

# TOURPLAN NX SUBSCRIBER AGREEMENT

Tourplan implements a subscriber model for licensing and services. A monthly Subscription fee entitles you to use Tourplan NX, the Services, and Documentation (your “**Subscription**”) comprising:

- a limited term license to use Tourplan NX
- Enhancements and Upgrades to Tourplan NX
- The Support Services including access to:
  - o knowledgebase
  - o documentation
  - o online help desk
  - o local office helpline
- access to training and consultancy services at additional cost
- optional use of the Tourplan Cloud Platform Services to host Tourplan NX.

If you choose to use the Tourplan Cloud Platform Services the provisions of “**Schedule 1: Tourplan Cloud Platform Terms and Conditions**” will apply in conjunction with this Subscriber Agreement.

Otherwise you are entirely responsible for all hardware, network, and general IT resources and management to run Tourplan NX and the provisions of “**Schedule 2: On Premises Terms and Conditions**” will apply in conjunction with this Subscriber Agreement.

This Agreement applies to your Subscription. By using Tourplan NX, the Services, or the Documentation:

- you agree to this Agreement; and
- where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to this Agreement on that person’s behalf and that, by agreeing to this Agreement on that person’s behalf, that person is bound by this Agreement.

If you do not agree to this Agreement, you and the person on whose behalf you are acting (if any) are not authorised to access or use Tourplan NX, the Documentation or any Services, and you must immediately stop doing so.

Tourplan may change this Agreement at any time by notifying you of the change by email or by posting a notice on the Tourplan website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Agreement. By continuing to access and use the Software or Service from the date on which the Agreement is changed, you agree to be bound by the changed Agreement.

This Agreement supersedes all previous Tourplan agreements, licenses, and arrangements between you and any Tourplan group company.

**AGREEMENT**

Tourplan agrees to make your Subscription available to the Subscriber on the terms of the Agreement. The Agreement comprises:

- ▲ your Client Details as held by your Local Tourplan Office;
- ▲ this Subscriber Agreement, including this cover page, the definitions and sections 1 to 13; and either
  - ▲ Schedule 1 - Cloud Platform Terms and Conditions; OR
  - ▲ Schedule 2 - On Premises Terms and Conditions.

**Definitions**

<b>Tourplan, we, us, our</b>	The organisation responsible for providing you with a Subscription to Tourplan NX comprising your Local Tourplan Office.
<b>You, your</b>	The person or entity who has entered into this agreement and thereby holds a license to Tourplan NX.
<b>Local Tourplan Office</b>	The Tourplan office as specified in your Client Details who will manage your account and be your primary provider of the Services.
<b>Tourplan NX or Software</b>	Tourplan NX tourism software system together with any updates including New Versions, Updates, and Patches.
<b>Client Details</b>	The details of your rights to use Tourplan NX as held by Tourplan including the number of concurrent users, functionality level, your Tourplan NX platform choice and Start Date.
<b>Agreement</b>	Your Client Details, this Subscriber Agreement and either Schedule 1 or Schedule 2, depending on your Subscription.
<b>Service(s)</b>	Any services provided by the Local Tourplan Office and any other Tourplan group company.
<b>Software</b>	Tourplan NX.
<b>Fees</b>	The Subscription Fee and any other fees payable under this Agreement.

<b>Subscription Fee</b>	The monthly subscription fee set out in your Client Details.
<b>Business Hours</b>	The business hours of the applicable Local Tourplan Office, excluding any public holidays observed by that Local Tourplan Office.
<b>Confidential Information</b>	the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. Tourplan's Confidential Information includes the Software and the Documentation.
<b>Data</b>	all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, the Service or the Software.
<b>Documentation</b>	the user and technical documentation designed to enable you to properly use and operate the Service(s) or Software (if any), including any update of the documentation.
<b>Force Majeure</b>	an event that is beyond the reasonable control of a party, excluding: <ul style="list-style-type: none"><li>▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or</li><li>▲ a lack of funds for any reason.</li></ul>
<b>Objectionable</b>	includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
<b>Support Services</b>	The support services described in this Subscription Agreement.
<b>Underlying System</b>	The Software, IT solutions, systems and networks (including software and hardware) used to provide the Tourplan Cloud Platform Services, including any third party solutions, systems and networks.
<b>New Version</b>	A major release of the Software that introduces material new or revised functionality, as indicated by the primary NX version number e.g. "Tourplan NX Version 1.a.b" is superseded by "Tourplan NX Version 2.c.d". In the example 1 and 2 are the

primary version numbers, while a,b,c,d represent secondary and tertiary version numbers. On occasion an “Update” or “Patch” may also be generally termed “New Version”.

