Terms and Conditions for the use of Team Management Systems (TMS) Products and Services

1. Definitions and Interpretation

In these terms, the following words have the following meanings:

“Agreement” means the agreement for TMS to supply Products and/or Services, incorporating these terms, including the Product and Services Schedule, and the corresponding Order;

“Respondent” means any individual that receives a TMS Profile.

“TMS Group” means TMS Australia, TMSDI, and all authorised distributors of the TMS suite of Profiles and services;

“Network Member” means the TMS Accredited facilitator placing an Order using this Agreement as defined in an Order;

“Order” means a written or verbal order, which may be agreed in an electronic mail, consisting of a statement of work, change request form, price addendum or other order for Products and/or Services agreed between Network Member and TMS;

“Output” means any reports TMS produces and provides to Network Member (i) on Respondents or (ii) as a result of a consultancy project;

“Product” means the TMS product TMS agrees to supply to a Network Member in an Order;

“Service” means the service TMS agrees to supply to a Network Member in an Order, including online and consultancy services as further described in the Product and/or Services Schedule;

“Territory” is as stated in the Order, or if left blank then the Territory is the country where Network Member is registered.

Headings are for reference only. Include, including, in particular or any similar expressions are illustrative and do not limit the sense of the words following those terms. The singular tense of a defined term also includes the plural. “Writing” or “written” includes faxes or electronic mail unless specifically excluded by the parties in an Order.

2. Basis of Agreement

2.1 Access to TMS Products and/or Services

2.1.1 TMS Products and/or Services are available only to facilitators accredited through an authorised TMS accreditation programme. Schedule 1: Product and Services, contains additional terms that apply to Products and/or Services that a Network Member may Order under this Agreement

2.2 Accreditation

2.2.1 Upon completion of an authorised accreditation programme, TMS accredited facilitators are provided with the following:

a. TMS Network Membership
b. Access to the Network Member Intranet
c. Access to a www.TMSProfiles.com facilitator site
d. Access to TMS Products and/or Services, (See Price and Payment).

2.2.2 Network Members can only administer those Profiles in which they are accredited. TMS Australia also recognises accreditation certification completed through any TMS Authorised Distributors, upon receipt of proof of accreditation and/or confirmation from the said Distributor.

2.3 TMS Products

2.3.1 TMS Products refer to the TMS self-rater and multi-rater questionnaires – provided as electronic (E-Profile) or hard copy (HC-Profile) versions; the TMS Hubs; TMS workshop materials and TMS E-Products.

2.3.2 Network Members can access the TMS Profile Suite via TMSProfiles.com or via an authorised TMS Office or Distributor.
2.4 TMS Services
2.4.1 The TMS Training Team provide technical information and advice to Network Members on the use of TMS Profiles and products. In addition to general advice regarding proposed solutions and use of the TMS Profiles and products.
2.4.2 From time to time, TMS may refer commercial opportunities to Network Members. In doing so, TMS does not guarantee the Network Member will be granted the opportunity.

2.5 TMS Software
2.5.1 Any software that is made available for download from TMS is the copyrighted work of TMS. Use of the Software is governed by the terms of the end user license agreement that accompanies or is included with the Software.
2.5.2 The software is made available for downloading solely for use by TMS accredited facilitators according to the Licence Agreement. Any reproduction or redistribution of the Software not in accordance with the Licence Agreement is expressly prohibited by law.

2.6 Offer & Acceptance
2.6.1 Network Members can access and administer Profiles via TMSProfiles.com, using their unique facilitator login information.
2.6.2 When a Network Member submits an order for Profiles via TMSProfiles.com, email or telephone, it is deemed as an offer to purchase such TMS Products and are subject to these terms.
2.6.3 The Order will be deemed accepted when TMS:
   a. Add additional Profile counts to the Network Members TMSProfiles.com facilitator site,
   b. Issues a written acknowledgement to the Network Member; and/or
   c. Delivers the Profiles and/or Products as ordered.
2.6.4 Unless otherwise stated, a quotation or proposed order provided to the Network Member for Products and/or Services is valid for a period of 30 days from the date of the proposed order.

