 The Subscription Services being used in breach of the acceptable use set out in clause 4 hereof;
  - 7.1.2 The Customer being in breach of the Vendor's terms and conditions for use of the Hosted Services or licence to use the Subscription Software;
  - 7.1.3 Any fraud except by TMB;

- 7.1.4 Any claims made by third parties arising from Issues in the Hosted Services or Subscription Software.
- 7.2 If TMB becomes aware of any claim as set out in sub-clause 7.1 it shall:
- 7.2.1 As soon as reasonably practical, notify the Customer of such claim;
- 7.2.2 Make no admission relating to such claim or legal proceedings without agreement of the Customer, such agreement not to be unreasonably delayed or withheld;
- 7.2.3 Consult with the Customer regarding the conduct of any action and have due regard for the Customer's representations and not agree any settlement, legal proceedings or make any payment by way of liquidated damages without the prior written agreement of the Customer, such agreement not to be unreasonably delayed or withheld.
- 7.3 Subject to the limitations in clause 10 of the General Terms and Conditions, each party (the first party) to this Agreement will fully indemnify and hold harmless the other from any claim or liability whatsoever from a third party arising directly or indirectly from the failure of one of the first parties to obtain or maintain any of the licences, approvals, authorisations or consents as set out in sub-clauses 5.3 and 6.15 of the General Terms and Conditions.

## 8. GENERAL

- 8.1 Use of the Subscription Services by the Customer constitutes acceptance of the terms and conditions of this Agreement.
- 8.2 If TMB receives notification of a copyright infringement report, a request to provide a copyright infringement list, an order to impose a technical restriction or any other notice, request or order, the Customer will do everything reasonably required by TMB to ensure that TMB and the Customer will be in compliance with their respective obligations in respect of the provision of the Subscription Services.

## 9. TERMINATION

- 9.1 In addition to the provisions of clause 11 of the General Terms and Conditions, this Agreement may also be terminated:
- 9.1.1 By either party by giving the other not less than ninety days' notice in writing to terminate on the last day of the Minimum Term or Additional Term thereafter;
- 9.1.2 By the Customer giving thirty days' notice in writing if TMB makes changes to the terms of this Agreement which are to the detriment of the Customer (for the avoidance of doubt, not including changes to charges) PROVIDED THAT such notice is given within thirty days of the effective date of the change(s);
- 9.1.3 Immediately by TMB in the event that it is so instructed by government or a regulatory body;

## 10. CHARGES AND PAYMENT

- 10.1 TMB shall raise invoices according to the schedule set out on the Order.
- 10.2 The Customer acknowledges that it may at any time, by raising a supplemental Order:
- 10.2.1 Purchase additional subscriptions at any time during the term of this Agreement and acknowledges that at the price quoted by TMB for such additional subscriptions may differ from any previous Subscriptions purchased or quotations provided by TMB.
- 10.3 If permitted by the Vendor, during any Additional Term the Customer may decrease the number of Subscriptions, PROVIDED THAT the total number of subscriptions is not reduced below seventy percent of the total number of subscriptions purchased during the Minimum Term.
- 10.4 The Customer agrees that it shall be liable for termination charges, which shall be paid by way of liquidated damages:
- 10.4.1 If the Customer terminates this Agreement at convenience prior to the end of the Minimum Term or any Additional Term; or
- 10.4.2 If TMB terminates this Agreement by reason of the Customer's un-remedied or repeated breach of this Agreement prior to the end of the Minimum Term or an Additional Term; then
- 10.4.3 The termination charge shall comprise:
- a) If the Customer has made a single payment at the commencement of the current term, no refund shall be payable by TMB; or

b) If the Customer is invoiced periodically as set out on the Order, the Charges from the date of termination to the end of the current term.

- 10.5 The Customer shall not be liable for termination charges if this Agreement is terminated by:
- 10.5.1 The Customer at the end of the Minimum Term or end of any Additional Term PROVIDED THAT the Customer properly serves written notice to terminate, in accordance with clause 9 of these Supplemental Terms and clause 11 of the General Terms and Conditions;
  - 10.5.2 TMB if it can no longer provide the Subscription Services or part thereof;
  - 10.5.3 The Customer by reason of TMB's un-remedied or repeated breach of the terms of this Agreement;
  - 10.5.4 The Customer if TMB or its supplier makes changes to the Subscription Services which materially adversely affect the Customer (which for the avoidance of doubt, does not include changes to Charges);
  - 10.5.5 The Customer if TMB makes changes the terms of this Agreement which are materially disadvantageous to the Customer PROVIDED THAT the Customer complies with the provisions of sub-clause 9.1.2 of these Supplemental Terms.

