

Terms and Conditions

This Terms and Conditions document forms a part of the Advertising Agreement to which it is attached and sets forth terms and conditions relating to the provision and use of the Travel Guide, LLC, d/b/a "Travel Media Group" ("TMG"), products and services ordered through the Advertising Agreement (the Advertising Agreement and this Terms and Conditions document collectively constitute the "Agreement"). Any terms that are not defined in these Terms and Conditions shall have the meanings given those terms under the Advertising Agreement. The Client, as identified in the Advertising Agreement, represents that it has read these Terms and Conditions and agrees to be bound by them.

1. ORDERED PRODUCTS AND SERVICES.

- (a) All products and services ordered by Client in the Advertising Agreement and/or any supplemental schedule and/or addendum thereto are referred to herein collectively as the "Ordered Product(s)/Service(s)". The Ordered Products/Services may include (i) print and/or digital advertising ("Advertising"), (ii) the development, hosting, maintenance and/or support of one or more websites (each, a "Client Website") and/or (iii) the provision of other products or services that may include, but are not necessarily limited to, reputation management services, video product/hosting, social media management and call tracking/reporting services (some of which may constitute Third Party Products, as defined below). Subject to Section 9 below, the Ordered Products/Services shall be provided to Client by, and are ordered by Client from, TMG for the term/contract period designated in the Advertising Agreement for that product or service (the "Contract Period").
- (b) For each Ordered Product/Service, TMG hereby grants Client a non-exclusive, non-transferable, revocable, limited license during the applicable Contract Period to have its authorized users (as specified in the Advertising Agreement) access and use that Ordered Product/Service and the related TMG Proprietary Materials (defined below) in connection with the operation of the hotelier or management group identified in the Advertising Agreement. Any rights not expressly granted herein are deemed withheld. Except as expressly permitted in this Section 1(b), Client may not use, reproduce, transfer, share, sublicense or transmit any TMG Proprietary Materials in any form or by any means without the prior written consent of TMG, and, without limiting the foregoing, Client is expressly prohibited from reselling, loaning or otherwise sharing any TMG Proprietary Materials or divulging any related Confidential Information (defined below). Client further shall not directly or indirectly, and shall not permit or authorize a third party to, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine source code from any TMG Proprietary Materials.
- (c) With respect to any Ordered Products/Services that include Advertising, Client expressly acknowledges and agrees as follows:
- (i) TMG shall, at Client's request and direction, prepare advertising content for Client to be inserted into one or more of TMG's printed and/or digital "Guides". Such Guides may be in the form of printed publications, Websites, mobile-accessible Websites, or mobile smartphone applications (apps) or other products developed by TMG and/or licensed as Third Party Products, and TMG shall then distribute such advertising Guides in locations and allotments and in manners at its sole discretion.
- (ii) All Advertising content submitted to TMG for publication hereunder is subject to TMG's approval in its sole discretion, and TMG reserves the right in its sole discretion to reject or cancel any Advertising at any time, with or without notice to Client, and the positioning within the Guides (or any other media) of all Advertising is and shall be at the sole discretion of TMG.
- (iii) Client shall return all Advertising proofs and any requested revisions to planned Advertising within the time period reasonably directed by TMG from time to time; otherwise, coupon expiration dates for any such Advertising will be changed to coincide with the next publication period of the applicable Guide or other publication medium. In addition, coupon rates for all Advertising shall remain the same for so long as such Advertising is published/distributed hereunder unless otherwise specified by Client within the time period specified in the Advertising Agreement. (TMG requires that all coupons be available for consumer use and be honored during the full distribution period for each applicable Guide or other distribution medium). Client may change the text of any Advertising at no cost, no more than once per publication "run".
- (d) TMG may also offer various products, services and/or other solutions that are provided by third parties and interoperate with one or more Ordered Products/Services hereunder (collectively, "Third-Party Products"), and Client agrees as follows with respect to any such Third-Party Products:
- (i) Any use by Client of any Third-Party Products and any related implementation, customization and other consulting services, and any exchange of data between Client and any provider of such Third-Party Products, is solely between Client and the applicable third-party provider. TMG does not warrant or support any Third-Party Products, and TMG hereby expressly disclaims any representations or warranties of any type or nature whatsoever with respect to any Third-Party Products.
- (ii) In addition to and not in limitation of the foregoing, Client understands and agrees that (A) Client shall look solely to the third-party vendor of the applicable Third-Party Products (and not to TMG) for maintenance and support, including but not limited to resolution of system errors, bugs, patches and fixes, and (B) Client's sole and exclusive rights and remedies with respect to any Third-Party Products, including rights and remedies in the event any Third-Party Products give rise to an infringement claim, will be against the third-party vendor and not against TMG.
- (iii) During the Term hereof, Client shall not contract directly with any provider of Third-Party Products for any products or services that are the same as or similar to the Covered Products/Services provided by TMG to Client under this Agreement.

