

# 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;
- access to training and consultancy services at additional cost; and
- 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 constitute part of 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 constitute part of this Subscriber Agreement.

The provisions of “**Schedule 3: Data Processor Agreement**” will constitute part of this Subscriber Agreement in any case.

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 Services from the date on which this 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 this Agreement. This 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;
- ▲ Schedule 3 - Data Processor Agreement; and
- ▲ either:
  - ▲ Schedule 1 - Cloud Platform Terms and Conditions; OR
  - ▲ Schedule 2 - On Premises Terms and Conditions.

### Definitions

In this Agreement, unless the context requires otherwise, capitalised words shall have the following meanings:

<b>Agreement, this Agreement</b>	Your Client Details, this Subscriber Agreement, including Schedule 3, and either Schedule 1 or Schedule 2, depending on your Subscription.
<b>Business Hours</b>	The business hours of the applicable Local Tourplan Office, excluding any public holidays observed by that Local Tourplan Office.
<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. Client Details include but are not limited to the details contained in your Order Form.
<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, as well as anything else labelled as Confidential Information by Tourplan.
<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.

**Definitions**

<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>End Date</b>	Defined in the Client Details. If not defined in the Client Details then there is no End Date for the purposes of this Agreement.
<b>Fees</b>	The Subscription Fee and any other fees payable under this Agreement.
<b>Force Majeure</b>	<p>an event that is beyond the reasonable control of a party, excluding:</p> <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>Intellectual Property Rights</b>	means and includes all rights conferred under statute, common law and equity in and in relation to inventions, patentable material, patents, copyright, trademarks (including names, labels, get-up, logos, patterns or other identifying marks), designs, rights in software and designs, circuit layouts and any other right granted by operation of law which confers protection on any written or artistic work created by intellectual effort (including, without limitation, rights in graphics, text, processes, music, videos, sounds, pictures, compilations, templates, page layout, digital conversion or other materials) and all associated intangible assets created as a by-product (including algorithms, brands, trade names, services, methods, techniques, configurations and methods).
<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.

**Definitions**

<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” at Tourplan’s discretion.
<b>Objectionable</b>	Anything deemed objectionable by Tourplan, including being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
<b>Order Form</b>	means an order (whether online or hard-copy) for Tourplan NX completed and submitted by you, and accepted by us.
<b>Patch</b>	A software release containing bug fixes as indicated by an increment in the tertiary version number.
<b>Processor</b>	Data processor in accordance with any applicable Data Protection laws. In the event you are a data processor for a third party regarding the personal data to which this Agreement applies, Processor shall mean data sub-processor, in accordance with any applicable Data Protection laws.
<b>Service(s)</b>	Any services provided by the Local Tourplan Office and any other Tourplan Group company.
<b>Start Date</b>	Defined in the Client Details.
<b>Subscription</b>	Tourplan’s provision of the Software, Documentation and Service(s) in accordance with your Client Details.
<b>Subscription Fee</b>	The monthly subscription fee set out in your Client Details.
<b>Support Services</b>	The support services described in section 3 of this Agreement.

**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>Tourplan Cloud Platform Services</b>	means the supply model in which we authorise you to access and use the Software hosted on the Underlying System.
<b>Tourplan Group</b>	Tourplan Southern Africa Pty Ltd, Tourplan Asia-Pacific Sdn Bhd, Tourplan Pacific Ltd, Tourplan Latin America SA, Tourplan UK Ltd, Tourplan Central Services Ltd, Tourplan Holdings Ltd.
<b>Tourplan NX or Software</b>	Tourplan NX tourism software system including the database schema and SQL objects together with any updates including New Versions, Updates, and Patches.
<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>Update</b>	A software release introducing minor new or revised functionality as indicated by an increment in the secondary version number.
<b>You, your</b>	The person or entity who has entered into this Agreement and thereby holds a license to use Tourplan NX.

**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 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, on the terms of this Agreement.

1.2. **License conditions:** You agree that you will:

- a. use the Software and the Documentation in compliance with all applicable laws (including privacy and data protection laws), and will not install or use the Software and the Documentation except under the terms of this Agreement.
- b. not copy (except for your own back-up purposes), reproduce, translate, adapt, decompile, reverse-engineer, modify, vary, or create derivative works of, the Software or any part thereof, or the Documentation.
- c. ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
- d. not attempt to circumvent any limitations on concurrent users or other limitations set forth in this Agreement or in your Client Details.
- e. not alter the Software or any part thereof
- f. not alter Data processed by the Software except through the Tourplan NX user interfaces and published Tourplan APIs (Application Programming Interfaces).
- g. maintain all copyright or other proprietary notices on the Software and the Documentation;
- h. Resell, license, sublicense, distribute, rent, lease, assign, loan or otherwise transfer the Software (or any part of the Software), the Documentation or your rights under this Agreement;
- i. 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 this Agreement; and
- j. 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.