<b>Update</b>	A software release introducing minor new or revised functionality as indicated by an increment in the secondary version number.
<b>Patch</b>	A software release containing bug fixes as indicated by an increment in the tertiary version number.

In this Agreement:

- *including* and similar words do not imply any limit;
- a *party* includes that party's permitted assigns.
- a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

## **1 LICENSE AND INTELLECTUAL PROPERTY**

1.1 **Grant of licence:** Tourplan grants you, and you accept, a non-perpetual, non-exclusive and non-transferable licence to use the executable code version of the Software and the Documentation for the period of your Subscription solely for your internal business purposes, for the number of concurrent users and level of functionality specified in your Client Details.

1.2 **License conditions:** You must:

- a use the Software and the Documentation for lawful purposes only and must not copy (except for your own back-up purposes), reproduce, translate, adapt, decompile, reverse-engineer, resell, modify, vary, sub-licence or otherwise deal in the Software or the Documentation.
- b ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
- c not attempt to circumvent any limitations on concurrent users or other limitations set forth in this Agreement or in your Client Details.
- d maintain all proprietary notices on the Software and the Documentation;
- e not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or your rights under the Agreement;
- f not challenge Tourplan's ownership of (including the Intellectual Property Rights in) the Software, the Documentation or any other item or material created or developed by or on behalf of Tourplan under or in connection with the Agreement; and

- g notify Tourplan in writing immediately after you become aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.

### 1.3 Intellectual Property:

- a Tourplan owns all Intellectual Property Rights in:
  - the Software and the Documentation; and
  - any other item or material created, developed or provided by or on behalf of Tourplan under or in connection with the Agreement, as such rights arise.
- b Neither this Agreement nor any transaction with Tourplan conveys any title, copyright, intellectual property rights in the Software or the Documentation (including any enhancements or modifications), or any rights of ownership to you.
- c You acknowledge that the Software and the Documentation embody substantial creative efforts, ideas and expressions and accordingly agree not to disclose the Software and the Documentation to third parties other than on a need-to-know basis.

### 1.4 Feedback: If you provide Tourplan with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by Tourplan; and
- b Tourplan may use or disclose any feedback for any purpose.

### 1.5 IP indemnity:

- a Subject to the limitations set forth in section 10.1, Tourplan indemnifies you against any claim or proceeding brought against you to the extent that claim or proceeding alleges that your use of the Software in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to you:
  - promptly notifying Tourplan in writing of any IP Claim;
  - making no admission of liability and not otherwise prejudicing or settling the IP Claim, without Tourplan's prior written consent; and
  - giving Tourplan complete authority and information required for Tourplan to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Tourplan's account.

- b The indemnity in section 1.5a does not apply to the extent that an IP Claim arises from or in connection with:
- your breach of the Agreement;
  - the use of the Software or the Documentation in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by Tourplan;
  - any third party data or data owned by you; or
  - modification or alteration of the Software by a person other than Tourplan; or
  - combination of the Software with any other software product not approved by Tourplan.
- c If at any time an IP Claim is made, or in the Tourplan's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, Tourplan may (at its option):
- obtain for you the right to continue using the items that are the subject of the IP Claim; or
  - modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.

1.6 **Warranties:** Tourplan warrants that:

- a to the best of its knowledge, your use of the Software in accordance with the Agreement will not infringe the Intellectual Property Rights of any other person; and
- b the Software will materially perform in conformity with the Documentation although you acknowledge that the Software is of a technical nature and may not be error-free or bug-free.