2. FEES.

- (a) For each Ordered Product/Service, Client shall pay TMG all fees designated in the Advertising Agreement for that product or service, as the same may be hereafter modified, which may include one-time "upfront fees" or set-up fees and costs (including, but not limited to, applicable travel costs) and/or recurring "monthly fees" (collectively, the "Fees").
- (b) Except to the extent that any such fees are payable in advance, TMG will invoice Client for all Fees on a periodic basis (which will be monthly in most cases), and all invoices are due upon receipt. If any Ordered Products/Services are provided on a bundled basis, TMG will begin invoicing for those Ordered Products/Services when the first of those bundled Ordered Products/Services is deployed/activated. With respect to any Ordered Product/Service that requires customization or Client input (e.g., Client Websites, etc.), the parties expect the customization and/or activation to be completed by the beginning of the corresponding Contract Period, but if the customization and/or activation is delayed through no fault of TMG, TMG may begin invoicing for those services not later than the first day of such corresponding Contract Period.
- (c) Any invoice that remains unpaid thirty (30) days after the original invoice date shall be subject to interest on any outstanding balance at a rate equal to the lesser of (i) 1.5% per month or (ii) the maximum rate permitted by applicable law. If any outstanding Fees remain unpaid for thirty (30) (or more) days from the original invoice date, TMG may, without limiting any of its rights and remedies, suspend the provision of the Ordered Products/Services in respect of which payment has not been received plus any or all other Ordered Products/Services. The foregoing rights and remedies of TMG shall not apply to any invoice, or portion thereof, that is then subject to a good faith dispute between the parties, provided that all other invoices (or portions thereof) not in dispute have been paid by Client in full. All returned checks will incur a charge of \$25 per incident on the account.
- (d) All Fees are exclusive of federal, state and local excise, sales, use and other taxes now or hereafter levied or imposed for the provision of Ordered Products/Services, and Client shall be solely liable for and shall pay all such taxes (except for any such taxes based on the net income of TMG), regardless of whether included on any invoice.
- (e) TMG may modify any monthly Fees payable under this Agreement by giving Client at least ninety (90) days' prior written notice from time to time. Any such Fee modification shall not require an affirmative response by Client or any further action by the parties; provided, however, if any such Fee modification will result in an increase in the Fees that are payable in respect of an Ordered Product/Service, then, for a period of thirty (30) days following receipt of notice of the increase, Client may cancel the applicable Ordered Product/Service by giving TMG written notice of cancellation. If Client does not timely cancel the applicable Ordered Product/Service, then such Fee increase shall be effective (and binding on Client) as of the date specified in TMG's initial notice thereof.

3. SYSTEMS.

- (a) Client acknowledges and agrees that (i) in order to transact business using various applicable Ordered Products/Services, certain capabilities are required of Client's computing and telecommunications equipment (both hardware and software), (ii) Client is obligated to procure and install for its use, at its own expense, all equipment and infrastructure (including wiring) that is necessary to access and otherwise receive the benefit of the applicable Ordered Products/Services, and (iii) TMG shall not be responsible or liable if for any reason Client's telecommunications and computing equipment is incompatible with or otherwise insufficient for Client to utilize any applicable Ordered Products/Services.
- (b) Client further acknowledges and agrees that (i) TMG, in its discretion, may track, analyze and/or create reports related to activity and/or results obtained in connection with Client's use of the Ordered Products/Services (including, without limitation, information from consumer actions or responses) (collectively, "Results Reports"), and (ii) in furtherance thereof, TMG may install certain tracking pixels or other similar tools on the Client Websites and the Client Content (defined below) included therein (including photos) and use those pixels and tools to collect information relating to such use of the applicable Ordered Products/Services, which information may be used by TMG to, among other things, create, market and sell products and services.

