

Terms of Use

between Global Travel Marketplace Pty Ltd ACN 673 407 317 trading as TravelDesk Technology of Travel (TravelDesk)

and a User

TravelDesk is a booking platform that gives users the tools to book travel experiences for themselves and/or customers. TravelDesk is not a travel agency or a tour operator – it is the booking system that allows a user access to the services as an agent to customers. When a user makes a customer booking via TravelDesk, the customer is booking directly with the third-party supplier / operator.

As a user of the booking platform, you will earn a commission on sales completed based on the registered retail price (RRP) less the net rate and Global Travel Marketplace Pty Ltd's service fee.

Please read these Terms of Use carefully as we want you to understand your legal rights and responsibilities of accessing the platform as a booking agent / user. By using the TravelDesk platform, you confirm that you have read these Terms of Use and agree to be bound by them. If you do not agree with all of these Terms of Use, you may not be permitted to access or use the services.

1. Purpose of This Document

(a) These Terms of Use sets out the terms applicable between Global Travel Marketplace Pty Ltd (ACN 673 407 317) trading as TravelDesk Technology of Travel (TravelDesk) and the User in relation to the User's access to and use of the Services.

(b) The agreement between the parties includes:

(i) the General Terms;

(ii) this Terms of Use; and

(iii) any document incorporated by reference in this Terms of Use or any other terms of use between the parties,

(Collectively referred to as the **Agreement**).

2. Scope of Services

The User acknowledges and agrees that:

(a) its access to and use of the Services will be limited to the these Terms of Use (as amended by any subsequent written agreement between the parties); and

(b) TravelDesk does not provide Travel Products to Customers or Users, and the User releases TravelDesk and its Personnel (and TravelDesk's Related Bodies Corporate and their Personnel) from any Claim arising out of or in connection with any Travel Products.

(c) TravelDesk offers customer care via our online and telephone customer care service. This service is to specifically support Users and Customers editing, refunding, transferring, or updating confirmed Transactions.

3. Transactions

(a) The User facilitates payment of the Retail Price directly by a Customer to TravelDesk via online payment services, and the following process will apply for all Transactions:

(i) the full Retail Price will be deposited into TravelDesk's restricted cash bank account/s and will be TravelDesk's upon deposit in such account/s; and

(ii) TravelDesk will remit to the User's nominated bank account the User's Commission less TravelDesk's Fee in respect of each Transaction. These remittances are made on a weekly basis;

(b) In consideration of the User remitting the Transaction Charges to TravelDesk through the Services and in accordance with this Agreement, TravelDesk authorises the User (or the User's agent) to issue a Voucher for the Transaction to the Customer.

(c) The Customer must present the Voucher to the Operator to facilitate the successful completion of the Transaction.

4. Refunds

(a) If a refund becomes due to a Customer, the User must process the refund using the Services. If TravelDesk holds any refund amount that is due to the User, TravelDesk will remit it to the relevant account used to process the Transaction, on a weekly basis. The amount TravelDesk remits will exclude:

(i) any cancellation fees due to the relevant Operator, which TravelDesk will pay to the Operator out of the funds it holds in relation to the relevant Transaction and

(ii) the TravelDesk Cancellation Processing Fee in any case where the User is entitled (in accordance with the arrangements with any relevant Customer or User) to retain some portion of the funds that were held by TravelDesk for the relevant Transaction (the **User's Retained Amount**). TravelDesk will keep the TravelDesk Cancellation Processing Fee.

(b) In relation to any refund payable, the User warrants that it will immediately (or as soon as is reasonably practicable) pay and coordinate the refunded amount to the Customer in the case the refund is not directly processed to a customer.

5. Key provisions included in the General Terms

The User acknowledges that the General Terms as at the date of this document contain the following important terms:

(a) TravelDesk may change the General Terms and this Terms of Use at any time by notice to the User. If the changes are material and User does not accept the changes, the User has the option to terminate this Agreement as set out in clause 1.2 of the General Terms.

(b) The User holds a non-exclusive licence to use the Services and may allow its Authorised Users to use the Services. The User is liable for its Authorised Users' access to and use of the Services.

(c) TravelDesk will use commercially reasonable efforts to ensure the Services are available to the User 24 hours a day, 7 days a week. However, the Services may become unavailable from time to time for scheduled changes or as a result of events beyond TravelDesk's reasonable control.

(d) TravelDesk may make changes to the Services during the Term. TravelDesk will use reasonable commercial endeavours to ensure that any such changes will not materially adversely impact the User's use of the Services. If the User does not wish to accept the changes, it may terminate this Agreement as set out in clause 4.6 of the General Terms.

(e) The User must maintain its Environment in order to obtain full access to the system.

(f) The User must hold, and comply with any conditions of, all permits and licences required by law by it as a seller or re-seller of Travel Products.

(g) The User's access and use of the Services is subject to the acceptable use provisions as set out in clause 5.2 of the General Terms, which include the requirement to comply with all relevant laws and legal requirements.

(h) The User must ensure that its Client Data is accurate, complete, reliable, up to date, and fit for purpose.

