

# **Main Subscription Agreement**

## **THE ACTION MANAGER LIMITED ("TAM") TERMS & CONDITIONS OF USE**

BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS & CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF TAM'S ONLINE SERVICE, INCLUDING OFF-LINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS & CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS & CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICE.

### **Welcome**

As part of the Service, TAM will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available through TAM's website incorporated by reference herein, including but not limited to TAM's privacy and security policies.

For reference, a Definitions section is included at the end of this Agreement, though, please note that some Definitions are established throughout the text and headers of this Agreement.

### **A. Privacy & Security, Disclosure**

TAM's privacy and security policies may be viewed at [www.theactionmanager.com](http://www.theactionmanager.com). TAM reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users of the Service ("Users"), when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service related communications from TAM from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under My TAM/My

Preferences. Note that because the Service is a hosted, online application, TAM may occasionally need to notify all Users (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If you become a paying customer of the Service, you agree that TAM can disclose the fact that you are a paying customer and the modules of the Service that you are using.

## **B. License Grant and Restrictions**

TAM hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the Terms & Conditions of this Agreement. All rights not expressly granted to you are reserved by TAM, TAM's Group Companies and its licensors.

You may not access the Service if you are a direct competitor of TAM, or are working on behalf of one, except with TAM's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not; (i) license, sub-license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of

the Service or the data contained therein; or (v) attempt to gain unauthorised access to the Service or its related systems or networks.

## **C. Your Responsibilities**

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify TAM ([legal@theactionmanager.com](mailto:legal@theactionmanager.com)) immediately of any unauthorised use of any password or account or any other known or suspected breach of security; (ii) report to TAM immediately and use reasonable efforts to immediately stop any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another TAM User or provide false identity information to gain access to or use the Service.

## **D. Account Information and Data**

TAM does not own any data, material or information that you submit to the Service in the course of using the Service ("Customer Data"). You, not TAM, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and TAM shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event you intend to terminate the Service, you are responsible for copying any data from TAM that you may need for the future, as TAM can not provide such data for you once the termination has taken place. TAM reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and TAM shall have no obligation to maintain or forward any Customer Data.

## **F. Intellectual Property Ownership**

TAM, TAM's Group Companies and its licensors, where applicable, shall alone own all rights, title and interest, including all related Intellectual Property Rights, in and to the TAM Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback,

recommendations or other information provided by you or any other party relating to the Service. This Agreement does not constitute a sale and does not convey to you any rights of ownership in or related to the Service, the TAM Technology or the Intellectual Property Rights owned by TAM or TAM's Group Companies. The TAM name, the TAM logo, and the product names associated with the Service are trademarks of TAM or TAM's Group Companies and no right or license is granted to use them.

## **G. Third Party Interactions**

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third party. TAM, TAM's Group Companies and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third party. TAM does not endorse any sites on the Internet that are linked through the Service. TAM provides these links to you only as a matter of convenience, and in no event shall TAM or its licensors be responsible for any content, products, or other materials on or available from such sites. TAM provides the Service to you pursuant to the terms and conditions of this Agreement. You recognise, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

## **H. Charges and Payment of Fees**

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total Users requested multiplied by the User license fee currently in effect. Payments must be made monthly in advance unless otherwise mutually agreed upon through the Order Centre (under the TAM Account tab). All payment obligations are non-cancellable and all amounts paid are non-refundable, including payments made for credits towards TAM's text messaging service and other services. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. As a condition to signing up for the Service, you must have pre-paid for the Service using a credit or debit card, or similar with the payment being confirmed to TAM by

PayPal (or an alternative recognised service provider that TAM may use in the future to administrate customer payments).

Your authorised License Administrator may add licenses at any time by using the Order Centre. Added User licenses will be subject to the following: (i) added licenses will run concurrently with the pre-existing License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee as per the Invoice Date for the next License Term ; and (iii) licenses added in the middle of a billing month will only be charged in full for the next billing month, as per below.

One month after the Effective Date or the last Invoice Due Date, the Invoice for the next billing month and License Term will fall due ("Invoice Due Date"). The renewal charge included on this Invoice will be equal to the total number of User licenses in place at 05:00 GMT 14 working days prior to the Invoice Due Date ("Invoice Date") multiplied by the license fee in effect.