4. COMPLIANCE.

- (a) Client represents, warrants and covenants that it is complying, and shall comply, with all federal, state and local laws, rules, regulations and ordinances applicable to this Agreement and its use of the Ordered Products/Services, including all accompanying federal regulations. Client further warrants and covenants that it shall comply with all policies and procedures in respect of the use of the Ordered Products/Services that TMG may provide to Client and similarly situated customers from time to time on an across-the-board basis, including, without limitation, policies and procedures regarding (i) end user use of an Ordered Product/Service, (ii) language that TMG requests Client to include in its website privacy policy and customer order forms and (iii) the requirements of third-party vendors utilized by TMG in connection with the provision of Third-Party Products included within the Ordered Products/Services to Client hereunder.
- (b) Client acknowledges and agrees that, as between Client and TMG, Client is solely responsible for all products advertised via any Advertising hereunder (including but not limited to the pricing thereof) as well as all messages, editorial content, advertising content (other than advertising content produced by TMG at Client's request), music recordings, photographs, videos, artwork or other similar content that is displayed on or distributed through any Advertising, any Client Website or any other product maintained or made available, in any media (electronic or otherwise), through any Ordered Product/Service (such content, except to the extent it incorporates any TMG Proprietary Material, is collectively the "Client Content"). Without limiting the foregoing, Client represents and warrants to TMG that (i) Client owns the Client Content and/or (ii) all licenses, rights and other permissions from third parties (including but not limited to ASCAP, BMI and the Copyright Clearance Center) that are necessary to display or distribute the Client Content through the applicable Ordered Products/Services shall be obtained (for the benefit of Client and TMG) and fully paid before such display and/or distribution commences and, further, shall thereafter be maintained in full force and effect by Client for so long as such distribution continues hereunder. Client acknowledges and agrees that TMG has not undertaken, and will not undertake, any obligation to investigate or evaluate the extent to which the display or distribution of any Client Content infringes upon or misappropriates any right of any third party or is otherwise permissible.
- (c) If any third party (including any governmental agency or authority) notifies TMG that Client's use of any Ordered Product/Service violates or may violate any federal, state or local law or regulation, TMG may at any time thereafter on notice to Client suspend Client's use of each applicable Ordered Product/Service until TMG receives reasonable assurance that Client's use does not violate such law or regulation.

5. PROPRIETARY RIGHTS; LICENSE; RESTRICTIONS.

- (a) As between the parties, TMG shall own all right, title and interest in and to the Ordered Products/Services and all Intellectual Property Rights (defined below) relating to the Ordered Products/Services (and any derivative works or enhancements thereof), including, but not limited to, all associated software, technology, materials, documentation, Brand Features (defined below), the style and design of any Client Website and any other text, audio, photo, video or other creative work, whether in print or electronic form, developed by TMG for any Client Website, and the Results Reports and the content therein (collectively, the "TMG Proprietary Materials"). Client shall not acquire any right, title or interest in the Ordered Products/Services or the TMG Proprietary Materials, except for the limited use rights expressly set forth in this Agreement, and Client shall not take any action to impair, limit or interfere in any manner with TMG's ownership or rights with respect to any TMG Proprietary Materials. (In addition to and not in limitation of the foregoing, except for any Client Content maintained thereon, all content displayed on any Client Website or products maintained hereunder, together with the style and website design of any such Client Website, are and shall remain the property of TMG.) Client further acknowledges and agrees that nothing herein shall be deemed or construed to limit in any manner TMG's use of the TMG Proprietary Materials. As used herein, (i) "Intellectual Property Rights" shall mean any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, as well as any and all applications, renewals, extensions, restorations and re-instatements thereof, now or hereafter in force and effect worldwide, (ii) "Brand Features" shall mean the trade names, trademarks, service marks, logos, and other distinctive brand features of a party, as secured by such party from time to time.
- (b) As between the parties, Client shall own all right, title and interest in and to the Client Content; provided, Client hereby grants to TMG a non-exclusive, worldwide, irrevocable, perpetual, royalty-free right and license (with rights to sublicense) to, reproduce, use, prepare derivative works from, display and distribute the Client Content as may be necessary or appropriate for TMG to provide the Ordered Products/Services (without limiting the foregoing, TMG may share the Client Content with its affiliates and applicable third-party vendors to the extent TMG deems necessary or appropriate to provide the Ordered Products/Services). In addition to and not in limitation of the foregoing, the parties acknowledge and agree that, (i) subject to the rights of applicable registries and/or registrars in and to any such domain name(s), Client is the sole owner of the domain name(s) for any Client Website registered by or on behalf of Client (which such domain name(s) shall constitute Client Content hereunder), and Client shall be solely responsible for any applicable domain name registration fees (TMG may host domain name(s) on behalf of Client, but shall have no ownership rights or responsibilities with respect thereto); (ii) TMG shall have no responsibility and shall be held harmless from liability for Client's failure to renew or maintain in good status Client's domain name(s); and (iii) Client shall not be entitled to any credit against its Fees payable to TMG if any Client Website is unavailable due to any failure to maintain domain name(s) in good standing.