1.7 **Breach of warranty:** Subject to section 1.8, if the Software does not meet the warranty in section 1.6b, Tourplan must, at its option and cost, remedy, repair, enhance or replace the defective item so that the Software meets and satisfies that warranty. The remedy, repair, enhancement or replacement of a defective item as described in this section will be your sole remedy against Tourplan for a breach of warranty under section 1.6b.

1.8 **Exclusion of warranty cover:** Tourplan is not obliged to remedy, repair, enhance or replace any defective item under section 1.6b to the extent that the defect arises from or in connection with:

- a modification or alteration of the Software by any person other than Tourplan or combination of the Software with any other software product not approved by Tourplan;  
or

- b a breach of the Agreement by you, including use of the Software by the you or your personnel in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised in writing by Tourplan.

1.9 **No implied warranties:** To the maximum extent permitted by law:

- a Tourplan's warranties are limited to those set out in the Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to the amount provided in section 10.1; and
- b Tourplan makes no representation concerning the quality of the Software or the Support Services, and does not promise that the Software will be error-free, bug-free, or will operate without interruption.

1.10 **Consumer Protection:** You agree and represents that you are entering the Agreement for the purpose of a business and that any applicable consumer protection legislation does not apply to the supply of the Software or the Support Services, or the Agreement.

## **2 ENHANCEMENTS AND UPGRADES**

2.1 Enhancements and Upgrades will be delivered to you the form of New Versions, Updates, and Patches to Tourplan NX.

2.2 Tourplan will actively develop Tourplan NX and the Documentation during the period of your Subscription and your Local Tourplan Office may from time to time offer or recommend New Versions, Updates and/or Patches.

2.3 New Versions, Updates and Patches are free for you to use while your account is current and all Subscription Fees have been paid up to date, but there will be charges associated if any of the following are required to implement any New Version, Update or Patch:

- a Project management
- b Physical installation
- c Training and/or consultancy services
- d Additional resources provided through the Tourplan Cloud Platform Services.

## **3 SUPPORT SERVICES**

3.1 For so long as your account is in good standing and all Subscription Fees are paid up to date, and subject to the conditions in sections 3.3 and 3.4 of this Agreement, Tourplan will provide the Support Services.

3.2 Where you consider on reasonable grounds that the Software is not materially performing in conformity with the Documentation, Tourplan will:

- a provide telephone and email support in the form of consultation, assistance and advice; and
  - b use reasonable efforts to assist in the resolution of the issue (taking into account the nature and severity of the issue).
- 3.3 The provision of support by Tourplan under section 3.2 of this Agreement is conditional on you:
- a first using reasonable efforts to resolve the issue by referring to the Documentation; and
  - b contacting the Local Tourplan Office during Business Hours, or
  - c submitting the issue through Tourplan's online 24x7 support platform "MyTourplan".
- 3.4 Tourplan may, at its discretion, from time to time recommend New Versions, Updates, and Patches, in which case the terms set out below will apply.
- a Where Tourplan recommends a New Versions, Updates, or Patches, you must promptly arrange for Tourplan to install the New Version, Update or Patch.
  - b Without limiting Tourplan's rights under the Agreement, if you fail to arrange to install the New Version, Update, or Patch, Tourplan may, at its option:
    - i cease providing the Support Services; or
    - ii increase the Fees with immediate effect by an amount Tourplan considers reasonable to cover any additional cost of continuing to provide the Support Services.
  - c Nothing in the Agreement requires Tourplan to provide Support Services where the support is required as a result of a circumstance that breaches any terms of the Agreement.
- 3.5 Tourplan may, at its discretion, from time to time recommend training and/or consultancy at its customary Fees for those Services, in which case the terms set out below will apply.
- a Where Tourplan recommends training and/or consultancy you must promptly arrange for the Local Tourplan Office to supply the training and/or consultancy.
  - b Without limiting Tourplan's rights under the Agreement, if you fail to arrange the training and/or consultancy, Tourplan may, at its option:
    - i cease providing the Support Services; or
    - ii increase the Fees with immediate effect by an amount Tourplan considers reasonable to cover any additional cost of continuing to provide the Support Services.