(i) The User must ensure that it is entitled to transfer the relevant Personal Information to TravelDesk so that TravelDesk may lawfully use, process and transfer the Personal Information as necessary to provide the Services in accordance with this Agreement.

(j) If applicable, the User must pay the Set-up Charge to TravelDesk prior to the Commencement Date.

(k) The User must pay TravelDesk's Fee to TravelDesk. TravelDesk (acting reasonably) may vary TravelDesk's Fee from time to time by giving the User prior written notice. If the User does not agree to the variation to TravelDesk's Fee, the User may terminate this Agreement as set out in clause 7.2 of the General Terms.

(l) The User indemnifies TravelDesk, its Personnel and its Related Bodies Corporate against various categories of loss as set out in clause 11.2 of the General Terms, including loss arising from any breach by the User of any third party right (including intellectual property rights) or any law.

(m) Each party's liability to the other party is limited as set out in clause 12 of the General Terms.

(n) The User must maintain insurance in accordance with clause 13 of the General Terms.

(o) The above is not an exhaustive list of important terms in the General Terms.

(p) As noted above, TravelDesk may change the General Terms at any time. The then-current version will be made available www.websitetravel.com/reseller-agreement-v011222. The amended or replaced General Terms may contain important terms that are different to those mentioned above.

6. General

(a) This Agreement is governed by the laws of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in that state.

(b) Any amendment to this Agreement has no force or effect, unless effected in accordance with the express terms of this Agreement or by an agreement executed by the parties.

(c) This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

(d) The User who enters into this Agreement warrants that he or she is duly authorised to do so.

(e) For the avoidance of doubt, any capitalised term in this Terms of Use which is not defined shall be taken to have the same meaning as that term is defined in the General Terms.

7. Things to do before the User executes this Agreement

Before executing this Agreement, the User should:

(a) read this document and the current General Terms carefully; and

(b) consider obtaining legal advice on this Agreement.

8. Definitions

In this Agreement unless the context otherwise requires:

TravelDesk Cancellation Processing Fee means five (5) percent of the User's Retained Amount

TravelDesk's Fee means the percentage charged by TravelDesk to access the Service as may be amended by TravelDesk from time to time.

Claim means any claim, action, proceeding or investigation of any nature or kind and includes the allegation of a claim.

Client Data means any data inputted into the Services by the User or the User's Personnel, including information inputted into the Services by the User or the User's Personnel about Customers.

Customer means a retail purchaser of a Travel Product.

General Terms means the then-current version of TravelDesk's "General Terms between TravelDesk and a Client", available at www.websitetravel.com/reseller-agreement

Net Rate means the Retail Price of a Travel Product net of the User's Commission.

Operator means a supplier of a Travel Product.

Personal Information has the meaning given to that term in the Privacy Laws.

Personnel means the directors, officers, employees, contractors and subcontractors of the relevant party.

Privacy Laws means the Privacy Act 1988 (Cth) and any other laws or legally-binding codes of practice, guidelines or standards issued by regulators or authorities that apply to the collection, handling, disclosure and use of Personal Information by the parties.

Related Body Corporate has the same meaning as in the Corporations Act 2001 (Cth).

Retail Price means the total retail price paid by a Customer for a Travel Product.

Services means the authorised use of TravelDesk's prescribed software and application programming interfaces by the User (as amended from time to time in accordance with this Terms of Use and the General Terms), provided on a "software as a service" basis.

Transaction means an agreement for the purchase and supply of any Travel Product between an Operator and a Customer, facilitated for the Customer by a User, using the Services.

Transaction Charges means the amounts paid in connection with the sale of Travel Products via the Services.

Travel Product means transport, accommodation, tours, travel activities or ancillary travel services provided by an Operator and made available through the Services.

User's Commission means the Retail Price of a Travel Product less the Net Rate and TravelDesk's Fee.

User's Retained Amount is defined in clause 4(a)(ii).

Voucher means a confirmation of payment by a Customer of the Retail Price for a Travel Product and which is generated by the User using the Services provided by TravelDesk.

General Terms

1. Agreement

1.1 Structure of the Agreement

(a) These General Terms set out the detailed terms applicable between Global Travel Marketplace Pty Ltd (ACN 673 407 317) trading as TravelDesk (TravelDesk) and Operator or User (the Client).

(b) The agreement between the parties includes:

- (i) these General Terms;
- (ii) any document incorporated by reference in a Terms of Use; and
- (iii) the Terms of Use,

(collectively referred to as the Agreement).

(c) The documents specified in clause 1.1(b) constitute the entire agreement between the parties in relation to the subject matter of this Agreement. If there are any inconsistencies between those documents, the document appearing lower in the list set out in clause 1.1(b) will prevail to the extent of the inconsistency.

1.2 Changes to these terms

(a) TravelDesk may change these terms or the terms of any Terms of Use at any time by notice to the Client.

(b) If the changes are material and the Client does not wish to accept the changes it may terminate this Agreement by written notice to TravelDesk to be given within 30 days of TravelDesk giving notice of the changes to the Client.