You acknowledge and agree that the Software involves and includes proprietary Intellectual Property Rights, information and methodology, and that any disclosure or use of the Software not expressly authorised in this Agreement is not permitted.

**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 this Agreement, as such rights arise.
- b. Neither this Agreement nor any transaction with Tourplan conveys any title, or grant any rights of ownership of Intellectual Property Rights in the Software or the Documentation (including any enhancements or modifications) to you.
- c. To the extent, if any, rights or ownership regarding the matters specified in section 1.3a are conveyed upon you in a manner unable to be excluded by this Agreement, you agree to assign all such rights and ownership interests immediately, exclusively, and perpetually to Tourplan. You agree that you will execute all documentation and perform all acts necessary to give effect to this section.

**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 this 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;
  - providing to Tourplan such information, assistance and authority as may be reasonably requested by Tourplan in order to enable Tourplan to defend the 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 this Agreement;
  - the use of the Software or the Documentation in a manner or for a purpose not reasonably contemplated by this Agreement or otherwise not authorised in writing by Tourplan;
  - any third party data or data owned by you or any person other than Tourplan; or
  - modification or alteration of the Software by a person other than Tourplan; or
  - combination, operation or use of the Software with any other software product not supplied 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 this 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 shall, 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, operation or use of the Software with any other software product not supplied by Tourplan; or



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

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

- a. Tourplan's warranties are limited to those set out in this 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 represent that you are entering this 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 this Agreement.

## **2. ENHANCEMENTS AND UPGRADES**

- 2.1. Enhancements and Upgrades will be delivered to you in the form of New Versions, Updates, and Patches to Tourplan NX.
- 2.2. Tourplan reserves the right to charge Fees for New Versions, Updates and Patches if Tourplan reasonably believes the implementation of the foregoing will incur Tourplan costs, including without limitation, any of the following:
  - 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 and 3.6 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 require New Versions, Updates, and Patches, in which case the terms set out below will apply.
  - a. Where Tourplan requires 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 this 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 this Agreement requires Tourplan to provide Support Services where the support is required as a result of any circumstance that breaches any terms of this 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 this 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.
- 3.6. The provision of Services is subject to you:
  - a. not having altered the Software or any part thereof; and
  - b. not having altered Data other than through the Tourplan NX user interfaces and published Tourplan API's.

#### 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.

#### 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 as to the availability, effectiveness, suitability for purpose, or any other matter regarding 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 APIs your customers may interoperate with Tourplan NX:
  - a. If such customers attempt to cache rates and availability continuously through Tourplan's 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 you or 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 there is a change to 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 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> day 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 or any portion thereof are unpaid Tourplan has the right, without prejudice to its other rights and remedies, to suspend this Agreement including access to Tourplan NX or the provision of Tourplan Cloud Platform Services, and/or Support Services. Tourplan shall not be liable to you or any other person for any losses arising from such suspension.

**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 this 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 this 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;
- b. to the extent that the foregoing is necessary, we may authorise a member or members of our personnel to access the Data;

- c. we may use aggregated non-identifiable Data for any purpose, commercial or otherwise; and
  - d. internet connectivity and data transfer capability for 24 hours a day, 7 days a week is necessary between your system and
    - i. Tourplan's licensing server for Tourplan to manage licensing compliance; and
    - ii. Tourplan's performance monitor for Tourplan to manage error statistics, performance data and detect system issues.
- 7.2. You will 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 all relationships to such Data, including but not limited to collecting, holding and processing that Data through the Service, we are acting as your Processor, on your direction, and for your ultimate benefit for the purposes of all applicable privacy laws.
- 7.4. You will obtain all necessary consents from the relevant individual(s) and entities to enable us to collect, use, hold, process, and otherwise transact with Data in accordance with this Agreement, and you agree to comply with all applicable privacy laws, including those regarding the gathering, use, storage, processing and deletion of personal information.
- 7.5. You agree to configure the Software according to all guidelines provided by us, including guidelines regarding data confidentiality. You will protect all Data and access thereto by use of username and password protection and will be responsible for selection and modification, maintenance, and security of all usernames and passwords and for restricting such access to the Data. To give effect to the foregoing you will use all reasonable security measures provided that the number and quality of such measures are at least industry standard.
- 7.6. You agree that the terms of "**Schedule 3: Data Processor Agreement**" are included in this Agreement and are thus binding from the Start Date.
- 7.7. You acknowledge that the Software may provide open text fields, fields with user-defined labels, and other such opportunities to enter information at the discretion of the user. You agree that:
- a. you are solely responsible for any information entered into such fields;
  - b. you will only enter Data containing personal information into fields designated for such Data by Tourplan labels and you agree that failure to comply with this section constitutes a material breach of this Agreement;