## 11. LIMITATIONS AND EXCLUSIONS

- 11.1 Under the terms of this Agreement, TMB does not provide the following services:
- 11.1.1 Connection of the Customer's site to the Public Internet;
  - 11.1.2 The installation of Software at the Customer's site;
  - 11.1.3 Web-site hosting.
- 11.2 TMB may provide some or all of such excluded services under the terms of separate agreements.
- 11.3 Whilst the law that governs this Agreement is set out and in clause 17 of the General Terms and Conditions, the Customer acknowledges that the Subscription Services, for which TMB acts solely as an agent for the Customer, are provided under Vendor's terms and conditions which are governed by Applicable Law.

## 12. DOMAIN NAME REGISTRATION SERVICES

- 12.1 The Customer confirms and warrants that it is the owner of or that it has been licensed by the owner to use any relevant trademark or name as the Domain Name and indemnifies TMB against all claims and proceedings arising from infringement of any Intellectual Property rights of any third party in relation to the Domain Name.
- 12.2 The Customer shall ensure that all details submitted in respect of the registration of a Domain Name are accurate and correct and any alterations to the details made thereafter are also accurate and correct.
- 12.3 TMB shall at its sole discretion require the Customer to select an alternative Domain Name, if in its reasonable opinion it believes that the Domain Name is or is likely to be:
- 12.3.1 Abusive, defamatory, obscene, indecent, menacing or otherwise offensive;
  - 12.3.2 In breach of the rights of any third party, including those of quiet enjoyment, privacy and copyright.
- 12.4 If the Customer has not paid any amount due under this Agreement or if the information required for registration is inaccurate or late, TMB shall be entitled not to proceed with the application for registration or may cancel registration.
- 12.5 The Customer acknowledges that information submitted by it pertaining to the registration of a Domain Name may be made available to other organisations and members of the public.
- 12.6 If the Customer requests TMB to transfer a Domain Name from a third party, to facilitate the processing of such transfer the Customer agrees:
- 12.6.1 That TMB shall charge a transfer fee, at its prevailing rate, for processing the transfer of any Domain Name from the Customer or from a third party;
  - 12.6.2 To co-operate fully and promptly with TMB's reasonable requests; and / or
  - 12.6.3 To use reasonable endeavours at the Customer's cost to ensure that any third party shall fully and promptly co-operate with TMB's reasonable requests.



- 12.6.4 That TMB will not be liable if such transfer cannot be processed or is delayed because full co-operation is not promptly provided by the Customer or such third party.
- 12.7 On termination of this Agreement, TMB shall, in response to express instructions from the Customer, transfer the Domain Name to a third party. For the avoidance of doubt, TMB will not transfer the Domain Name to a third party in response to an unsolicited request from a third party.
- 12.8 The Customer agrees:
- 12.8.1 That registration and use of the Domain Name is subject to the Registrar's standard terms and conditions as revised from time to time;
- 12.8.2 It will be legally bound by the Registrar's terms and conditions.
- 12.8.3 It is the Customer's sole responsibility to obtain a copy of such terms and conditions and to comply therewith;
- 12.8.4 On receipt of a request from the Customer, TMB shall, without unreasonable delay, notify the Customer in writing of the name and contact details of the relevant Registrar;
- 12.8.5 That any disputes that arise out of the use of the Domain Name shall be referred by the Customer to:
- a) For .co.uk domains, to Nominet UK;
- b) For all other domains, to ICANN; and
- The Customer shall promptly advise TMB of such dispute.
- 12.8.6 Registration and use of SSL Certificates is subject to the Vendor's standard terms and conditions as revised from time to time.
- 12.8.7 The Customer acknowledges that it will be legally bound by the Vendor's terms and conditions.
- 12.8.8 It is the Customer's sole responsibility to obtain a copy of such terms and conditions and to comply therewith;
- 12.8.9 On receipt of a request from the Customer, TMB shall, without unreasonable delay, notify the Customer in writing of the name and contact details of the relevant Vendor.
- 12.9 TMB does not warrant that the proposed Domain Name is capable of being registered or that it will be registered. The Customer should not assume registration of the Domain Name until it has been notified in writing that the Domain Name has been registered. TMB shall not be liable for any action taken by the Customer (including marketing or publicity and the costs thereof) before such notification.
- 12.10 The Customer will have no claim against TMB if the Registrar refuses to register the Domain Name or suspends or cancels it for any reason.
- 12.11 TMB is not responsible and will not be liable for the Customer's use of the Domain Name. The Customer is solely responsible for resolving disputes with any third party in relation to its use of the Domain Name. Where there is such a dispute TMB may without notice or liability withhold and/or suspend the Domain Name.
- 12.12 TMB does not warrant that the Domain Name is or will continue to be available for the Customer's use after termination of this Agreement or that no other domain name is or will be registered which conflicts with or affects the use of the Domain Name.
- 12.13 The Customer may not transfer the Domain Name to any third party without prior written notice. On receipt of such notice, TMB will process the transfer PROVIDED THAT the Customer has paid and TMB has received all Charges owed to TMB in relation to this Agreement.
- 12.14 Subject to the terms of this Agreement TMB shall be responsible for ensuring that the successfully registered Domain Name is hosted and remains registered for the duration of this Agreement.