#### 4 TRAINING AND CONSULTANCY

- 4.1 Training and consultancy services are available to you as part of your Subscription but subject to additional costs as set out below:
- a These Services will be arranged on request and supplied by your Local Tourplan Office
  - b Any time, travel and accommodation costs associated with providing training and consultancy services will be quoted by the Local Tourplan Office and are additional to the Fees.
- 4.2 You are responsible for ensuring your staff are trained adequately to use Tourplan NX without relying on Support Services to supplement training.

### GENERAL TERMS AND CONDITIONS

#### 5 THIRD PARTY INTEROPERATION

- 5.1 Through the use of web services and APIs, the Tourplan system interoperates with a range of third party services. Tourplan does not make any warranty or representation on the availability of those services. Without limiting the previous sentence, if a third party service provider ceases to provide that service or ceases to make that service available on reasonable terms, Tourplan may cease to make available that service to you. To avoid doubt, if Tourplan exercises its right to cease the availability of a third party service, you are not entitled to any refund, discount or other compensation.
- 5.2 Through the use of Tourplan's web services and API your customers may interoperate with Tourplan NX:
- a If such customers attempt to cache rates and availability continuously through Tourplan's web services and API then excessive resource consumption is likely to occur.
  - b If you or your customers excessively consume Tourplan interoperability system resources to the extent that they cause performance degradations to you, your other customers, or other Tourplan clients, Tourplan reserves the right, without prejudice to its other rights and remedies, to discontinue your interoperability capabilities in Tourplan NX until interoperability is contained within limits regarded as reasonable by Tourplan.
  - c If Tourplan exercises its right to discontinue your interoperability with your customers you are not entitled to any refund, discount or other compensation.

#### 6 FEES

- 6.1 **Fees:** You must pay the Subscription Fee to Tourplan.
- 6.2 **Level of Fee:** The amount of your Subscription Fee is as set out in your Client Details and will be adjusted to new levels notified to you in advance if at any time you choose to change your Subscription.

6.3 **One-off fees:** One-off fees will apply for the management of changes to your Client Details and for additional engineering and/or administrative work required to implement such changes. Training and consultancy services, and the installation of New Versions, Patches and Updates may incur associated one-off fees.

6.4 **Invoicing and payment:**

- a Tourplan will provide you with valid tax invoices on the dates set out in your Client Details, or if there are none, monthly in advance for the Fees due in the following month.
- b All Tourplan pricing including the Subscription Fees is exclusive of any tariffs, duties, taxes (including GST, VAT, withholding or any other similar tax) or levy payable in respect of the fees, other than income tax payable by Tourplan. All such taxes or levies are payable by you.
- c You must pay the Fees:
  - i by the 20<sup>th</sup> of the month following the date of invoice; and
  - ii electronically in cleared funds without any set off or deduction except to the extent required by law. If you are required by law to make any deduction, you must pay Tourplan any additional amount that is necessary to ensure receipt by Tourplan of the full amount which Tourplan would have received but for the deduction.

6.5 **Non-Payment of Fees:** If fees are unpaid Tourplan has the right, without prejudice to its other rights and remedies, to suspend the Agreement including access to Tourplan NX or the provision of Tourplan Cloud Platform Services, and/or Support Services.

6.6 **Overdue amounts:** Tourplan may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the lesser of; (i) the corporate overdraft reference rate (monthly charging cycle) applied by the Tourplan's primary trading bank as at the due date (or if Tourplan's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum, or (ii) the highest rate permitted by applicable law.

6.7 **Fee increases:** Tourplan may increase the Fees by giving at least 90 days' notice. If you do not wish to pay the increased Fees, you may terminate the Agreement and your right to use the Software and Documentation on no less than 60 days' notice, provided the notice is received by Tourplan before the effective date of the Fee increase. If you do not terminate the Agreement in accordance with this section, you are deemed to have accepted the increased Fees.

## 7 DATA

7.1 You acknowledge that:

- a we may require access to your Data to exercise our rights and perform our obligations under this Agreement; and
- b to the extent that this is necessary but subject to section 8, we may authorise a member or members of our personnel to access the Data for this purpose; and
- c we may use aggregated non-identifiable Data for all purposes, commercial or otherwise, but only in accordance with law; and
- d internet connectivity and data transfer capability is necessary between your system and
  - i Tourplan's licensing server for Tourplan to manage licensing compliance.
  - ii Tourplan's performance monitor for Tourplan to manage error statistics, performance data and detect system issues.