2.7 Profile counts and access to the Hub
2.7.1 The cost of all self-rater questionnaires (TMP, WoWV, and QO2™) includes access for the respondent to the Profile Hub and the core applications. Hub access is 2-years from the time the questionnaire is completed.
2.7.2 The default and recommended set-up for E-Profiles is facilitator and respondent access to the Hub and the core applications at the time of profile questionnaire set up. This ensures the respondent gains access to all Profile resources and full value of the Profile.
2.7.3 TMS may conduct monthly audits on Profile usage and application set up.

3. Price and payment
3.1 Price
3.1.1 Network Members can access TMS Profiles at a wholesale rate. The wholesale rate for Products and/or Services is outlined in the Team Management Systems– Price List, or stated within a written Proposal, issued by TMS.
3.1.2 All prices shown for any TMS Products and/or Services, unless stated, are in Australian Dollars, exclusive of GST and postage and handling.

3.2 Invoicing
3.2.1 Where a Network Member places an order for Profiles via TMSProfiles.com, they are deemed to have confirmed that they have the authority to enter into the agreement, and accept the pricing and terms and conditions set out herein.
3.2.2 TMS e-Profile counts are invoiced upon order.
3.2.3 TMS hard copy Profiles will be invoiced upon despatch. If hard copy Profile requested but not provided at time of despatch Profile will be invoiced at the current e-Profile rate.
3.2.4 All profile questionnaires setup will be invoiced at the e-Profile rate when requested or at the end of the month in which they were setup. If hard copy Profile requested after invoice raised, then printing and freight will be invoiced when despatched.
3.2.5 All other TMS Products and/or Services will be invoiced at the time of the order and/or upon entering into an agreement for Services (including accreditation, TMS Profile debriefs), unless otherwise agreed with the Network Member.
Terms and Conditions for the use of Team Management Systems (TMS) Products and Services
Last updated on 1 September 2016

3.3 Payment
3.3.1 Unless otherwise agreed in writing, payment for Profiles is due within 30 days from the date of the invoice. For accreditation workshops including in-house accreditation workshops, payment is due prior to the commencement of the workshop.
3.3.2 In the event of late or non-payment, TMS may suspend the provision of Products and/or Services and/or charge the Network Member default interest at a rate of 2% per month accruing on a daily basis from the due date for payment until the date on which payment is made and the costs in pursuing a debt recovery procedure.
3.3.3 Where profile questionnaires have been completed but Profile not provided to end user then payment in full is required as the Profile has been generated and in accordance with our Ethical Guidelines.

4. Quality
4.1 Warranty
4.1.1 TMS warrants that if the Network Member demonstrates that there is a defect in the Products, or the Services have not been performed with reasonable care and skill in accordance with good industry practice, then it will:
   a. repair or make good such defect at no charge to Network Member; or
   b. replace such Products and/or re-perform such Services; or
   c. issue a pro-rated credit note for such affected Products or Services (“Warranty”).

4.2 Conditions
4.2.1 The Warranty does not apply:
   a. unless Network Member notifies TMS in writing of the alleged defect within 7 days of the time when the Network Member discovers the defect and in any event within 1 month of the date of delivery of TMS’s Products and/or the date of TMS’s performance of Services; or
   b. in respect of any defect arising from wilful damage, Network Member’s negligence, misuse or alteration of Products without TMS approval; or
   c. if the total price for Products and/or Services has not been paid by the due date for payment; or
   d. if the Network Member cannot provide evidence of the claimed defect or problem such that TMS can reproduce the claimed defect.

4.3 Other Warranties
4.3.1 This express Warranty is the only warranty given by TMS and is in lieu of all other warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise, all of which are hereby excluded, to the fullest extent permitted by governing law, from the Agreement.

5. Liability
5.1 Unlimited Liability
5.1.1 Nothing in these terms will exclude or limit either party’s liability for: (a) death or personal injury caused by its negligence or (b) for fraud or fraudulent misrepresentation.

5.2 Consequential and other losses
5.2.1 Neither party will be liable for any of the following losses or damage (whether or not such losses or damage were foreseen, direct, indirect foreseeable, known or otherwise): (i) loss of; profits (whether actual or anticipated); revenue; anticipated savings; business; opportunity; or goodwill; or (ii) any indirect, special or consequential loss or damage howsoever caused.
5.2.2 To the extent all or some portion of the exclusion or limitation of liability is not allowed by applicable law, the party’s liability is limited to the greatest extent permitted by applicable law.