## Service Schedule

This Service Schedule sets out all of the Subscription Services that may be provided by TMB. The Service Components of the Subscription Services that are to be provided under the terms of this Agreement are listed on the Order attached hereto.

### Service Description Overview

#### 1. Microsoft 365

TMB procures subscriptions to a number of Microsoft 365 packages, as set out on the Order.

#### 2. Third-Party Vendor

TMB procures Subscriptions to a range of third-party desktop applications, on-line applications and on-line services. Subscription details including number of End User Subscriptions are set out on the Order.

#### 3. Extended Warranty and Warranty Uplift

TMB procures hardware manufacturer's extended warranties and warranty uplifts on behalf of the Customer. The warranty services will be provided directly to the Customer by the manufacturer or appointed subcontractor (which may be TMB). The details of the warranties, including Equipment covered, will be set out on the Order.

#### 4. Software Assurance

TMB procures software assurance services from software manufacturers or other vendors on behalf of the Customer. Software assurance typically provides for the supply of patches, maintenance releases and functional upgrades. The details of the software assurance, including Software covered, will be set out on the Order.

#### 5. Domain Name Registration and SSL Certificates

TMB will provide, as set out on the Order:

- Domain Name Registration – the management of the registration of Domain Names.
- Domain Name Transfers – the management of the transfer of Domain Names between Registrars and / or Domain Name hosting services.
- The supply of SSL Certificates.

#### 6. Service Desk

6.1 TMB's Service Desk will provide the following:

- Management of the prompt resolution of availability Issues arising within the Hosted Services which are raised by the Customer;
- Escalation management if required in the event of protracted Issue resolution.

6.2 The Customer shall raise Service Requests by one of the following methods:

6.2.1 Via TMB's client portal, which is accessed from [www.tmb.co.uk/customer-login](http://www.tmb.co.uk/customer-login);

6.2.2 By email to TMB's Service Desk: [support@tmb.co.uk](mailto:support@tmb.co.uk);

6.2.3 M1 and P1 Issues (as defined in TMB's Service Level Document) by telephone to TMB's Service Desk: 0333 900 9050.

6.3 The Service Desk is available to take calls and respond to Service Requests between the hours of 9am to 5pm Monday to Friday, excluding bank and public holidays. The Customer may however send emails at any time.

6.4 The Service Desk's target initial response and recovery times are set out in paragraph 7 of this Service Schedule.

6.5 TMB's Service Desk does not provide:

- Onsite Support

- “How to” assistance
- Any excluded services listed in sub-clause 11.1

## **7. Service Level Agreement**

- 7.1 TMB’s response and recovery targets are documented in TMB’s SLA document which can be found at <http://www.tmb.co.uk/terms>.
- 7.2 TMB shall make reasonable endeavours to meet the targets set out in TMB’s SLA document. Failure by TMB to meet such targets shall not be deemed a breach of this Agreement.

## **8. Complaint Handling**

- 8.1 If the Customer is dissatisfied with any Services-related matter, the Customer should make a complaint using TMB’s escalation process which can be found at <http://www.tmb.co.uk/terms>.