7.2 You must arrange all consents and approvals that are necessary for us to access the Data as described in section 7.1.

7.3 You acknowledge and agree that to the extent Data contains personal information, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of applicable privacy laws. You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with this Agreement, and you agree to comply with all applicable privacy laws with respect to the gathering, use, storage, processing and deletion of personal information. You agree to configure the Software according to guidelines provided by us with regards to maintaining data confidentiality. All information is under username/password protection and you are responsible for selection and modification of all usernames and passwords and for ensuring the confidentiality of access to this information.

## **8 CONFIDENTIALITY**

8.1 **Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of section 88.1a and 88.1b.

8.2 **Permitted disclosure:** The obligation of confidentiality in section 88.1a does not apply to any disclosure or use of Confidential Information:

- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- b required by law (including under the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
- e by Tourplan if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Tourplan enters into a confidentiality agreement with the third party on terms no less restrictive than this section 8.

## 9 WARRANTIES

9.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.

## 10 LIABILITY

10.1 **Maximum liability:** The maximum aggregate liability of Tourplan (including all members of the Tourplan group of companies) under or in connection with the Agreement or relating to the Services, Software and Documentation, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the Fees paid by you under the Agreement in the previous 12 months.

10.2 **Unrecoverable loss:** Tourplan (and every member of the Tourplan group of companies) is not liable to you under or in connection with the Agreement for any:

- a loss of profit, revenue, savings, business, data and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

10.3 **Unlimited liability:** Clauses 10.1 and 10.2 do not apply to limit Tourplan's liability under or in connection with the Agreement for:

- a personal injury or death;
- b fraud or wilful misconduct; or
- c a breach of section 8 (Confidentiality).

- 10.4 **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.
- 10.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost, or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

## 11 TERM AND TERMINATION

11.1 **Duration:** Unless terminated under this section 11, the Agreement:

- a starts on the Start Date and ends on the End Date; but
- b where there is no End Date, continues monthly from the Start Date until a party gives not less than 3 calendar months' notice starting from the 1st day of the month immediately following notice to the other party that the Agreement will terminate on the expiry of the then-current term.

11.2 **Termination rights:**

- a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
  - i breaches any material provision of the Agreement and the breach is not:
    - ▲ remedied within 20 days of the other party notifying it of the breach; or
    - ▲ capable of being remedied;
  - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
  - iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
- b Tourplan may immediately terminate the Agreement if:
  - i the remedies in section 1.5 of are exhausted without remedying or settling the IP Claim; or
  - ii you fail to install a recommended New Version, Update, or Patch in accordance with section 3.4 (Support Services); or
  - iii you fail to arrange the training and/or consultancy services in accordance with section 3.5 (Support Services).

### 11.3 Consequences of termination or expiry:

- a Termination or expiry of the Agreement does not affect either party's rights and obligations accrued before that termination or expiry.
- b On termination or expiry of the Agreement, you must pay all Fees for the rights and services provided prior to that termination or expiry.
- c Each party must, at the other party's request following the termination or expiry of the Agreement, return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

11.4 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including sections 8, 10, 11.3, 11.4 and 12, continue in force.

## 12 DISPUTES

12.1 **Good faith negotiations:** Before referring any dispute to arbitration, a party must use their best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

12.2 **Arbitration:** Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by the arbitration of a single arbitrator in accordance with the UNCITRAL Arbitration Rules as at present in force. Any arbitration shall be conducted in English in Singapore.

12.3 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.

12.4 **Right to seek relief:** This section 12 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

## 13 GENERAL

13.1 **Force majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

- a immediately notifies the other party and provides full information about the Force Majeure;
- b uses best efforts to overcome the Force Majeure; and
- c continues to perform its obligations to the extent practicable;

provided, in no event will an event of Force Majeure relieve or delay an obligation to pay money.