5.3 Maximum Liability
5.3.1 Subject to clauses 5.1 and 5.2, TMS’ total aggregate liability arising out of or in connection with the performance or contemplated performance of the Agreement (whether for tort (including negligence), breach of Agreement, breach of statutory duty or otherwise) will in no event exceed 120% of the price paid or payable by the Network Member in the 12-month period immediately before the date of the event giving rise to Network Member’s claim.
6. Termination

6.1 Cause
6.1.1 Either party may terminate the Agreement by written notice with immediate effect if the other party:
   a. becomes or is likely to become insolvent, enters into administration, bankruptcy or compromises any debts with creditors; or
   b. materially breaches the Agreement and following written notice, fails to remedy such breach where it is capable of remedy, within 30 days.

6.2 Convenience
6.2.1 Either party may terminate the Agreement for any reason by providing the other party with at least 30 days prior written notice after the expiry of any agreed minimum term or any agreed subscription term.

6.3 Consequences
6.3.1 Upon termination of the Agreement for any reason:
   a. the relationship between the parties and any term licences granted under the Agreement will cease;
   b. any provision which expressly or by implication is intended to come into or remain in force on or after the termination of the Agreement, will continue in full force and effect;
   c. such termination will be without prejudice to any rights or remedies of either party which may have accrued up to the date of termination;
   d. except in the event of TMS’s breach, all sums owing pursuant to an Order will become due subject to its terms; and
   e. TMS may revoke any Profile accreditations held by the Network Member, and will advise all registered TMS Offices and/or distributors.

6.3.2 If the Network Member terminates under clause 6.2, the Network Member will pay the cancellation charges specified in an Order or, under a statement of work, the fees based on the percentage of work completed up to the date of termination.

7. Ownership and Rights

7.1 Intellectual Property Ownership
7.1.1 TMS, or its licensors, will at all times remain the sole owner of any pre-existing Intellectual Property in Products and/or Services as well as any Intellectual Property created or developed in the course of TMS’s performance of the Agreement. For the purpose of this Agreement, “Intellectual Property” includes any patent, copyright, design right, registered design, trade mark, service mark, trade name, domain name, algorithms, user interface designs, benchmark data, architecture, know-how, database right, utility model, unregistered design or other industrial or intellectual property rights subsisting throughout the world, whether or not registered and all applications, renewals and extensions of the same.

7.1.2 TMS Training Materials contain valuable confidential and proprietary information belonging to TMS and they may not be shared with any third party (including independent contractors and consultants) without prior approval from TMS. TMS retains any and all Intellectual Property rights for these materials.

7.1.3 TMS authorises accredited Network Members to use the TMS, TMS Network Member, and Profile registered logos/images only when performing and/or advertising services related to the TMS Products and Profile Suite. The use of all TMS registered logos/images must be in accordance with the TMS Brand Guidelines. A copy of the TMS Brand Guidelines is available upon request.

7.1.4 The Network Member will at all times remain the owner of any property (including Intellectual Property) which the Network Member provides to TMS.

7.2 Ownership of Output
7.2.1 Network Members have access to the Output of completed profile questionnaires for a period of 2-years via their TMSProfiles.com facilitator site. Upon completion of the profile questionnaire, the Respondent becomes owner of their Output.
Terms and Conditions for
the use of Team Management Systems (TMS) Products and Services
Last updated on 1 September 2016

7.2.2 Network Members may download, make copies and create derivative works of any Output under this Agreement; provided that all underlying Intellectual Property rights in the Output remains the property of TMS.

7.2.3 TMS hereby grants the Network Member a non-exclusive, non-transferrable, perpetual licence to use the Intellectual Property contained in the Output in accordance with this Agreement. Except as expressly stated above, this Agreement does not grant the Network Member any rights to, or in any TMS Intellectual Property.

7.3 Guidance and Warranty

7.3.1 The Output represents TMS’s professional opinions based on information provided to TMS by the respondents or, on behalf of the recipient by the Network Member and must not be relied upon as the sole basis for any employment related decisions.

7.3.2 TMS Products are not designed for the recruitment or selection of candidates.

7.3.3 TMS is not operating as a recruitment agency; nor is TMS responsible for the acts or omissions of the Network Member, including but not limited to; (i) the Network Member’s selection of TMS Profiles without a specific written recommendation from TMS; and (ii) the Network Member’s use of TMS Profiles, it’s interpretation of Output or it’s resulting decisions.