(c) If the Client does not give notice of termination of this Agreement within the period described in clause 1.2(b), this Agreement will continue in effect and the changes to these terms will apply to this Agreement with effect 30 days after the date TravelDesk gave the notice of the change to the Client.

2. Term

This Agreement commences on the Commencement Date and remains in force unless it is terminated in accordance with the terms of this Agreement (Term).

3. Licence

3.1 Grant of Licence

(a) Subject to the Client complying with this Agreement, TravelDesk grants to the Client, and the Client accepts, a non-transferable, non-exclusive licence during the Term to access and use the Services for the purposes set out in this Agreement.

(b) The Client must not access or use the Services for any purpose other than its internal business use (except to the extent the Services are designed to allow the Client to use the Services to engage with third parties, for example in order for an Operator to advertise and sell transport, activities, tours or accommodation to the public).

3.2 Authorised Users

TravelDesk acknowledges that the Client may authorise its Authorised Users to access and use the Services. The Client:

(a) is responsible for the access to and use of the Services by its Authorised Users, including their compliance with this Agreement; and

(b) will be liable for all acts and omissions of its Authorised Users as if they were the Client's own acts and omissions.

4. Services

4.1 Selection of Services

(a) TravelDesk will provide the Services in accordance with the Terms of Use and on the terms and conditions set out in this Agreement.

(b) The Services and their functionality are further described at www.websitetravel.com.

(c) The parties may at any time agree in writing to vary the Client's selected Services, upon any related variation to the Fee and upon any other related variation. In that case the relevant Terms of Use will be amended, or will be deemed amended, accordingly.

4.2 Hosting, management and support of Services

The Client acknowledges and agrees that the Services may be hosted, managed and supported by TravelDesk or by a third party cloud-based provider.

4.3 Availability

(a) Although TravelDesk will use commercially reasonable efforts to ensure the Services are available 24 hours a day, 7 days per week, the Services may become unavailable from time to time for scheduled Changes or as a result of events beyond TravelDesk's reasonable control including:

(i) failure or default by any of TravelDesk's third party service providers;

(ii) abnormal usage volumes; or

(iii) any breach of this Agreement by the Client or the negligence of the Client or its Authorised Users.

(b) In the case of downtime for reasons outside of TravelDesk's reasonable control, TravelDesk will use commercially reasonable efforts to overcome such circumstances or mitigate their effects and resume full operation as soon as reasonably practical.

4.4 Third Party Products

(a) As part of the Services, TravelDesk may arrange for the Client's access to Third Party Products for the purpose of supporting or enabling functionality of the Services.

(b) The Client acknowledges and agrees that TravelDesk's responsibility in respect of the Third Party Products is limited to the procurement of Third Party Products on behalf of the Client.

(c) For the avoidance of doubt, TravelDesk's liability to the Client for any act, omission or default by the

supplier of any Third Party Products will be limited to the remedy (if any) which TravelDesk recovers from the relevant supplier of the Third Party Products.

4.5 Client Data

- (a) The Services may allow the Client to enter and manage Client Data.
- (b) The Client is solely responsible for any representations made in the Client Data.
- (c) The Client acknowledges and agrees that TravelDesk may alter or remove any Client Data if TravelDesk reasonably considers that it breaches the law or the rights of any third party.

4.6 Changes to the Services

- (a) TravelDesk may make Changes to the Services during the Term.
- (b) The Client acknowledges and agrees that the Services may be unavailable for the purpose of TravelDesk making Changes to the Services.
- (c) TravelDesk will use reasonable commercial endeavours to ensure that any Changes to the Services will not materially adversely impact the Client's use of the Services.
- (d) If the Client does not wish to accept the Changes to the Services, it may terminate this Agreement by notice to TravelDesk within 30 days of TravelDesk completing the Changes to the Services.

4.7 Feedback

In the event that the Client or any of its Authorised Users provides TravelDesk with any feedback, suggestion or comment regarding the Services, the Client grants (and must ensure any of its relevant Authorised Users grants) to TravelDesk a worldwide, irrevocable, perpetual, sub-licensable, transferable, royalty-free licence to use any such feedback, suggestion or comment for any purpose without any obligation or compensation to the Client or any of its Authorised Users.

4.8 Transactions

TravelDesk is not party to, and has no obligations under, any Transaction, and the Client releases TravelDesk and its Personnel from any Claim arising out of or in connection with any Transaction (except to the extent the Claim arises due to a breach of this Agreement by TravelDesk or negligence by TravelDesk), including any Claim regarding the performance or quality of the transport, accommodation, tours or activities, or other services, the subject of the Transaction.