- c. to the extent any information entered into such fields constitutes personal data, you will do everything required to ensure that Data is lawfully obtained and retained under the relevant privacy and data protection laws;
- d. you will not enter Data containing personal information into open text fields, fields with user-defined labels, and other such opportunities to enter information at the discretion of the user; and
- e. Tourplan is acting as your Processor, on your direction, and for your ultimate benefit for the purposes of any information entered into such fields.

7.8. You agree that Tourplan shall not be liable for any of the following in relation to the Service:

- a. any event where any use of your usernames and/or passwords for authentication whether genuine, inadvertent, spoofed, or malicious, result in
  - i. back-door intrusion including MS-SQL server, Operating System, access control or operating environment access; and/or
  - ii. Data privacy breaches;
- b. your implementation of 2 Factor Authentication (2FA), IP restriction, user maintenance, and password control;
- c. Data privacy breaches relating to system access outside the perimeter of the user interface provided by Tourplan;
- d. any event associated with Data that leaves the perimeter of the user interface and the data storage technologies provided by Tourplan including but not limited to
  - i. Data transfer; and/or
  - ii. user and API Data communications; and/or
  - iii. Data that has been exported to an external file, browser view, or to any computing application, program, interaction or system, not created by Tourplan.

## 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 and not disclose the Confidential Information to any person except as approved in writing by the party that supplied the Confidential Information;
- 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 8.1a and 8.1b. You acknowledge

that the Software and the Documentation is our Confidential Information and accordingly agree not to disclose the Software and the Documentation to any other persons except on a need-to-know basis.

8.2. **Permitted disclosure:** The obligation of confidentiality in section 8.1a does not apply to any disclosure or use of Confidential Information:

- a. necessary for the purpose of performing this Agreement or exercising a party's rights under this 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 this 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. INDEMNIFICATION**

9.1. **Your Indemnification:** You shall indemnify and hold harmless Tourplan (together with our directors, officers, employees, agents, consultants, contractors) and the Tourplan Group against all costs, losses, claims, liability or damages (including the actual legal fees charged by our solicitors) incurred or suffered as a direct or indirect consequence of your breach of this Agreement, material or otherwise.

9.2. Tourplan's right to indemnification shall in no way restrict its right to pursue other remedies regarding the matters indemnified in this section.

## **10. LIMITATION OF LIABILITY**

10.1. **Maximum liability:** The maximum aggregate liability of Tourplan (including our directors, officers, employees, agents, consultants, contractors, and all members of the Tourplan Group) under or in connection with this Agreement or relating to the Services, Software and Documentation, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in aggregate exceed an amount equal to the Fees paid by you under this Agreement in the 12 months preceding the event giving rise to the liability.

10.2. **Unrecoverable loss:** Tourplan (including our directors, officers, employees, agents, consultants, contractors, and every member of the Tourplan Group) is not liable to you under or in connection with this Agreement or relating to the Services, Software and Documentation for any:

- a. loss of profits, revenue, savings, business, data and/or goodwill; or
  - b. consequential, indirect, incidental or special damage or loss of any kind.
- 10.3. **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under this Agreement, or by the negligence or misconduct of the other party or its personnel.
- 10.4. **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 this Agreement.

## 11. TERM AND TERMINATION

11.1. **Duration:** Unless terminated under this section 11, this 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 this 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 this Agreement if the other party:
  - i. breaches any material provision of this 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 this Agreement for 30 days or more due to Force Majeure.
- b. Tourplan may immediately terminate this 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 this Agreement does not affect either party's rights and obligations accrued before that termination or expiry.
- b. On termination or expiry of this 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 this 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:** On the expiry or termination of this Agreement, sections 1.2 - 1.4, 6.4 – 6.6, 7 - 10, 11.3, 12 and 13 shall 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, this Agreement through good faith negotiations.