7.3.4 The Network Member warrants that it will:
   a. not copy, reproduce, modify or adapt, translate, disassemble or, reverse engineer, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Product and/or Services (as applicable) in any form or media or by any means, except as permitted under this Agreement;
   b. not cause confusion, deception or false associations with products and/or services that are not Products and/or Services (including debriefs, workshops or other services) whether by preparing reports that are identical with, or confusingly similar to, Output prepared by TMS, or otherwise;
   c. administer the Products and/or any Services (including any related materials), in compliance with all relevant laws, procedures or guidelines applicable in the Territory or otherwise;
   d. use the results appropriately, professionally, and in an ethical manner, paying due regard to applicable laws, the needs of those involved in the testing process, the reasons for testing, and the broader context in which the testing takes place; and
   e. ensure each Profile administrator has the necessary accreditations and competencies to carry out the administration process and the knowledge and understanding of the Products and proper usage that inform and underpin such process.

8. Data Protection

8.1 Definitions

“Data Controller” means a person/entity who determines the purposes for which and the manner in which any Personal Data are, or are to be, processed (collected, used, amended, retained, destroyed etc.);

“Data Processor” means a person/entity (other than an employee of the Data Controller) that processes Personal Data on behalf of the Data Controller;

“Personal Data” means data which relates to a living individual who can be identified from that data, (or from that data and other information which is in the possession of the Data Controller); and

“Third Party” any person or entity other than Network Member, Respondent, the Data Controller or the Data Processor or other person authorised to process data for the Data Controller or person, excluding the TMS Group.

8.2 Compliance

8.2.1 Both parties will comply with all applicable laws and regulations in relation to the collection, processing and storage of Personal Data relating to Respondents.

8.3 Data Collected

8.3.1 Personal Data, which is used to produce the Output, is either input by the Respondent via TMSProfiles.com or provided by Network Member. Respondent Personal Data may include information to contact Respondent (“Respondent Data”).

8.3.2 TMS, will not contact the Respondent directly and does not store any Personal Data for the purpose of completing an assessment (“Assessment Data”).
8.3.3 The profile questionnaire answers, provided by the Respondent, are processed via TMSProfiles.com or TMS Software to generate results of the assessment (“Profile Data”). Results Data is provided to the Network Member and the Respondent in the form of Output. Respondent Output is held on the Network Member’s TMSProfiles.com facilitator site. TMS does not have access to Respondent Output unless granted explicit permission by the Network Member for the purpose of providing additional Products and/or Services.

8.3.4 The Respondent or Network Member may provide optional information for the purposes of research (“Research Data”).

8.4 Data Transfer

8.4.1 Network Member agrees that TMS may transfer Personal Data to the facilities of other members of the TMS Group in order to provide Network Member with the Products and/or Services under this Agreement. This may include processing Profile Data and Results Data in countries in which data protection laws do not provide the same level of protection as those within the EEA. In such cases, the TMS Group will take appropriate steps to ensure Network Member’s information is adequately protected in accordance with EU data protection laws.

8.4.2 Subject to clause (8.4.3) below, TMS may disclose Personal Data to Third Parties in the following limited circumstances: if TMS Group (i) buys or sells any affected business assets, (ii) contracts with Third Parties to perform or provide certain services on behalf of a member of the TMS Group, or (iii) is under a duty to disclose or share Personal Data to comply with any legal obligation.

8.4.3 TMS will contractually require any buyer of TMS assets that include Personal Data or any Third Party performing services on TMS’s behalf to provide the same level of protection for Personal Data required in these terms and under any applicable data protection laws.

8.5 Data Processing

8.5.1 Network Member is the Data Controller of all Respondent Data, Assessment Data and any Output. TMS acts as the Data Processor in respect of the Respondent Data, Assessment Data and in producing the Output.

8.5.2 Where TMS acts as Network Member’s Data Processor, TMS will:

a. process Personal Data in accordance with Network Member’s reasonable instructions or otherwise as may be required to provide the Product and/or Services under this Agreement, and to support Network Member in its use of the Products and/or Services; and

b. take appropriate steps to protect Personal Data, whether electronic or otherwise, including by implementing reasonable administrative, technical and physical security controls to protect Personal Data from unauthorised access, improper use or disclosure, unauthorised modification or unlawful destruction or accidental loss.