6. CONFIDENTIALITY.

- (a) During the Term of this Agreement and for a period of three (3) years thereafter, each party (the "Receiving Party") shall retain in confidence the terms of this Agreement and all confidential or proprietary information, technology, materials and know-how of the other party disclosed to or acquired by the Receiving Party pursuant to or in connection with this Agreement that either is designated as confidential and/or proprietary or that reasonably should be understood to be confidential and/or proprietary given the nature of the information and/or the circumstances surrounding its disclosure ("Confidential Information"). (Without limiting the generality of the foregoing, Client expressly acknowledges and agrees that the TMG Proprietary Materials constitute TMG's Confidential Information includes.) In connection with the foregoing, (i) neither party shall use any Confidential Information with respect to which it is the Receiving Party for any purpose other than to carry out the activities permitted or contemplated hereunder (including, provision or use of the Ordered Products/Services, as applicable), or to exercise or enforce its rights under this Agreement; (ii) each Receiving Party shall use commercially reasonable efforts to protect the Confidential Information of the other party against any unauthorized use or disclosure, and in any event shall take precautions at least commensurate with those taken to protect its own Confidential Information of a similar nature; and (iii) each Receiving Party shall notify the other party promptly in writing in the event such party learns of any unauthorized use or disclosure of any Confidential Information that it has received from such other party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible. The restrictions set forth in this Section 6 shall not apply to any information that: (A) was known by the Receiving Party without obligation of confidentiality prior to disclosure thereof by the other party; (B) was in or entered the public domain through no fault of the Receiving Party; (C) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; or (D) is independently developed by the Receiving Party without use of or reference to any Confidential Information of the other party.
- (b) If a Receiving Party is required to disclose Confidential Information of the other party pursuant to an order from a court of competent jurisdiction or governmental agency with appropriate legal authority, the Receiving Party shall (i) provide the disclosing party with prior notice of such compelled disclosure, (ii) provide reasonable assistance, at the disclosing party's cost and expense, if the disclosing party wishes to contest the disclosure, and (iii) disclose only those portions of the Confidential Information as are necessary to comply with the order.

- (c) Upon request of the other party, each Receiving Party shall return to the other or destroy all materials, in any medium, which contain or reveal all or any part of any Confidential Information of the other party.