**12.2.** If the dispute is not resolved within ten (10) Business Days from the commencement of negotiations under section 12.1, then the dispute shall be escalated to the parties' respective chief executives (or equivalent).

**12.3.** Where escalation occurs, the parties' chief executive officers (or equivalent) shall meet (or otherwise communicate if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.

**12.4. Arbitration:** If, after a further discussion period of five (5) Business Days, the parties remain unable to reach an agreed outcome, either party can elect to submit the dispute to arbitration in accordance with the procedures specified in sections 12.5 – 12.7 below. If such an election is made, then the dispute shall be resolved in accordance with the following procedures and the Arbitration Act 1996.

**12.5.** Any party may refer a dispute to arbitration by giving notice to the other party that it seeks a matter in dispute to be referred to arbitration. The notice shall set out the matter in dispute in sufficient detail to enable the other party to be adequately informed as to the nature of the dispute.

**12.6.** Any dispute shall be heard in Auckland, New Zealand, by a single Arbitrator. The Arbitrator shall:

- a. be appointed by the parties, if they can agree on a single Arbitrator; or
- b. be appointed by the President for the time being of the New Zealand Law Society, if the parties cannot agree on a single Arbitrator.

- 12.7. Parties shall be entitled to attend arbitration by AV link and shall not be required to attend in person in Auckland. The decision of the Arbitrator on any matter so referred to the Arbitrator shall be final and binding on the parties. The Arbitrator may, in the Arbitrator's unfettered discretion, determine and award the costs of the dispute. Unless the decision of the Arbitrator contains an award of costs, the parties shall bear the Arbitrator's costs equally.
- 12.8. **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under this Agreement even if there is a dispute.
- 12.9. **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 this 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 this 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 this Agreement.
- 13.4. **Notices:** A notice given by a party under this 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 this Agreement does not affect the legality, enforceability or validity of the remaining provisions of this Agreement.
- 13.6. **Entire agreement:** This 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 this Agreement, and no such representation, warranty or agreement has any effect from the Start Date.

**13.7. No assignment:**

- a. Tourplan may assign any of its rights and responsibilities under this Agreement to any other member of the Tourplan Group, or to a reputable purchaser in the event of a sale of all or substantially all of Tourplan's assets. In all other circumstances, neither party may assign, transfer or novate its rights and responsibilities under this Agreement without the prior written consent of the other party (which shall not be unreasonably withheld).
- 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 13.7a. 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.

13.8. **Law:** This Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

**13.9. In this Agreement:**

- a. The meaning of general words is not limited by specific examples introduced by "*including*", "*for example*" or similar expressions;
- b. a *party* includes that party's permitted assigns and successors;
- c. Any covenant or requirement on you not to do something shall also constitute an obligation not to suffer, permit, cause or assist any other person (including any of your personnel) to do that thing; and
- d. 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.

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

13.11. **Third Parties:** This Agreement is intended to confer benefits on our directors, officers, employees, agents, consultants, contractors, and every member of the Tourplan Group. Accordingly, each of these persons may enforce this Licence Agreement.

# **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 this 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 will 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 (e.g. to enable maintenance or other development activity to take place, or in the event of Force Majeure). We will 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 this 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 this 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 section) 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 material 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. We will take standard industry measures to back up all Data stored using the Tourplan Cloud Platform Services however you agree that we are not liable for the loss of any Data stored using 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 this Agreement
- 2.10. You agree to provide us with such Data and information, including data files, as may be reasonably necessary to process Support Service requests.
- 2.11. You indemnify us against any costs, losses, claims, liability or damages (including the actual legal fees charged by our solicitors) 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 in advance our reasonable costs of providing that copy. Within a reasonable period of receipt of that request, we will 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.

Tourplan shall not be liable to you or any other person for any losses arising from our exercise of these rights.

#### **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. Tourplan will have no responsibility for “up-time” during periods where your account with us is not in good standing, for example 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 supplied 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.

These too are not counted as down-time.