5. Client Obligations

5.1 General Obligations

The Client will (and must ensure that each of its Authorised Users will):

- (a) maintain its Environment in order to obtain full access and use of the Services;
- (b) maintain adequate security of the Client's Environment to minimise the risk of viruses, malicious

computer code or other forms of interference with the Client's Environment or the Services;

- (c) hold, and comply with any conditions of, all permits and licences required by any Relevant Laws for Subscribers, Operators or Users (as applicable);
- (d) keep and maintain a separate back up copy of all Client Data uploaded by it onto the Services;
- (e) cooperate with TravelDesk in relation to, and take all reasonable steps to facilitate, the provision of the Services by TravelDesk;
- (f) comply with all reasonable directions in relation to the Services issued by TravelDesk;
- (g) notify TravelDesk promptly if it becomes aware of, or forms a reasonable belief that there has been an occurrence of, any unauthorised access to or use of the Services;
- (h) perform its obligations owed to any Customer, Subscriber, Operator or User in accordance with the terms of those obligations, using appropriately qualified Personnel, and with a high degree of care and skill; and
- (i) provide to TravelDesk information relating to this Agreement or the Services as TravelDesk may reasonably request from time to time.

5.2 Acceptable Use

The Client will (and must ensure that each of its Authorised Users will):

- (a) comply with all Relevant Laws and Legal Requirements in relation to its access to and use of the Services;
- (b) not access and use the Services in a manner which could interfere with the Services or the provision of the Services by TravelDesk to other Clients;
- (c) not engage in conduct or activities which attempt to manipulate or bypass any limitations on the Services;
- (d) not use the Services in a manner, nor permit the transmission, inputting or storage of any data in a manner, that infringes any third party rights;
- (e) not use the Services to input, store, or transmit any objectionable, defamatory, obscene, harassing, threatening, misleading or unlawful data;
- (f) take all reasonable precautions to keep access to the Services (including login information and passwords) secure and protected at all times from misuse or any form of unauthorised access or use;
- (g) not do (or omit to do) anything that may jeopardise the security of the Services or access to the Services;
- (h) not transfer, assign, grant a security interest in, or otherwise deal with its rights in relation to the Services contrary to the terms under this Agreement;
- (i) not resell, sub-license, resupply, provide a bureau service using, communicate or otherwise make available to a third party the Services (except as may be expressly permitted by this Agreement); and

(j) not copy, reproduce, translate, decompile, reverse-engineer, modify, vary or otherwise deal with the Services or any computer code underlying the Services (except as may be expressly permitted by this Agreement).

5.3 Client Data

The Client will (and must ensure that each of its Authorised Users will):

- (a) ensure that the Client Data is accurate, complete, reliable, up to date, and fit for purpose; and
- (b) take reasonable steps to ensure that any advertising for third parties or links to third party websites incorporated into the Client Data complies with all Relevant Laws and Legal Requirements.

6. Privacy

6.1 Compliance with Privacy Laws

The parties will, in performing their respective obligations under this Agreement, comply with all applicable Privacy Laws, and neither party will put the other in breach of any such Privacy Laws.

6.2 Privacy Collection Statement

The Client:

- (a) will ensure that the Client is entitled to transfer the relevant Personal Information to TravelDesk so that TravelDesk may lawfully use, process and transfer the Personal Information as necessary to provide the Services in accordance with this Agreement; and
- (b) will ensure that the relevant individuals have been provided the Privacy Collection Statement at the time the Client collected their Personal Information (or if that is not practical, as soon as practical after that time).

6.3 TravelDesk's Use and Disclosure Obligations

TravelDesk will (except where otherwise required or authorised by law):

- (a) only access or use the relevant Personal Information provided by the Client for the purposes of performing its obligations under this Agreement; and
- (b) not otherwise access, use, process, modify or disclose the relevant Personal Information except with the Client's or the relevant individual's prior written consent,

however TravelDesk is under no obligation to:

- (c) withhold any Client Data or related data, documentation or records from any law enforcement officer or government representative, officer or agency with apparent authority to seek delivery or access to such data; or
- (d) refuse to provide any such person or instrumentality with access to Client Data or related data, documentation or records,

if TravelDesk receives a request or demand for such information which on its face appears to be valid and lawful.

6.4 Transfer of Client Data Outside of Australia

TravelDesk may store Client Data (including any Personal Information) in servers located in Australia and overseas and may access that Client Data (including any Personal Information) from both within and outside Australia from time to time, for the purposes of performing its obligations under or in connection with this Agreement.

6.5 Client Data Security

TravelDesk will take commercially reasonable steps to:

- (a) protect Client Data (including Personal Information) to which TravelDesk has access in connection with this Agreement against unauthorised access, use, modification or disclosure;
- (b) ensure the security of Client Data (including Personal Information) to which TravelDesk has access in connection with this Agreement by maintaining security systems and procedures that comply with the Privacy Laws; and
- (c) destroy, permanently de-identify, or return (at the Client's direction) any Client Data (including Personal Information) held by TravelDesk which is no longer required for the purposes described in its Privacy Collection Statement.

6.6 TravelDesk is a Processor of Client Data

The Client acknowledges and agrees that TravelDesk is a processor of any Personal Information included in the Client Data and the Client is the controller of that Personal Information. TravelDesk will only process the personal data on documented instructions from the Client (including the instructions constituted by this Agreement).

6.7 Deletion of Personal Information

The Client must take reasonable steps to promptly delete from the Services any Personal Information contained in the Client Data once it is no longer required for the Client's business purposes.