8.5.3 TMS Group and any Third Party TMS engages to process Personal Data will be required to protect and process Personal Data in accordance with this Agreement and applicable data protection laws.

8.6 Research Data

8.6.1 TMS collects Research Data in the form of optional demographic questions displayed at the beginning of a Respondent assessment, and in the form of further information on results. TMS will be the Data Controller of all Research Data if the Respondent elects to provide such information.

8.6.2 Respondent’s ability to complete an assessment will not be affected by the Respondent’s choice not to provide Research Data, nor will such choice affect Respondent’s assessment results. Research Data is not disclosed to the Network Member.

8.7 Assessment Validation and Benchmarking.

8.7.1 The Network Member authorises TMS to use Assessment Data and Results Data in an anonymised format for assessment validation and benchmarking purposes. TMS uses such Assessment Data and Results Data, along with Research Data, to ensure that the TMS psychometric instruments remain valid and reliable, fair and objective, and to benchmark tests against industry recognised differences for particular groups. TMS is bound by ethical guidelines and data protection law in the use of all data. Access to any data used for validation, benchmarking, or research will be restricted to TMS employees directly involved in research supporting TMS Products and Services.

8.8 Sharing your personal information

8.8.1 We do not sell, trade, or rent Users personal identification information to others. We may share generic aggregated demographic information not linked to any personal identification information regarding visitors and users with our business partners, trusted affiliates and advertisers for the purposes outlined above. We may use third party service providers to help us operate our business and the Site or administer activities on our behalf, such as sending out
newsletters or surveys. We may share your information with these third parties for those limited purposes provided that you have given us your permission.

8.8.2 TMS will disclose a respondent’s contact information, without notice, only if required to do so by law or in the good faith belief that such action is necessary to (i) Conform to the edicts of the law or comply with legal process served on TMS or its websites (ii) Protect and defend the rights or property of TMS and its websites, and/or (iii) Act in urgent circumstances to protect the personal safety of users of TMS, its websites, or the public.

8.8.3 TMS may request (though Network Member has no obligation to comply with such request):
   a. use of Network Member’s company name and logo in TMS’s customer lists (whether online or offline) and other marketing materials;
   b. Network Member to participate in a press release which announces Network Member’s decision to use TMS’s Products and/or Services; or
   c. Network Member to participate in the joint development of a case study describing Network Member’s use of the Products and/or Services, or in other joint press and marketing activities.
   d. Notwithstanding the foregoing TMS may use Network Member’s plain text name as required in any public reporting or regulatory documents.

9. Confidentiality

9.1 Non-Disclosure
9.1.1 The Agreement, its content, the matters to which it relates and information exchanged, whether in tangible or intangible form or disclosed orally or in writing, pursuant to it are confidential between the parties, their affiliates, representatives and advisers and shall not be disclosed to any other person whatsoever who does not need to know such information. If there is an existing mutual confidentiality agreement in effect between the parties then this section applies only to the extent that it extends such existing agreement. Each party will apply no lesser security measures and degree of care than those which the receiving party applies to its own confidential information and which the receiving party warrants as providing adequate protection from unauthorised disclosure, copying or use.

9.2 Exceptions
9.2.1 Notwithstanding the foregoing, an obligation of confidentiality will not exist in relation to any information which:
   a. is already in the public domain through no act or omission of the receiving party;
   b. is independently developed by the receiving party, which independent development can be evidenced in writing; or;
   c. is required to be disclosed pursuant to a legal obligation providing the receiving party first consults with the disclosing party to agree an appropriate course of action.

10. General

10.1 Compliance with Laws
10.1.1 Each party will comply with all laws and regulations applicable to its activities, responsibilities or undertakings related to this Agreement.
10.1.2 Each party will comply with all applicable anti-corruption laws, statutes, regulations and codes. Breach of this Section 10.1 is a material breach of this Agreement.

10.2 Relationship
10.2.1 Nothing in the Agreement will create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

10.3 Force Majeure
10.3.1 Neither party will have any liability to the other if the affected party does not fulfil its obligations to the other due to an event outside the affected party’s reasonable control.
10.4 Notice

10.4.1 Notice under the Agreement will be in writing and delivered by email or other carrier providing a receipt to the address stated in the Order and to the attention of the TMS Business Manager with a copy to: TMS Ground Floor, Gardner House, 9 Gardner Close, Milton Queensland 4064 Australia.