13.2 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

- 13.3 **Independent contractor:** Tourplan is your independent contractor. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 13.4 **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email to an email address notified by the other party for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.
- 13.5 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.
- 13.6 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 13.7 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to Tourplan's NX Services, Software and Documentation and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Services, Software and Documentation that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date.
- 13.8 **No assignment:**
- a You may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of Tourplan, that consent not to be unreasonably withheld. You remain liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
  - b Any change of control of your business is deemed to be an assignment for which Tourplan's prior written consent is required under section 13.8a. In this section, **change of control** means any transfer of shares or other arrangement affecting you or any member of your group which results in a change in the effective control of your business.
- 13.9 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of England and Wales.

## **SCHEDULE 1 - TOURPLAN CLOUD PLATFORM SERVICES TERMS AND CONDITIONS**

The terms and conditions in this schedule apply to your use of Tourplan NX provided through the Tourplan Cloud Platform Services. If you are not using the Tourplan Cloud Platform Services then this schedule will not apply to you and does not form part of the Agreement.

### **1 PROVISION OF THE TOURPLAN CLOUD PLATFORM SERVICES**

- 1.1 Tourplan will use reasonable efforts to provide the Tourplan Cloud Platform Services:
- a in accordance with this Agreement and applicable laws;
  - b exercising reasonable care, skill and diligence; and
  - c using suitably skilled, experienced and qualified personnel.
- 1.2 Tourplan's provision of the Tourplan Cloud Platform Services to you is non-exclusive. Nothing in this Agreement prevents us from providing the Tourplan Cloud Platform Services to any other person.
- 1.3 We must use reasonable efforts to ensure the Tourplan Cloud Platform Services meets or exceeds the Tourplan Cloud Platform Services service levels set out in this Schedule. It is possible that on occasion the Tourplan Cloud Platform Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We must use reasonable efforts to advise you in advance details of any scheduled unavailability.

### **2 YOUR OBLIGATIONS**

- 2.1 You and your personnel must:
- a use the Tourplan Cloud Platform Services in accordance with the Agreement solely for:
    - i your own internal business purposes; and
    - ii lawful purposes; and
  - b not resell or make available the Tourplan Cloud Platform Services to any third party, or otherwise commercially exploit the Tourplan Cloud Platform Services.
- 2.2 When accessing the Tourplan Cloud Platform Services, you and your personnel must:
- a not impersonate another person or misrepresent authorisation to act on behalf of others or us;
  - b correctly identify the sender of all electronic transmissions;



- c not attempt to undermine the security or integrity of the Underlying Systems;
- d not use, or misuse, the Tourplan Cloud Platform Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Tourplan Cloud Platform Services;
- e not attempt to view, access or copy any material or data other than:
  - i that which you are authorised to access; and
  - ii to the extent necessary for you to use the Tourplan Cloud Platform Services in accordance with the Agreement; and
- f not use the Tourplan Cloud Platform Services in a manner, or transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is objectionable, incorrect or misleading.

2.3 Without limiting section 2.2, no individual other than a Permitted User (as set out in this clause) may access or use the Tourplan Cloud Platform Services. You may authorise any member of your personnel to be a “Permitted User”, in which case you must provide us with the Permitted User’s name and other information that we reasonably require in relation to the Permitted User. You must procure each Permitted User’s compliance with sections 2.1 and 2.2 of this Schedule and any other reasonable condition notified by us to you.

2.4 A breach of any of this Agreement by your personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of this Agreement by you.

2.5 You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Tourplan Cloud Platform Services, including to use, store and input Data into, and process and distribute Data through, the Tourplan Cloud Platform Services.

#### **Data**

2.6 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with this Agreement.

2.7 While we will take standard industry measures to back up all Data stored using the Tourplan Cloud Platform Services, you agree to keep a separate back-up copy of all Data uploaded by you onto the Tourplan Cloud Platform Services.

2.8 You agree that we may store Data (including any personal information) in secure servers and may access that Data (including any personal information) from time to time. We have sole discretion as to the means of providing this Data hosting service.