6.8 Provision of information

TravelDesk will provide the Client with all information reasonably requested in order to demonstrate TravelDesk's compliance with this clause 6, including allowing suitable representatives of the Client to audit relevant records of TravelDesk subject to TravelDesk and the Client first agreeing the terms applicable to the audit (with each party to act in good faith).

6.9 Survival

The provisions of this clause 6 will survive the termination or expiry of this Agreement.

7. Payments

7.1 Fee

- (a) In consideration of the Services TravelDesk provides under this Agreement, the Client will pay the Fee to TravelDesk.

(b) TravelDesk (acting reasonably) may vary the Fee from time to time by giving the Client prior written notice. If the Client does not agree with the variation to the Fee, the Client may terminate this Agreement by notice in writing to TravelDesk within 30 days of TravelDesk's notice varying the Fee.

7.2 Payment

The Fee must be paid in accordance with the terms of the applicable Terms of Use.

7.3 Interest on overdue amounts

TravelDesk may charge default interest at the rate provided for by section 2 of the Penalty Interest Rates Act 1983 (Vic), plus 2% (compounding daily) on any overdue amounts from the date the payment was due until the date of payment in full.

7.4 GST

(a) Terms defined in the GST Act have the same meaning when used in this clause unless expressly stated otherwise.

(b) Except where this Agreement specifies otherwise, an amount payable by a party under this Agreement in respect of a taxable supply by the other party represents the value of the supply including GST where the amount of GST payable is deemed to have been calculated at the prevailing GST rate.

(c) If at any time an adjustment is made between the supplier or any other payer of GST and the relevant taxing authority on account of GST on any supply made or other matter or thing done under or in connection with this Agreement by the supplier, a corresponding adjustment must be made as between the supplier and the recipient and any payment required to give effect to the adjustment must be made.

(d) Each party warrants to the other party that if legally required, it is registered for GST at the time of entering this Agreement and will promptly notify the other party if it ceases to be so registered.

8. Intellectual Property Rights

8.1 Ownership

As between the parties:

(a) all Intellectual Property Rights in the Services including any modifications to them are owned by TravelDesk; and

(b) all Intellectual Property Rights in the Client Data including any modifications to it made by or on behalf of the Client are owned by the Client.

8.2 Client's Licence to TravelDesk

(a) The Client grants to TravelDesk:

(i) a non-exclusive, royalty-free, worldwide licence to use (and allow TravelDesk's Personnel to use) the Client Data for the purposes of performing its obligations under this Agreement and to further develop the Services; and

(ii) a non-exclusive, royalty-free, worldwide licence to use the Client Trademarks during the Term for the purposes of providing and promoting the Services.

(b) The Client warrants that the use of the Client Data and Client Trademarks by TravelDesk in accordance with clause 8.2(a) will not infringe any third party's rights (including Intellectual Property Rights).

(c) TravelDesk agrees that it:

(i) will use the Client Trademarks in such manner and form (if any) as the Client may specify in writing from time to time; and

(ii) the Client Trademarks are and will remain the property of the Client or its successors or assigns; and

(iii) its use of the Client Trademarks under this Agreement, and any goodwill resulting from that use, will accrue solely for the Client's benefit.

9. Confidentiality

9.1 Confidential Information

The parties acknowledge that one may provide the other with Confidential Information for the purposes of this Agreement. Each party agrees to take reasonable steps to keep the other's Confidential Information secure from unauthorised disclosure.

9.2 Use of Confidential Information

A party will not, without the prior written approval of the other party, disclose, copy or use the other party's Confidential Information, other than to:

(a) the extent required to exercise its rights or perform its obligations under this Agreement;

(b) its Personnel for the purposes of the party exercising its rights or performing its obligations under this Agreement;

(c) comply with any Legal Requirements.

(d) obtain professional advice in relation to matters arising under or in connection with this Agreement.

9.3 Compliance by Personnel

Each party must procure compliance by each of its Personnel to whom the other party's Confidential Information is disclosed, with the obligations under this clause 9 as if this clause 9 applied directly to them.

9.4 Return of Confidential Information

Upon termination or expiry of this Agreement, each party must promptly either return or destroy (at that party's option) the other party's Confidential Information in its possession or control. Each party must promptly certify in writing to the other party that it has complied with its obligations under this clause 9.4.

10. Warranties

10.1 General

Each party warrants that:

(a) it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on that party; and

(b) all information it provides to the other party is true and correct to the best of its knowledge, information and belief.

10.2 Exclusions

TravelDesk does not warrant and is not responsible for:

(a) any Third Party Products; or

(b) services to the extent not provided by TravelDesk or its Personnel.

10.3 Disclaimer

TravelDesk does not warrant that the operation of the Services will be uninterrupted, always accessible, free from harmful components, accurate or error-free.