10.5 Severability/Waiver

10.5.1 If any provision of the Agreement is held to be invalid under any enactment or rule of law, that invalidity will not affect the rest of the Agreement, which will remain valid and enforceable. Any waiver of any breach of the Agreement will be in writing, and will not prevent the subsequent enforcement of that provision nor be deemed to be a waiver of any subsequent breach of that or any other provision.

10.6 Law/Jurisdiction

10.6.1 These Terms and any agreement shall be governed by the law of Queensland and the parties submit to the courts of Queensland in respect of any dispute arising.
Schedule 1: Product and Services

This Product and Services Schedule contains additional terms that apply to Products and/or Services that Network Member may Order under this Agreement.

1. Access to TMS Products and/or Services

TMS Products and/or Services are available only to facilitators accredited through an authorised TMS accreditation programmes.

1.1 Accreditation

1.1.1 Upon completion of an authorised accreditation programme, TMS accredited facilitators are provided with the following:
   a. TMS Network Membership
   b. Access to the Network Member Intranet
   c. Access to a www.TMSProfiles.com facilitator site
   d. Access to TMS Products and/or Services

1.1.2 TMS Australia also recognises accreditation certification completed through any TMS Authorised Distributors, upon receipt of proof of accreditation and/or confirmation from the said Distributor.

1.2 TMS Products

1.2.1 TMS Products refer to the TMS self-rater and multi-rater questionnaires – provided as electronic (E-Profile) or hard copy (HC-Profile) versions; the TMS Hubs; TMS workshop materials, and TMS E-Products.

1.2.2 Network Members can only administer those TMS Profiles in which they are accredited.

1.2.3 Network Members can access the TMS Profile Suite via TMSProfiles.com or by contacting a TMS Office.

1.3 TMS Training Services

1.3.1 The TMS Training Team provide technical information and advice to Network Members on the use of TMS Profiles and products. In addition to general advice regarding proposed solutions and use of the TMS Profiles and products.

1.3.2 From time to time, TMS may refer commercial opportunities to Network Members. In doing so, TMS does not guarantee the Network Member will be granted the opportunity.

1.4 TMS Software

1.4.1 Any software that is made available for download from TMS is the copyrighted work of TMS. Use of the Software is governed by the terms of the end user license agreement.

1.4.2 The software is made available for downloading solely for use by TMS Accredited Facilitators according to the Licence Agreement. Any reproduction or redistribution of the Software not in accordance with the License Agreement is expressly prohibited by law.

1.5 Offer & Acceptance

1.5.1 Network Members can access and administer Profiles via TMSProfiles.com, using their unique facilitator login information.

1.5.2 When a Network Member submits an order for Profiles via TMSProfiles.com, email or telephone, it is deemed as an offer to purchase such TMS Products and are subject to these terms.

1.5.3 The Order will be deemed accepted when TMS:
   a. Add additional Profile counts to the Network Members TMSProfiles.com facilitator site,
   b. Issues a written acknowledgement to the Network Member; and/or
   c. Delivers the Profiles and/or Products as ordered.

1.5.4 Unless otherwise stated, a quotation or proposed order provided to the Network Member for Products and/or Services is valid for a period of 30 days from the date of the proposed order.

1.6 Profile counts and access to the Hub

1.6.1 The cost of all self-rater questionnaires (TMP, WoWV, and QO2™) includes access for the respondent to the Profile Hub and the core applications. Hub access is 2-years from the time the questionnaire is completed.

1.6.2 The default and recommended set-up for e-Profiles is facilitator and respondent access to the Hub and the core applications at the time of Profile set up. This ensures the respondent gains access to all Profile resources and full value of the Profile.
Terms and Conditions for
the use of Team Management Systems (TMS) Products and Services
Last updated on 1 September 2016

1.6.3 TMS may conduct monthly audits on Profile usage and application set up.

1.7 Support, Maintenance and Upgrades
1.7.1 TMS provides Network Member’s with TMS customer support services for administrators at no additional cost. Such support services are not available to Network Member customers or respondents and additional charges may apply for any requests for support by direct end customer or respondents support directed to TMS by a Network Member.
1.7.2 TMS will use all commercially reasonable endeavours to have the TMSProfiles.com Platform generally available for use except for scheduled maintenance periods or unscheduled maintenance required to address system issues.
1.7.3 TMS will conduct system upgrades to TMSProfiles.com Platform from time to time. In the event that immediate action is required (such as in the event of an attempted or successful security breach), TMS will inform Network Members as soon as is reasonably practicable where such breach or remedial action directly affects Network Member data.