TAM reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

## **I. Excess Data Storage Fees and Upload Limit**

The maximum disk storage space provided to you at no additional charge is the greater of 1 GB or an aggregate of 20 MB per User license. If the amount of disk storage required exceeds these limits, you will be charged the then current storage fees. For reference only; on 1 January 2009, to increase your overall storage space by 1 GB cost GBP 20.00 per month, and to increase the storage space per User licence by an additional 10MB cost GBP 0.20 per User per month (n.b. if you choose this option, you must increase the storage for all your Users, as this can not be done on an individual User basis), see tab TAM Accounts on the Service for up to date fees. TAM will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum, however, any failure by TAM to so notify you shall not affect your responsibility for such additional storage charges. When uploading documents to TAM, TAM restricts each upload to a maximum 10 MB per document. TAM reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

## **J. Billing and Renewal**

TAM charges and collects in advance for use of the Service. TAM will automatically make your authorised License Administrator aware of the next Invoice Due Date. You can find the details of your account, old Invoices and details of Invoices due for payment under your TAM Account tab on the Service. The renewal charge will be equal to the then current number of total User licenses, as established in point H above, multiplied by the license fee in effect during the prior term, unless TAM has given you at least 28 days prior written notice of a fee increase, which shall then be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis (see TAM's website for current fees [www.theactionmanager.com](http://www.theactionmanager.com)). TAM's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.

You agree to provide TAM with complete and accurate billing and contact information. This information includes your legal company name (and number where applicable), street address, email address, and name, email address and telephone number of an authorised billing contact and License Administrator. You agree to update this information within 30 days of any change to these details. If the contact information you have provided is false or fraudulent, TAM reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless TAM in its discretion determines otherwise: (i) entities with headquarters and a majority of users resident in the United Kingdom will be billed in Pound Sterling, GBP, and subject to UK payment terms and pricing schemes ("UK Customers"); and (ii) all other entities will be billed in GBP, U.S. dollars, Euros or local currency and be subject to either UK or non-UK payment terms and pricing schemes at the discretion of TAM ("Non-UK Customers").

If you believe your bill is incorrect, you must contact us in writing to [accounts@theactionmanager.com](mailto:accounts@theactionmanager.com) within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

## **K. Non-Payment and Suspension**

In addition to any other rights granted to TAM herein, TAM reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes overdue and falls into arrears by more

than 14 days. You will continue to be charged for User licenses during any period of suspension. TAM reserves the right to impose a reconnection fee in the event you are suspended and thereafter request to regain access to the Service. You agree and acknowledge that TAM has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more overdue.

## **L. Termination upon Expiration/Reduction in Number of User Licenses**

This Agreement commences on the Effective Date. For TAM User licenses, the term is indefinite and may be terminated at any time in TAM's sole discretion. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term at TAM's then current fees.

You can terminate this Agreement at any time. You can do this simply by stopping future payments to TAM, but we would appreciate if you could notify us by emailing [accounts@theactionmanager.com](mailto:accounts@theactionmanager.com) and let us know of your intentions. Should you wish to take advantage of our 45 days-money-back-guarantee, you must email us on [45@theactionmanager.com](mailto:45@theactionmanager.com) within 45 days of the Effective Date. TAM will not refund any charges for User license fees if the notification is received after this deadline. The 45 days-money-back-guarantee only applies to the User license fees, as payments made for credits towards TAM's text messaging service and other services are non-refundable. When we receive your notification, we will send the TAM Responsible person in your company an email and asking him/her to verify your intention to terminate the Service as well as ask him/her a few questions about the reasons for the termination. Once we have received the TAM Responsible person verification to our email, we will proceed to to close your account and refund you the User license fees. In the event you intend to terminate the Service, you are responsible for copying any data from TAM that you may need for the future, as TAM can not provide such data for you once the termination has taken place.

You can reduce the number of User licenses on TAM at any time. Simply go to the main tab called "Staff Set-up" on the Service and then click "Terminate" on the drop down next to the User(s) you wish to cancel access to the Service for. Provided you do this prior to the cut-off date, i.e. the Invoice Date (see point H above), these terminated Users will not be charged for on your next Invoice.

In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute

notice of termination, and you agree and acknowledge that TAM has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

## **M. Termination for Cause**

Any breach of your payment obligations or unauthorised use of the TAM Technology or Service will be deemed a material breach of this Agreement. TAM, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, TAM may terminate a free account at any time in its sole discretion. You agree and acknowledge that TAM has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

## **N. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. TAM represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online TAM help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

## **O. Mutual Indemnification**

You shall indemnify and hold TAM, TAM's Group Companies and its licensors harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including all legal fees and costs) arising out of or in connection with; (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that



TAM (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release TAM of all liability and such settlement does not affect TAM's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

TAM shall indemnify and hold you and your parent organisations, subsidiaries, affiliates, officers, directors, employees, solicitors and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees and costs) arising out of or in connection with; (i) a claim alleging that the Service directly infringes a copyright or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by TAM of its representations or warranties; or (iii) a claim arising from breach of this Agreement by TAM; provided that you (a) promptly give written notice of the claim to TAM ([legal@theactionmanager.com](mailto:legal@theactionmanager.com)); (b) give TAM sole control of the defence and settlement of the claim (provided that TAM may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to TAM all available information and assistance; and (d) have not compromised or settled such claim. TAM shall have no indemnification obligation, and you shall indemnify TAM pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(es).