- e. Tourplan may suspend the Tourplan Cloud Platform Services in whole or in part at any time on written notice if:
- (i) It is necessary to safeguard the provision or integrity of the Tourplan Cloud Platform Services or the Underlying System;
  - (ii) The Tourplan Cloud Platform Services or the Underlying System require urgent modification or maintenance;
  - (iii) Security situations (for example a DoS attack on a server) threaten the stability of the Underlying System; or
  - (iv) There is or has been unauthorised, unlawful or fraudulent use of the Tourplan Cloud Platform Services or your use of the Tourplan Cloud Platform Services is causing or may potentially cause damage or interference to the Underlying System;
  - (v) It is necessary to comply with a direction, order or request of any governmental authority or other competent authority; or
  - (vi) We have a right to suspend the Tourplan Cloud Platform Services under the Agreement (e.g. due to breach or non-payment by you).

Unless otherwise agreed, any suspension of the Services under subclauses (i) or (iii) – (vi) shall not represent an up-time failure, nor give rise to any service level credits, compensation or other remedies.

### **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 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.
- c. Your sole and exclusive remedy for failure to meet the 99% up-time guarantee for the Tourplan Cloud Platform Services shall be the provision of service level credits in accordance with this Schedule. Failure to meet the 99% up-time guarantee will not be deemed to be a breach of the Agreement.

### **2.16. Service Level Credit Calculation**

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



<b>Uptime</b>	<b>Service level credit provided</b>
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.

2.17. 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 and for maintaining the foregoing at a standard reasonably nominated by Tourplan;
- b. we will require access to your system and the Data to exercise our rights and perform our obligations under this Agreement; and
- c. to the extent that this is necessary but subject to section 7 of the Subscriber Agreement, we may authorise a member or members of our personnel to access your system and the Data for this purpose.

2.18. 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 Subscriber Agreement, to meet our obligations under this Agreement, and to validate your compliance with this Agreement on an ongoing basis.

# SCHEDULE 3 - DATA PROCESSOR AGREEMENT

The terms of this Schedule and its appendices apply from the Start Date of this Agreement.

## 1. Introduction

- 1.1 This agreement re processing of personal data (the “**Data Processor Agreement**”) regulates [Tourplan](#)’s (the “**Data Processor**”) processing of personal data on behalf of the you (the “**Data Controller**”) and is attached as an addendum to the [Tourplan NX Subscriber Agreement](#) (“**Service Agreement**”) in which the parties have agreed the terms for the Data Processor’s delivery of services to the Data Controller.
- 1.2 In the event you are a data processor for a third party regarding the personal data to which this Data Processor Agreement applies, then the terminology in the above section 1.1 shall apply, however “**Data Processor**” shall mean data sub-processor, and “**Data Controller**” shall mean data processor.

## 2. Legislation

- 2.1 The Data Processor Agreement (DPA) shall ensure that the Data Processor complies with the applicable data protection and privacy legislation (the “Applicable Law”), including in particular The **General Data Protection Regulation (GDPR)** (Regulation (EU) 2016/679)

## 3. Processing of personal data

- 3.1 Purpose: The purpose of the processing under the Service Agreement is the provision of the Services by the Data Processor as specified in the Service Agreement.
- 3.2 In connection with the Data Processor’s delivery of the Services to the Data Controller, the Data Processor will process certain categories and types of the Data Controller’s personal data on behalf of the Data Controller.
- 3.3 “Personal data” includes “*any information relating to an identified or identifiable natural person*” as defined in GDPR, article 4 (1) (1) (the “Personal Data”). The categories and types of Personal Data processed by the Data Processor on behalf of the Data Controller are listed in appendix A. The Data Processor only performs processing activities that are necessary and relevant to perform the Services. The parties shall update appendix A whenever changes occur that necessitates an update.
- 3.4 The Data Processor shall have and maintain a register of processing activities in accordance with GDPR, article 32 (2).

## 4. Instruction

- 4.1 The Data Processor may only act and process the Personal Data in accordance with the documented request (support ticket or email) from the Data Controller (the “Instruction”), unless required by law to act without such instruction. The Instruction at the time of entering into this DPA is that the Data Processor may only process the Personal Data with the purpose of delivering the Services as described in the Service Agreement. Subject to the terms of this DPA and with mutual agreement of the parties, the Data Controller may issue additional written instructions consistent with the terms of this Agreement. The Data Controller is responsible for ensuring that all individuals who provide written instructions are authorised to do so.
- 4.2 The Data Controller guarantees to process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. The Data Controller’s instructions for the processing of Personal Data shall comply with Applicable Law. The Data Controller will have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which it was obtained.
- 4.3 The Data Processor will inform the Data Controller of any instruction that it deems to be in violation of Applicable Law and will not execute the instructions until they have been confirmed or modified.