1.8 Liability
1.8.1 Access to TMSProfiles.com is dependent on third parties, such as internet service providers. TMS will have no liability to Network Member for any losses Network Member suffers resulting directly or indirectly from:
   a. failures of performance on the part of TMS’s internet service provider; or
   b. failure of Network Member’s equipment or those of Network Member’s respondent(s) or third parties; or
   c. reasons related to TMS’s provision of system upgrades or maintenance; or
   d. any security breach of TMS’s system unless such breach is shown to be the result of TMS’s negligence; or
   e. inability to access the TMSProfiles.com in any one country due exclusively to TMS’s software or hardware for any period not exceeding (i) twenty-four (24) consecutive hours or (ii) an aggregate of more than forty-eight (48) hours in any calendar month

2. TMS Public or In-House Accreditation Services

2.1 Accreditation Course
2.1.1 Network Member may order accreditation training from TMS. Any TMS Product and/or Service used during an accreditation course will be supplied in accordance with these terms.
2.1.2 TMS reserves the right to modify the course content, materials and support resources at any time before the start of the course to facilitate delivery of the relevant and up-to-date materials.
2.1.3 Network Member may request substitutions of delegates to a training course at any time. If TMS accepts such request, the substitute delegates must successfully complete any pre-course training requirements before attending the course.
2.1.4 TMS will only provide a certificate or other qualification upon payment and the delegate’s successful completion of the training course. TMS will be the sole arbiter of such successful completion.
2.1.5 Network Member is solely responsible for the conduct of its delegates. Property brought to the training venue is entirely at Network Member’s own risk and TMS excludes all liability for theft or loss of such property from the training venue, howsoever caused.

2.2 Licence
2.2.1 TMS grants to each individual accreditation participant (“Participant”) a personal, non-exclusive, royalty-free, revocable, non-transferable and non-assignable licence to use the programme materials, tools and resources provided to participant by TMS (“Accreditation Materials”) which may include other Training Materials.
2.2.2 Participants may only use any online tools during the term of the Agreement but may continue to use tangible Programme or Accreditation Materials after the term.
2.2.3 Network Member acknowledges and agrees that the licence to the Accreditation Materials is to each Participant and the Programme Materials may not be otherwise shared, copied or distributed by the Network Member.
2.2.4 Network Member further agrees to not sub licence, sell, transfer, assign, or display the Accreditation Materials to or for any third party. Except for the licence granted herein TMS shall retain all ownership, title and interest in any and all Intellectual Property relating to the Programme Materials and related Services.

2.3 Charges
2.3.1 The Network Member will pay TMS invoices in accordance with Clause 3.3 of these terms or by the start date of the workshop or programme, whichever is earliest.
2.3.2 TMS course fees exclude any third party training materials which will be supplied to the client at an agreed price.
2.3.3 In-company accreditation fees exclude flights, accommodation and on-ground expenses, which are payable by the client/Network Member.

2.4 Copies, Confidentiality and Intellectual Property

2.4.1 Any course notes, publications, surveys and other TMS materials and services provided in the course of the training ordered ("Training Materials") have been prepared by TMS for the exclusive and individual use of workshop participants and the materials may not be reproduced or copied in any way without the prior approval of TMS.

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2.6 Cancellation/Postponement

2.6.1 TMS may cancel an accreditation training course at TMS’s discretion without liability to the participant by giving participant at least 7 days prior written notice.

2.6.2 If the participant wishes to cancel or postpone a training course, the participant must give TMS written notice at least 14 days before the start date of the course. On receipt of participant’s notice, TMS will credit the participant’s account with a sum equal to any fees paid by the participant in connection with the relevant training course less any amount payable by TMS to any third party (e.g. the training venue provider).

2.6.3 If the participant cancels a training course by giving TMS less than 14 days written notice, TMS’s full course fees are payable, subject to mutual agreement between the parties for other arrangements. All sums paid for training are available for application to fees for training courses up to 6 months from the date of invoice. Thereafter the sums will be null and void and any remaining credit will be cancelled. Participant may purchase an extension to the end date for up to six months for a fee of 20% of the outstanding contracted amount.