11. Indemnities

11.1 TravelDesk's Indemnity

(a) TravelDesk will indemnify, defend, and hold the Client and its Personnel harmless from and against any Claim by any third party that the Services or the permitted use of the Services infringes or violates any third party's valid trademark, patent, copyright or trade secret (IP Claim). If in TravelDesk's reasonable judgment any such IP Claim, or threat of an IP Claim, materially interferes with the Client's use of the Services, TravelDesk will consult with the Client, and TravelDesk will have the option, in its sole discretion, to:

(i) substitute functionally equivalent non-infringing Services;

(ii) modify the Services to make them non-infringing; or

(iii) obtain for the Client at TravelDesk's expense the right to continue using the infringing Services.

(b) If TravelDesk cannot achieve any of the remedies in the preceding clause on a reasonable commercial basis, it may, by written notice, require the Client to cease using the Services (or the relevant functionality) and refund a pro-rata portion of the Fee for the Services for such period of time in which the Client was unable to use the Services (or the relevant functionality).

(c) TravelDesk will have no indemnity obligation for claims of infringement resulting or alleged to result from:

(i) any combination, operation, or use of the Services with any programs or equipment not supplied by TravelDesk or not specified in this Agreement for such purpose if in TravelDesk's reasonable judgment such infringement is caused by such use;

(ii) inclusion of Client Data; or

(iii) the use of the Services in a manner other than for their intended purposes or contrary to this Agreement or TravelDesk's lawful directions.

(d) To the extent permitted at Law, the provisions in this clause 11.1 state the Client's sole and exclusive remedy in relation to any IP Claim.

11.2 Client's Indemnity

The Client agrees to defend, indemnify and hold harmless TravelDesk, its Personnel and its Related Bodies Corporate from and against any and all Claims or Losses arising from:

(a) the Client's use of the Services (except to the extent any such Claim or Loss arises from a breach of this Agreement by TravelDesk or the negligence of TravelDesk);

(b) the Client's breach of any third party right (including Intellectual Property Rights) or any Law; or

(c) any claim arising in relation to any content of the Client Data.

11.3 General

The defence and indemnification obligations provided for in this clause 11 are conditional upon:

(a) the indemnified party providing the indemnifying party timely notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification;

(b) the indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim; and

(c) the indemnified party allowing the indemnifying party to control the defence and all related settlement negotiations; provided that the indemnifying party may not settle any claim that results in the indemnified party's liability and the indemnifying party will be required to consult in good faith with the indemnified party during any settlement discussions.

11.4 Survival

The provisions of this clause 11 will survive the termination or expiry of this Agreement.

12. Limit on liability

12.1 Competition and Consumer Act

Nothing in this Agreement restricts, excludes or modifies any consumer rights under any statute including the Competition and Consumer Act 2010 (Cth).

12.2 Exclusion of liability

TravelDesk will not have any liability to any party (including the Client) because of any act or omission of TravelDesk or its Personnel, where such act or omission is specifically required by a direction to TravelDesk or its Personnel from a Regulatory Body purporting to exercise its functions or powers.

12.3 Consequential Loss

To the full extent permitted by law, neither party is liable to the other party for any Consequential Loss arising out of or in relation to this Agreement.

12.4 Conditions and warranties excluded

Except for conditions and warranties expressly stated in this Agreement, to the extent permitted by law each party excludes all conditions and warranties under or in connection with this Agreement.

12.5 Limitation of liability

(a) Each party's total aggregate liability in respect of all Claims arising under or in connection with this Agreement (including in negligence) will not exceed the total Fees paid by the Client to TravelDesk under this Agreement in the 12 months preceding the Claim.

(b) Each party's liability under or in connection with this Agreement (including in negligence) will be reduced by the extent, if any, to which the other party or its Personnel contributed to the relevant Losses.

(c) Each party must take reasonable steps to mitigate any Losses it suffers as a result of a breach by the other party of this Agreement or the negligence of the other party or the other party's Personnel.

(d) To the extent permitted by law, a party's liability for breach of any condition, warranty or guarantee imposed by statute that cannot be excluded and the other party's sole and exclusive remedy in relation to such breach will be limited to (at the first party's election):

(i) in the case of goods:

(A) replacement or repair of the goods or supplying the equivalent goods again; or

(B) paying the cost of replacing or repairing the goods or of acquiring equivalent goods; and

(ii) in the case of services:

(A) supplying the services again; or

(B) paying the cost of having the services supplied again.

12.6 Survival

The provisions of this clause 12 will survive the termination or expiry of this Agreement.

13. Insurance

(a) Each party must effect and maintain at its own expense the following insurance policies until the termination or expiry of this Agreement and for at least 3 years after that:

(i) in the case of TravelDesk: professional indemnity insurance with a policy value of not less than \$10,000,000; and

(ii) in the case of each party: public liability insurance with a policy value of not less than \$10,000,000.

(b) Upon request, each party will promptly provide to the other party a copy of the certificate of currency for each of the insurance policies specified in clause 13(a).

(c) This clause 13 will survive the termination or expiry of this Agreement.

14. Suspension and Termination

(a) Without limiting TravelDesk's rights in respect of any breach of this Agreement, if the Client or any of its Personnel breaches any material obligation in this Agreement, TravelDesk may suspend the Client's or any of its Personnel's access to or use of any or all of the Services until the breach is remedied to TravelDesk's reasonable satisfaction.