## **5. The Data Processor's obligations**

### **5.1 Confidentiality**

- 5.1.1 The Data Processor shall treat all the Personal Data as strictly confidential information. The Personal Data may not be copied, transferred or otherwise processed in conflict with the Instruction, unless the Data Controller has agreed in writing.
- 5.1.2 The Data Processor's employees shall be subject to an obligation of confidentiality that ensures that the employees shall treat all the Personal Data under this DPA with strict confidentiality.
- 5.1.3 Personal Data will only be made available to personnel that require access to such Personal Data for the delivery of the Services and this Data Processor Agreement.

5.2 The Data Processor shall also ensure that employees processing the Personal Data only process the Personal Data in accordance with the Instruction.

### **5.3 Security**

- 5.3.1 The Data Processor shall implement the appropriate technical and organizational measures as set out in this Agreement and in the Applicable Law, including in accordance with GDPR, article 32. The security measures are subject to technical progress and development. The Data Processor may update or modify the security measures from time-to-time provided that such updates and modifications do not result in the degradation of the overall security.

### **5.4 Data protection impact assessments and prior consultation**

- 5.4.1 If the Data Processor's assistance is necessary and relevant, the Data Processor shall assist the Data Controller in preparing data protection impact assessments in accordance with GDPR, article 35, along with any prior consultation in accordance with GDPR, article 36.

### **5.5 Rights of the data subjects**

- 5.5.1 If the Data Controller receives a request from a data subject for the exercise of the data subject's rights under the Applicable Law and the correct and legitimate reply to such a request necessitates the Data Processor's assistance, the Data Processor shall assist the Data Controller by providing the necessary information and documentation. The Data Processor shall be given reasonable time to assist the Data Controller with such requests in accordance with the Applicable Law.
- 5.5.2 If the Data Processor receives a request from a data subject for the exercise of the data subject's rights under the Applicable Law and such request is related to the Personal Data of the Data Controller, the Data Processor must forward the request to the Data Controller and must refrain from responding to the person directly.

### **5.6 Personal Data Breaches**

- 5.6.1 The Data Processor shall notify the Data Controller without undue delay after becoming aware of a breach occurring that can lead to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to, personal data transmitted, stored or otherwise processed re the Personal Data processed on behalf of the Data Controller (a "Personal Data Breach").
- 5.6.2 The Data Processor shall make reasonable efforts to identify the cause of such a breach and take those steps as they deem necessary to establish the cause, and to prevent such a breach from reoccurring.

### **5.7 Documentation of compliance and Audit Rights**

- 5.7.1 Upon request by a Data Controller, the Data Processor shall make available to the Data Controller all relevant information necessary to demonstrate compliance with this DPA, and shall allow for and reasonably cooperate with audits, including inspections by the Data Controller or an auditor mandated by the Data Controller. The Data Controller shall give notice of any audit or document inspection to be

conducted and shall make reasonable endeavours to avoid causing damage or disruption to the Data Processors premises, equipment and business in the course of such an audit or inspection. Any audit or document inspection shall be carried out with reasonable prior written notice of no less than 30 days, and shall not be conducted more than once a year.

- 5.7.2 The Data Controller may be requested to sign a non-disclosure agreement reasonably acceptable to the Data Processor before being furnished with the above.

## 5.8 Data Transfers

- 5.8.1 In performing the Services the Data Processor may need to transfer your data, and often to countries outside the European Economic Area. In all cases, transfer of your data will always be through a secure encrypted protocol. In some cases, personal data will be saved on storage solutions that have servers outside the European Economic Area (EEA). Only those storage solutions that provide secure services with adequate relevant safeguards will be employed.