7. DISCLAIMER; LIMITATIONS OF LIABILITY.

- (a) EACH ORDERED PRODUCT/SERVICE AND ALL TMG PROPRIETARY MATERIALS ARE PROVIDED ON AN "AS IS" BASIS. EXCEPT FOR EXPRESS WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, IF ANY, TMG DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS, ORAL, IMPLIED OR STATUTORY, WITH RESPECT TO ANY ORDERED PRODUCT/SERVICE OR ANY TMG PROPRIETARY MATERIAL, OR ANY THIRD-PARTY PRODUCTS, AND TMG HEREBY SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE ORDERED PRODUCTS/SERVICES, THE OTHER TMG PROPRIETARY MATERIALS AND ANY THIRD-PARTY PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF QUALITY, ACCURACY, COMPLETENESS, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING ANYTHING IN THE FOREGOING, (i) TMG DOES NOT MAKE ANY REPRESENTATION OR WARRANTY THAT THE ORDERED PRODUCTS/SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR WILL FULFILL ANY PARTICULAR NEEDS OR PURPOSES; (ii) TMG DOES NOT PROVIDE ANY WARRANTY AGAINST INFRINGEMENT OR INTERFERENCE WITH ENJOYMENT; (iii) CLIENT ACKNOWLEDGES THAT THE OPERATION, USE OR PERFORMANCE OF THE ORDERED PRODUCTS/SERVICES ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, OMISSIONS, DELAYS AND LOSSES, INCLUDING INADVERTENT LOSS OR DISCLOSURE OF DATA OR DAMAGE TO MEDIA, WHICH MAY GIVE RISE TO LOSS OR DAMAGE, AND CLIENT AGREES THAT TMG SHALL NOT BE LIABLE IN ANY EVENT ON ACCOUNT OF ANY SUCH ERRORS, OMISSIONS, DELAYS, OR LOSSES; AND (iv) CLIENT ACKNOWLEDGES AND AGREES THAT NO STATEMENTS MADE IN ANY ADVERTISING MATERIALS OR ANY OTHER DOCUMENTATION (OTHER THAN STATEMENTS THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT) HAVE FORMED A PART OF THE PARTIES' AGREEMENT OR UNDERSTANDING, AND CLIENT IS NOT ENTITLED TO RELY ON SUCH STATEMENTS IN ADVERTISING OR OTHER DOCUMENTATION.
- (b) IN ADDITION TO AND NOT IN LIMITATION OF ANY OTHER LIMITATION OF LIABILITY HEREUNDER, CLIENT ACKNOWLEDGES AND AGREES THAT (i) TMG SHALL NOT BE LIABLE TO CLIENT OR ANY OTHER PERSON FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR OTHER SIMILAR DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ORDERED PRODUCT/SERVICE OR ANY TMG PROPRIETARY MATERIAL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TMG SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR REVENUE, INCLUDING, BUT NOT LIMITED TO, ANY SUCH LOSSES INCURRED AS A RESULT OF LOSS OF USE OF ANY ORDERED PRODUCT/SERVICE OR ANY TMG PROPRIETARY MATERIAL, LOSS OR DISCLOSURE OF DATA (HOWEVER CAUSED), BUSINESS INTERRUPTION, COST OF RECOVERING SOFTWARE OR DATA OR OTHER SIMILAR COSTS); AND (ii) TMG'S TOTAL LIABILITY FOR ALL CLAIMS OF ANY KIND IN RESPECT OF ANY ORDERED PRODUCT/SERVICE OR TMG'S OBLIGATIONS UNDER THIS AGREEMENT RELATING THERETO, REGARDLESS OF THE FORM IN WHICH ANY CLAIM MAY BE BROUGHT, SHALL NOT EXCEED (IN THE AGGREGATE) THE TOTAL FEES PAID BY CLIENT TO TMG UNDER THIS AGREEMENT FOR THAT ORDERED PRODUCT/SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIMS.
- (c) If TMG is not appointed to handle the hosting of domain-name service ("DNS") entries or domain names relating to the Client Website(s) that constitute Ordered Products/Services hereunder, then TMG shall not be responsible for any issues that may result from or relate to the hosting, including domain downtime.

8. INDEMNIFICATION.

- (a) Client assumes sole responsibility for all use of the Ordered Products/Services, the TMG Proprietary Materials and all Third-Party Products. Furthermore, Client shall indemnify, defend and hold harmless TMG and its affiliates, and its and their respective officers, directors, employees, agents and representatives (collectively, the "Indemnified TMG Parties"), from and against any and all claims, proceedings and demands asserted or alleged by third parties against an Indemnified TMG Party ("Claims"), and from and against any damages, costs, expenses and liabilities of any kind whatsoever (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with any such Claims, arising out of or in any way related to (i) Client's use of any of the Ordered Products/Services, (ii) any breach by Client of any representations, warranties, covenants or other terms and conditions set forth in this Agreement, (iii) Client's violation of or failure to comply with any applicable law, rule or regulation, or (iv) any allegation that any Client Content, whether as displayed on any website, product or otherwise, (A) infringes (directly or in a contributory manner), violates or misappropriates any copyright, patent, trademark or service mark or any other Intellectual Property Right of a third party, (B) violates any right of publicity or privacy of any third party or (C) constitutes unlawful use, disclosure or misappropriation of a third party's trade secret or otherwise constitutes unfair competition under applicable law.
- (b) In the event that use of the Ordered Products/Services (*excluding* any Client Content displayed thereon) or other TMG Proprietary Materials becomes, or in TMG's sole discretion is likely to become, the subject of any Claim of infringement by any third party, then TMG may at its option and expense either (i) use commercially reasonable efforts to procure for Client the right to continue to use the applicable Ordered Product(s)/Service(s) or TMG Proprietary Materials as provided in this Agreement, or (ii) use commercially reasonable efforts to replace or modify the applicable Ordered Product(s)/Service(s) or TMG Proprietary Materials with a version that is non-infringing but that performs substantially similar functions. In the event that neither of the foregoing options is commercially viable in the sole judgment of TMG, then TMG may cancel its provision to Client of the applicable Ordered Product(s)/Service(s) or TMG Proprietary Materials and refund to Client any Fees pre-paid by Client with respect thereto.