(b) Without limiting the generality of any other clause in this Agreement, a party may terminate this Agreement by written notice to the other party if the other party:

(i) breaches a material term of this Agreement and does not remedy the breach within 14 days of receiving a notice of the breach, or

(ii) breaches a material term of this Agreement that is not capable of remedy; or

(iii) becomes, threatens or resolves to become or is in jeopardy of becoming subject to any bankruptcy, receivership, external administration or other form of insolvency administration, and fails to make any payment when due under this Agreement;

(iv) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or

(v) ceases or threatens to cease conducting its business in the normal manner.

15. Dispute Resolution

15.1 First Step

A party must use its best efforts and enter into good faith negotiations with the other party to resolve any dispute under or in connection with this Agreement before taking any further action.

15.2 Escalation

If the parties have been unable to resolve the dispute through the negotiations specified in clause 15.1 within 20 Business Days, then the parties' representatives will meet with a view to resolving the dispute.

15.3 Mediation

If the process in clause 15.2 fails to resolve the dispute to each of the parties' reasonable satisfaction, the parties will appoint a mutually agreed third party mediator to mediate the dispute, the costs of which will be shared equally between the parties.

15.4 Expert Determination

(a) If the parties cannot agree on the identity of a mediator within 7 days after either party notifies the other party that the dispute is to be referred for mediation, an Expert will be nominated at the request of either party, by the President for the time being (or their nominee) of the Law Institute of New South Wales (or if that organisation ceases to exist or fails to nominate an Expert within a reasonable period, a similar and independent organisation nominated by the party).

(b) The determination of the Expert will be final and binding on the parties except in the case of manifest error.

(c) The Expert will be free to decide the determination procedure to be adopted and the parties will

execute all documents that the Expert reasonably requests that they execute in order to implement that procedure.

(d) The Expert will act as an expert and not as an arbitrator.

15.5 Confidential and Without Prejudice

All negotiations connected with dispute resolution under this clause 15 must be conducted in strict confidence, and are without prejudice to rights of the parties in any further legal proceedings.

15.6 Costs

Each party must pay its own costs in relation to complying with this clause 15 except for the costs and expenses of any Expert which will be borne by the parties equally.

15.7 Interlocutory Relief

Nothing in this clause 15 restricts or prevents a party from applying for urgent interlocutory relief.

16. Relationship

The parties are independent contractors. Nothing in this Agreement will create the relationship of partnership, joint venturers, principal and agent, trustee and beneficiary or employer and employee between the parties, and it is the express intention of the parties that any such relationships are denied.

17. General provisions

17.1 Force Majeure

(a) Neither party will be responsible for a failure to perform any obligation under this Agreement (except an obligation to pay money) to the extent that it is caused by a Force Majeure Event, provided that such party has:

- (i) taken all reasonable steps to prevent and avoid the effects of the Force Majeure Event;
- (ii) taken all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable; and
- (iii) on becoming aware of the Force Majeure Event, promptly informed the other party of the Force Majeure Event.

(b) In the event that the Force Majeure Event continues for more than 30 days starting on the day the impact of the Force Majeure Event starts, the unaffected party may terminate this Agreement by not less than 10 days' notice in writing to the affected party.

17.2 Assignment

The Client must not assign any right or liability under this Agreement without the prior written consent of TravelDesk. TravelDesk may assign its rights or liabilities under this Agreement, or novate this Agreement, to a Related Body Corporate that has the resources and expertise to fully perform this Agreement and the Client must take all steps, including executing all documents, reasonably requested by TravelDesk for this purpose.

17.3 Notices

(a) Any notice may be served by delivery in person or by post to the address of the recipient specified in the Details Table or most recently notified by the recipient to the sender, or to the email address most recently notified by the recipient to the sender.

(b) Any notice is effective for the purposes of this Agreement upon delivery to the recipient before 4.00pm local time on a day in the place in or to which the notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

17.4 Governing law and jurisdiction

This Agreement is governed by the laws of Victoria, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in that state.

17.5 Amendments

Subject to clause 1.2, any amendment to this Agreement has no force or effect, unless effected by an agreement executed by the parties.

17.6 Third parties

This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

17.7 Further assurances

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

17.8 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

17.9 Continuing performance

(a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.

(b) Any indemnity under this Agreement:

- (i) constitutes a liability separate and independent from any other liability under this Agreement or any other agreement; and
- (ii) survives and continues after performance of this Agreement.

17.10 Waiver

Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by a party does not preclude any other or further exercise of that or any other right by that party.

17.11 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

17.12 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

17.13 Survival

Any term of this Agreement that is expressed to survive, or by its nature survives, the termination or expiry of this Agreement will survive and continue in effect following termination or expiry of this Agreement.

17.14 Party acting as trustee

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

18. Definitions and interpretation

18.1 Definitions

In this Agreement unless the context otherwise requires:

Authorised User means Personnel of the Client or a User whom the Client invites and/or permits to access and use the Services.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.