- 2.9 You agree we may access your Data as required by us for the purposes of providing support services and meeting our responsibilities under the Agreement
- 2.10 You agree to providing us with such information, including data files, as may be reasonably necessary to process support service requests.
- 2.11 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.
- 2.12 At any time prior to one month after the date of termination for any cause, you may request:
- a a copy of any Data stored using the Tourplan Cloud Platform Services, provided that you pay our reasonable costs of providing that copy. Within a reasonable period of receipt of that request, we must provide a copy of the Data in an electronic MS-SQL database backup form. We do not warrant that the format of the Data will be compatible with any software; and/or
  - b deletion of the Data stored using the Tourplan Cloud Platform Services, in which case we must use reasonable efforts to promptly delete that Data.

To avoid doubt, we are not required to comply with section 2.12a to the extent that you have previously requested deletion of the Data.

- 2.13 Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Tourplan Cloud Platform Services and/or delete, edit or remove the relevant Data if we consider that you or any of your personnel have:
- a undermined, or attempted to undermine, the security or integrity of the Tourplan Cloud Platform Services or any Underlying Systems;
  - b used, or attempted to use, the Tourplan Cloud Platform Services:
    - i for improper purposes; or
    - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Tourplan Cloud Platform Services;
  - c transmitted, inputted or stored any Data that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be objectionable, incorrect or misleading; or
  - d otherwise materially breached this Agreement.

**2.14 Service Level Guarantee**

- a Tourplan offers a 99% up-time guarantee for the Tourplan Cloud Platform Services.

- b Tourplan defines “up-time” as all the time that the Tourplan Cloud Platform Services are available for use as measured by our continuous monitoring system that checks once every minute whether iCom and the database server are functioning. “Up-time” does not include periods where your account with us is not in good standing, namely when any Fee invoices are overdue for payment.
- c Periods of internet connectivity failure between you and the Tourplan Cloud Platform Services that are beyond our reasonable control are not counted as down-time. For example, if your own Internet Service Provider has a failure which prevents you from connecting to the Tourplan Cloud Platform Services, that is still counted as up-time if the Tourplan Cloud Platform Services is otherwise available for use.
- d Tourplan is not responsible for problems arising from:
  - the improper use, operation or neglect of either Tourplan NX or the Tourplan Cloud Platform Services
  - the unauthorised modification of Tourplan NX by third parties, combination of Tourplan NX with other software products not approved by Tourplan, or installation or use of Tourplan NX on hardware not meeting our minimum specifications
  - excessive resource consumption caused by activities outside normal usage of the Tourplan Cloud Platform Services, as determined at Tourplan’s discretion
  - Faults external to or outside Tourplan’s reasonable control.

**2.15 Service Level Credit**

- a In any month that we fail to meet the 99% up-time guarantee for the Tourplan Cloud Platform Services you are eligible for a service level credit on your account.
- b To be eligible for a service level credit:
  - Your account must be in good standing
  - Service interruption incidents must be notified to us through the myTourplan online support system.
  - A ticket requesting the credit must be submitted through the the myTourplan online support system.
  - Service credit requests must be submitted within the month following the uptime guarantee failure
  - Service credit requests must contain ticket numbers detailing the associated service interruption incidents.

**2.16 Service Level Credit Calculation**

A service level credit will be provided as follows based on the percentage of your monthly Subscription Fee:

Uptime	Service level credit provided
99-100%	N/A
98%	10%
97%	20%
96%	30%
95%	40%

94%	50%
93%	60%
92%	70%
91%	80%
90%	90%
Less than 90%	100%

## **SCHEDULE 2 - TOURPLAN NX ON PREMISES TERMS AND CONDITIONS**

The terms and conditions in this schedule apply to your use of Tourplan NX Software on any platform other than the Tourplan Cloud Platform Services. "On Premises" means you provide your own cloud, hosting service or data centre provider, as well as your on-site / in house equipment and resources.

2.1 You acknowledge that:

- a you are entirely responsible for hardware, network, backup, third party software and general IT resources and management to run Tourplan NX;
- b we will require access to your system and the Data to exercise our rights and perform our obligations under the Agreement; and
- c to the extent that this is necessary but subject to section 7 of the Subscription Agreement, we may authorise a member or members of our personnel to access your system and the Data for this purpose.

2.2 You must arrange all consents and approvals that are necessary for us to access your Tourplan NX system and the Data as described in sections 5 and 7 of the Subscription Agreement, to meet our obligations under this Agreement, and to validate your compliance with this Agreement on an ongoing basis.