## **P. Disclaimer of Warranties**

TAM, TAM's Group Companies and its licensors make no representation, warranty, or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service or any Content. TAM, TAM's Group Companies and its licensors do not represent or warrant that; (i) the use of the Service will be secure, timely, uninterrupted or error free or operate in combination with any other hardware, software, system or data; (ii) the Service will meet your requirements or expectations; (iii) any stored data will be accurate or reliable; (iv) the quality of any products, services, information, or other material purchased or obtained by you through the Service will meet your requirements or expectations; (v) errors or defects will be corrected; or (vi) the Service or the server(s) that make the Service available are free of viruses or other harmful components. The Service and all Content are provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether expressed, implied,

statutory, or otherwise, including without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by the applicable laws by TAM, TAM's Group Companies and its licensors.

## **Q. Internet Delays**

TAM's Services may be subject to limitations, delays, and other problems inherent in the use of the internet and other electronic communications. TAM is not responsible for any delays, delivery failures, or other damage resulting from such problems.

## **R. Limitation of Liability**

If you are in breach of clause B of this Agreement including, but not limited to, you being a direct competitor of TAM, or are acting on behalf of one, then there shall be no limitations to your liability and as to what TAM can claim from you.

Save for the above paragraph, in no other event shall either party's aggregate liability exceed the amounts actually paid by and/or due from you in the 12 month period immediately preceding the event giving rise to such claim. In no event shall either party, and/or its licensors, be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this Service, including but not limited to the use or inability to use the Service, or for any content obtained from or through the Service, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

## **S. Additional Rights**

Certain countries, states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

## **T. Notice**

TAM may give notice by means of a general notice on the Service, electronic mail to your email address on record in TAM's account information, or by written communication sent by first class mail or pre-paid post to your address on record in TAM's account information. Such notice shall be deemed to have been given upon the expiration of; 48 hours after mailing or posting if sent by first class mail or pre-paid post; or 12 hours after sending (if sent by email).

You may give notice to TAM (such notice shall be deemed given when received by TAM) at any time by emailing us on [legal@theactionmanager.com](mailto:legal@theactionmanager.com).

## **U. Modification to Terms**

TAM reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

## **V. Assignment and Change in Control**

This Agreement may not be assigned by you without the prior written approval of TAM (which shall not be unreasonable withheld), but may be assigned without your consent by TAM to (i) any of TAM's Group Companies, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of TAM directly or indirectly owning or controlling 50% or more of you shall entitle TAM to terminate this Agreement for cause immediately upon written notice.

## **X. General**

No text or information set forth on any other purchase order, pre-printed form or document (other than an Invoice, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable

provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and TAM as a result of this Agreement or use of the Service. The failure of TAM to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by TAM in writing. This Agreement, together with any applicable Invoice, comprises the entire agreement between you and TAM and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## **Y. Law**

Except as otherwise provided in this clause, this Agreement shall be governed by and construed in all respects in accordance with English Law.

Except as otherwise provided in this clause, the Parties hereby submit to the exclusive jurisdiction of the Courts of England.

## **Z. Definitions**

As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means these online terms of use, any Invoices, whether written or submitted online via the Order Centre, and any materials available on the TAM website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by TAM from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the later date of either the date this Agreement was accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed as part of the TAM ordering process, or the date your payment for the Service was confirmed by our online payments service provider; "Initial Term" means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is monthly, the Initial Term is the first month); "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name

rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world, and including these Terms & Conditions; "License Administrator(s)" means those Users designated by you who are authorised to purchase User licenses online using the Order Centre and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Invoice; "Invoice" means the form evidencing the initial subscription for the Service and any subsequent orders for old and new Users submitted online, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Invoice to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Invoice, the terms of this Agreement shall prevail); "Order Centre" means TAM's online application that allows the License Administrator designated by you to, among other things, add additional Users to the Service, purchase additional credits for text messages, and other fees charged by TAM; "TAM" means The Action Manager Limited whose correspondence address is Suites 1601-1603, Kinwick Centre, 32 Hollywood Road, Central, Hong Kong; "TAM's Group Companies" means TAM and any of its subsidiaries or shareholdings, TAM's parent company and subsidiaries and other shareholdings of the parent company and other companies with shareholdings in TAM, and other affiliates; "TAM Technology" means all of TAM's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by TAM in providing the Service; "Service(s)" means the specific edition of TAM's online services identified during the ordering process, developed, operated, and maintained by TAM, accessible via [www.theactionmanager.com](http://www.theactionmanager.com) or another designated web site or IP address, or ancillary online or off-line products and services provided to you by TAM, to which you are being granted access under this Agreement, including the TAM Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by you (or by TAM at your request).

## **Questions or Additional Information:**

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to [info@theactionmanager.com](mailto:info@theactionmanager.com).