Changes means any upgrades, maintenance, additions or removals of any features and functionality, redesign, improvements, or any other alterations to the Services.

Claim means any claim, action, proceeding or investigation of any nature or kind and includes the allegation of a claim.

Client Data means any data inputted into the Services by the Client or the Client's Authorised User, including information inputted into the Services by the Client or the Client's Authorised User about Customers.

Client Trademarks means the brands, logos and trademarks used by the Client to brand and promote itself and its products and services.

Commencement Date means the date a Client agrees to be bound by the Terms of Use and this Agreement.

Confidential Information means, in relation to a party (for the purposes of this definition, the Discloser):

- (a) information relating to or used by the Discloser, including know-how, trade secrets, ideas, marketing strategies and operational information;
- (b) information concerning the current or proposed business affairs (including financial information, products, services, customers and suppliers) or property of the Discloser; and
- (c) other information which is disclosed, communicated or imparted by or on behalf of the Discloser in circumstances importing an obligation of confidence or which a reasonable person would have realised was of a confidential nature,

and the Confidential Information of TravelDesk includes the source code, object code, and details of the functionality of the Services, but Confidential Information excludes information which is:

- (d) in or enters the public domain other than through an unauthorised act of the receiving party, which is or becomes publicly known other than by breach of this Agreement or any other obligation of confidentiality; or
- (e) developed independently by the receiving party without reliance on any of the Discloser's Confidential Information.

Consequential Loss includes special, incidental, punitive, exemplary, indirect or consequential Losses, as well as business interruption losses, loss of revenue, anticipated savings, profits, goodwill, reputation, interest or business opportunity, costs of procurement or substitution of goods, technology or services, and loss of information or data (including the costs of recovering or reconstructing any lost or corrupted data).

Customer means a retail purchaser of Travel Products.

Environment means the Client's existing hosting and processing environment, including all hardware, software, storage space, power, Internet connectivity and other components to be used in conjunction with the Services.

Expert means a person who is duly qualified or generally recognised as an expert in the substance of the dispute to be resolved by the Expert.

Fee means any fee or fees as described in the relevant Terms of Use.

Force Majeure Event means an event or circumstance whose occurrence and effects could not have been prevented or overcome, such as earthquakes, natural disasters, fire, flood, riots, civil commotion, industrial disputes, malicious damage, failure of any utility services, viruses (pandemic or epidemic), denial of service attacks, other acts or omissions or service outages by third parties (including any Internet service provider) or breakdown of plant or equipment.

GST means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Intellectual Property Rights means any intellectual property rights subsisting anywhere in the world, including:

- (f) rights in relation to copyright (registered or unregistered), inventions (including patents, innovation patents and utility models), confidential information, technical information and know-how, registered and unregistered designs, registered and unregistered trademarks, and circuit layout rights, topography rights, and rights in databases;
- (g) any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may at any time subsist;
- (h) any application and the right to apply for registration for any of the above; and
- (i) any right of action against any party in connection with any of the above.

Legal Requirements means any present and future obligation arising under laws, statutes, regulations, by-laws, codes, orders, ordinances, proclamations and decrees (provided such orders, ordinances, proclamations and decrees are legally binding).

Loss means any loss, damage, liability, cost (including all legal and other professional costs), charge, expense, outgoing, fine or payment of any nature or kind.

Operator means a supplier of Travel Products.

Personal Information has the meaning given to that term in the Privacy Laws.

Personnel means the directors, officers, employees, contractors and subcontractors of the relevant party.

Privacy Collection Statement means TravelDesk's privacy collection statement as amended from time to time, the current version of which is set out at www.adventium.tech.

Privacy Laws means the Privacy Act 1988 (Cth) and any other laws or legally-binding codes of practice, guidelines or standards issued by regulators or authorities that apply to the collection, handling, disclosure and use of Personal Information by the parties.

Regulatory Body means any government or any governmental, semi-governmental, or judicial entity or authority, any self-regulatory organisation established or recognised under any statute or any stock exchange.

Related Body Corporate has the same meaning as in the Corporations Act 2001 (Cth).

Relevant Laws means all laws and legally-binding codes of practice, guidelines or standards issued by relevant regulators or authorities or industry bodies including the Privacy Laws and the Competition and Consumer Act 2010 (Cth).

Services means the authorised use of TravelDesk's prescribed software and application programming interfaces by the Client (as amended from time to time in accordance with this Terms of Use and the General Terms), provided on a "software as a service" basis.

Terms of Use means a Terms of Use entered into by TravelDesk and the Client, in relation to the Services.

Third Party Products means any third party software, deliverables and services to be used in conjunction with the Services.

Transaction means an agreement for the purchase and supply of any Travel Product between a Subscriber and a Customer, facilitated for the Customer by a User, using the Services.

Travel Product means transport, accommodation, tours, travel activities or ancillary travel services made available through the Services.

User means a re-seller or agent who sells Travel Products to Customers.

18.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Agreement includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression "at any time" includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (l) reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.