## 6. Sub-Processors

- 6.1 The Data Processor is given general authorisation to engage third-parties to process the Personal Data ("Sub-Processors") without obtaining any further written, specific authorization from the Data Controller, provided that the Data Processor notifies the Data Controller in writing about the identity of a potential Sub-Processor (and its processors, if any) before any agreements are made with the relevant Sub-Processors and before the relevant Sub-Processor processes any of the Personal Data. If the Data Controller wishes to object to the relevant Sub- Processor, the Data Controller shall give notice hereof in writing within ten (10) business days from receiving the notification from the Data Processor. Absence of any objections from the Data Controller shall be deemed consent to the relevant Sub-Processor.
- 6.2 In the event the Data Controller objects to a new Sub-Processor and the Data Processor cannot accommodate the Data Controller's objection, the Data Controller may terminate the Services by providing written notice to the Data Processor.
- 6.3 The Data Processor is accountable to the Data Controller for any Sub-Processor in the same way as for its own actions and omissions.
- 6.4 The Data Processor is at the time of entering into this Data Processor Agreement using the Sub- Processors listed in appendix B. If the Data Processor initiates sub-processing with a new Sub-Processor, such new Sub-Processor shall be added to the list in appendix B under paragraph 2.

## 7. Remuneration and costs

- 7.1 The Data Controller shall remunerate the Data Processor based on time spent to perform the obligations under section 5.4, 5.5, 5.6 and 5.7 of this Data Processor Agreement based on the Data Processor's normal hourly rates.
- 7.2 The Data Processor is also entitled to remuneration for any time and material used to adapt and change the processing activities in order to comply with any changes to the Data Controller's Instruction, including implementation costs and additional costs required to deliver the Services due to the change in the Instruction. The Data Processor is exempted from liability for non-performance within the Service Agreement if the performance of the obligations under the Service Agreement would be in conflict with any changed Instruction or if contractual delivery in accordance with the changed Instruction is impossible. This could for instance be the case; (i) if the changes to the Instruction cannot technically, practically or legally be implemented; (ii) where the Data Controller explicitly requires that the changes to the Instruction shall be applicable before the changes can be implemented; and (iii) in the period of time until the Service Agreement is changed to reflect the new Instruction and commercial terms thereof.

## **8. Limitation of Liability**

8.1 The total aggregate liability to the Data Controller, of whatever nature, whether in contract, tort or otherwise, of the Data Processor for any losses whatsoever and howsoever caused arising from or in any way connected with this engagement shall be subject to the "Limitation of Liability" section set out in the Service Agreement.

8.2 Nothing in this DPA will relieve the processor of its own direct responsibilities and liabilities under the GDPR.

## **9. Duration**

9.1 The Data Processor Agreement shall remain in force until the Service Agreement is terminated.

## **10. Data Protection Officer**

10.1 The Data Processor will appoint a Data Protection Officer where such appointment is required by Data Protection Laws and Regulations.

## **11. Termination**

11.1 Following expiration or termination of the Service Agreement, the Data Processor will delete or return to the Data Controller all Personal Data in its possession as provided in this Agreement except to the extent the Data Processor is required by Applicable law to retain some or all of the Personal Data (in which case the Data Processor will archive the data and implement reasonable measures to prevent the Personal Data from any further processing). The terms of this DPA will continue to apply to such Personal Data.

## **12. Contact**

12.1 The contact information for the Data Processor and the Data Controller is listed in appendix C.

## Appendix A

### Personal Data

1. The Data Processor processes the following types of Personal Data in connection with its delivery of the Services:
  - a. Contact information of relevant employees of the Data Controller necessary for the administration and processing of the Services. Namely:
    - Name
    - position
    - telephone number
    - email address
2. The Data Processor may process the following types of Personal Data held in Tourplan in connection with its delivery of the Services:

Data Controller to specify and maintain a schedule types of Personal Data held in Tourplan and send to Tourplan to be managed as part of the Controllers **Client Details**.

## Appendix B

### APPROVED SUB-PROCESSORS

The following Sub-Processors shall be considered approved by the Data Controller at the time of entering into this Agreement:

1. Datapipe, 10 Exchange Place, 12th Floor, Jersey City, NJ US 07302
2. Microsoft Azure, One Microsoft Way, Redmond, Washington, US
3. Other Tourplan Offices and business units within the Tourplan Group:
  - a. Tourplan Africa
  - b. Tourplan Asia
  - c. Tourplan Pacific
  - d. Tourplan Latin America
  - e. Tourplan Europe
  - f. Tourplan Central Services



## Appendix C

### 1. Contact Information

1. The Data Processors contacts for matters related to this Agreement are
  - 1.1. Those contacts specified in the Service Agreement, or
  - 1.2. You can reach our central Data Protection Officer by emailing [DPO@tourplan.com](mailto:DPO@tourplan.com)

2. The **Data Controller's contacts** for matters related to this Agreement are:

**Data Controller to specify primary and secondary contact details and send to Tourplan to be managed within the Controllers **Client Details**.**