9. TERM AND TERMINATION.

- (a) This Agreement shall commence on the date that the initial Advertising Agreement is signed by an authorized Manager of TMG and shall remain in effect until terminated in accordance with this Agreement (the period that this Agreement is so in effect, the "Term").
- (b) Each Advertising Agreement specifies an initial term/contract period (defined above as the Contract Period) for each Ordered Product/Service. After the initial Contract Period for any Ordered Product/Service expires, the Contract Period for such Ordered Product/Service shall, except as provided below, automatically renew for successive terms that are equal in length to the initial Contract Period, unless a party gives the other party written notice of its intent not to renew this Agreement for the applicable Ordered Products/Services not less than (i) ninety (90) days prior to the applicable renewal date, with respect to Ordered Products/Services that consist of print Advertising services, or (ii) sixty (60) days prior to the applicable renewal date, with respect to all other Ordered Products/Services, in which case this Agreement shall terminate effective as of the last day of the calendar month following the expiration of the applicable notice period (for instance, if notice of non-renewal for Ordered Products/Services consisting of print Advertising services is delivered on March 24, the effective date of termination would be June 30).
- (c) The cancellation of one Contract Period shall not, in and of itself, cause the cancellation of any other Contract Period unless the cancellation is effected as a result of a breach and the non-breaching party expressly elects, in its sole discretion, to exercise its termination right under Section 9(d). This Agreement shall automatically terminate if for a period of ninety (90) consecutive days there is no Contract Period in effect for the provision of any Ordered Product/Service (e.g., all renewals have been cancelled).
- (d) Client, on the one hand, or TMG, on the other hand, may terminate this Agreement at any time by written notice to the other party if (i) the other party materially breaches this Agreement and the breach remains uncured for a period of thirty (30) days after notice of breach from the non-breaching party, or (ii) the other party ceases to do business in the normal course, a petition for relief under any bankruptcy legislation is filed by or against the other party, the other party makes an assignment for the benefit of creditors, or a receiver is appointed for all or substantially all of the other party's assets. In addition to and not in limitation of the foregoing, TMG may terminate this Agreement (including any and all active Advertising Agreements) immediately upon written notice to Client in the event that Client, or any of its employees, agents or other representatives, engages in any conduct that TMG in its reasonable discretion deems offensive, inappropriate or otherwise inconsistent with TMG's standards of conduct, including, but not limited to, use of abusive, insulting or derogatory language with any TMG personnel.
- (e) Following termination of this Agreement for any reason, all rights and licenses granted herein shall terminate and Client shall immediately cease use of all Ordered Products/Services (including by discontinuing use of all TMG Proprietary Materials) and certify to TMG that it has destroyed all copies of all applicable TMG Proprietary Materials. Notwithstanding the foregoing, termination of this Agreement shall not limit either party from pursuing any remedies available to it at the time of or in connection with such

termination, nor shall such termination release Client from its obligation to satisfy all payment obligations under this Agreement. Sections 2, 5, 6, 7, 8, 9(e), 10 and 11 shall survive any termination or expiration of this Agreement.

10. GOVERNING LAW; DISPUTE RESOLUTION. The parties hereby expressly (i) agree that their respective rights and obligations shall be determined by the terms of this Agreement and (ii) waive and opt out of any application of the Uniform Computer Information Transactions Act, or any version thereof, adopted in any State in any form to the maximum extent permitted by applicable law. This Agreement will be construed in accordance with and governed by the laws of the Commonwealth of Virginia (subject to clause (ii) in the preceding sentence), without regard to principles of conflicts of law. Each party irrevocably consents to the exclusive jurisdiction and venue of any local, state or federal court that is located in Norfolk, Virginia in connection with any dispute, claim or controversy arising out of or relating to this Agreement, and waives any objections in the nature of jurisdiction or venue. In any action or other proceeding by which Client's account is referred to an attorney or collection agency for collection, Client will pay for all collection fees, costs and expenses incurred by TMG in connection therewith. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.

11. GENERAL.

- (a) **Independent Contractors.** The relationship of the parties hereunder is that of independent contractors. Neither TMG, on the one hand, nor Client, on the other hand, has or will have any power to bind the other or to create any obligation on behalf of the other, nor shall it represent that it has any such power.
- (b) **Promotional Matters.** TMG may issue press releases and other marketing and promotional material describing the relationship created by this Agreement and, among other things, displaying websites or products, developed for or provided to Client as examples of the service offerings available from TMG. Client hereby grants TMG the right to use Client's name, trademarks, service marks and logos (i) in advertising targeted to all or any portion of Client's customer base in connection with the performance of the Ordered Products/Services hereunder, and (ii) in any advertising and publicity identifying Client as a customer of TMG.
- (c) **Notices.** All notices and other communications to each party must be in writing and sent to the applicable address specified in the Advertising Agreement, with any such notices to TMG to be sent care of Vice President/General Manager, Travel Media Group. Unless otherwise agreed, notice shall be deemed given upon (i) receipt when delivered personally, (ii) written verification of receipt from overnight courier, (iii) verification of receipt of registered or certified mail, or (iv) verification of receipt via facsimile.
- (d) **Force Majeure.** No party shall be deemed to be in default or otherwise liable for any delays or failure in performance of its obligations under this Agreement (other than its obligation to pay any monies owed hereunder, which shall not be excused) resulting directly or indirectly from any cause or circumstances beyond its reasonable control, including but not limited to acts of God or nature, war or warlike conditions, terrorism, riot, embargoes, acts of civil or military authority, fire, flood, accidents, strikes or labor shortages, sabotage, shortages in fuel, transportation facilities or materials, or failures of equipment, Internet, telecommunications facilities or third party software programs.
- (e) **Severability; Waiver.** If any term or condition hereof is found or ruled to be invalid or unenforceable, the remaining terms and conditions hereof shall remain in full force and effect and shall be enforceable to the maximum extent permitted by law. The failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- (f) **Remedies.** Except as otherwise expressly set forth in this Agreement, a party's remedies set forth herein are not exclusive and are in addition to any and all other remedies available at law or in equity, none of which shall be deemed as waived by virtue of a party's exercise of any other remedy. Each party acknowledges that any unauthorized use or disclosure of the other party's Confidential Information would cause the other party irreparable harm that may not be adequately compensated by monetary damages; accordingly, in addition to any other remedies available to it at law or in equity, each party will be entitled to injunctive or other equitable relief to prevent any actual or threatened unauthorized use or disclosure of its Confidential Information.
- (g) **Amendment; Assignment; Continuing Obligation.** Except to the extent otherwise expressly provided herein (such as, by way of example, in the case of Fee increases by TMG), this Agreement may not be amended or otherwise modified except by a writing signed by both parties. Client may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity without the express prior written consent of TMG. In addition, and notwithstanding anything to the contrary set forth in this Agreement, if another person, business or entity becomes the "Client" under this Agreement, whether by way of a permitted assignment hereof, change of ownership of the original/current Client hereunder, or any other means or mechanism whatsoever, then following such assignment, ownership change or other means/mechanism the original/current Client shall nonetheless be and remain responsible for both (i) all obligations incurred by the original/current Client hereunder prior to such change and (ii) any and all obligations (including but not limited to payment of all Fees) incurred by any such new "Client" subsequent to such change.
- (h) **Third Party Beneficiaries.** This Agreement is not intended to benefit any third party and the parties do not intend to create, and do not and shall not be deemed to create, any third party beneficiary rights hereunder.
- (i) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, written or oral, with respect thereto.

[END OF TERMS & CONDITIONS - UPDATED MAY 2018]