



# Master Services Agreement

Please read this Contract carefully before using the Service as it forms a legally binding contract between the Client and Journey. The Client's attention is particularly drawn to the provisions of clauses 5.10 – 5.14 (inclusive) (*Liquidated Damages*) and clause 14 (*Limitation of Liability*).

## 1. Background

- 1.1 Journey Hospitality Limited who is registered in England and Wales with company number 07413674 whose registered office is at Elmstone Business Park, Stoke Road, Elmstone Hardwicke, Cheltenham, GL51 9SY ("**Journey**", "**Us**", "**We**" or the "**Supplier**") is a hospitality-focused, ecommerce, marketing and technology business who has developed a range of performance marketing products, technology and digital services.
- 1.2 Journey provides a platform for Clients to manage online bookings and provide the Client's customers with a user-friendly way to search and make bookings from a web-enabled device.

## 2. Definitions and interpretation

- 2.1 In these Terms the following definitions apply:

**Business Day** means a day other than a Saturday, Sunday or bank or public holiday in England or Wales.

**Business Hours** means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the England or Wales.

**Client** means the client whose details are set out in the Order.

**Client Default** has the meaning given to it in clause 5.11.

**Client Marks** means the trade marks, service marks or trade names of the Client.

**Client Materials** means any and all data, imagery, text, statistics, analysis, content, credentials, API keys and other materials provided by the Client to Journey.

**Commencement Date** has the meaning given to it in clause 3.2.

**Confidential Information** means any commercial, financial or technical information, information relating to the Services (including, but not limited to, software, technology, programming, research), financial and business information, know-how or trade secrets which are obviously confidential in nature or have been identified as confidential, or any other piece of information that either party designates as confidential or proprietary.

**Contract** means the agreement between Journey and the Client for the supply and purchase of the Services incorporating this MSA, the Terms and the Order and including all their respective schedules, attachments and statements of work.

**Controller** has the meaning given to it in applicable Data Protection Laws from time to time.

**Data Protection Laws** means, as binding on either party or the Services:

- (a) the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
- (b) the Data Protection Act 2018;
- (c) any laws which implement or supplement any such laws; and
- (d) any laws that replace, extent, re-enact, consolidate or amend any of the foregoing.

**Extended Term** has the meaning given to it in clause 3.3.

**Fees** has the meaning given to it in clause 7.1.

**Implementation Services** means the set-up services detailed in the Order and which will be performed by Journey for the Client during the Set Up Period.

**Initial Term** has the meaning given to it in clause 3.3.

**Intellectual Property Rights** means copyright, patents, know-how, trade secrets, trade marks, trade



names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to inventions, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing.

**Inventory** means items available for sale online via the Product, Platform or Service.

**Journey API** means Journey's application programming interface and includes the documents (in whatever media) that accompany the API.

**Journey Dashboard** means the interactive user dashboard through which the Client views information about their, and their customer's use of the Platform.

**Journey Materials** means all materials, equipment, documents and other property of Journey.

**Modules** means the modules (including rooms, tables, spa, vouchers, retail and events) which the Client chooses to use in the Platform, as detailed in the Order.

**Order** means the order for the Services by the Client from Journey set out in Journey's order form.

**Personal Data** shall have the meaning given to it in applicable Data Protection Laws from time to time.

**Platform** means all software, application programming interfaces (including the Journey API), user interfaces (including the Journey Dashboard), and other technology that Journey uses to provide and make available the Services.

**Processor** shall have the meaning given to it in the applicable Data Protection Laws from time to time.

**Review Period** has the meaning given to it in clause 22.1.

**Services** means the services set out in the Order and to be performed by Journey for the Client in accordance with the Contract, including any Implementation Services detailed in the Order.

**Service Fees** has the meaning given to it in clause 7.3.

**Service Period** means the period commencing on completion of the Set Up Period and continuing throughout the remainder of the Term.

**Set Up Fee** means the set-up fee detailed in the Order.

**Set Up Period** means the period when Journey carries out the Implementation Services and sets up the Platform for the Client to use.

**Special Terms** any specific terms and conditions that apply to individual products, Modules or deliverables (including specific Modules) delivered in performance of the Services will be detailed in the Order.

**Specification** means the description provided for the Product or Services by Journey to the Client set out or referred to in the Order.

**Target Go-Live Date** means the date which is eight (8) weeks from the Commencement Date when all Modules should be set up for the Client to use in its business via the Platform.

**Term** means together the Initial Term and any Extended Term.

**Terms** means Journey's terms and conditions of supply set out in this document.

**Update** means a modification, feature enhancement or update to the Services or Platform that requires the Client to take some action, which may include changing the implementation of the Services or the Platform.

**VAT** means value added tax under the Value Added Tax Act 1994.

**Virus** means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise), or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2.2 In these Terms, unless the context requires otherwise:

2.2.1 a reference to the Contract includes these Terms, the Order, and their respective schedules and



- appendices (if any);
- 2.2.2 any clause, schedule or other headings in these Terms is included for convenience only and shall have no effect on the interpretation of the Terms;
- 2.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 2.2.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.2.5 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

### 3. Acceptance and Term

- 3.1 No terms or conditions endorsed on, delivered with, or contained in the Client order, confirmation of order, specification or other document shall form part of the Contract (except to the extent Journey agrees otherwise in writing).
- 3.2 An Order shall not be accepted by Journey, and no binding obligation to supply any Services shall arise, until the earlier of:
  - 3.2.1 Journey signing the Order; or
  - 3.2.2 Journey performing the Services.(the "**Commencement Date**").
- 3.3 The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (*Termination*) for the initial term set out in the Order (**Initial Term**) and shall automatically extend for 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term, unless otherwise specified in the Order. The Client may give written notice to Journey, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

### 4. Services

#### Implementation Services

- 4.1 Journey shall use reasonable endeavours to complete the Implementation Services during the Set Up Period so as to meet the Target Go-Live Date, subject to clause 4.2.
- 4.2 Journey shall be given an extension of time for completion of the Implementation Services and the parties shall agree a revised Target Go-Live Date, if one or more of the following events occurs but, in each case only to the extent that such is the actual cause of the delay in meeting any existing Target Go-Live Date:
  - 4.2.1 a variation to the Platform is made at the Client's request;
  - 4.2.2 a force majeure event occurs as described in clause 24;
  - 4.2.3 the delay is caused in whole or in part by an action or omission of the Client or its employees, agents or third party contractors.
- 4.3 If Journey is entitled to an extension of time to complete the Implementation Services, Journey shall give written notice to the Client and the parties shall use best endeavours to agree in writing what extension of time is reasonable in the circumstances.

#### Services

- 4.4 Journey shall supply the Services to the Client in accordance with the Specification in all material respects.
- 4.5 Journey reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Journey shall notify the Client in any such event.
- 4.6 Journey warrants that the Services will be provided using reasonable care and skill.
- 4.7 Journey is not a party to any transaction or any agreement with any of the Client's customers in connection with any product or service offered by the Client via the Platform.



- 4.8 Journey may modify the Services and the Platform at any time, including adding or removing functionality or imposing conditions on use of the Services. Journey will notify the Client of any adverse changes in, or removal of functionality from, the Services or the Platform. Where Journey notifies the Client of or makes changes under this clause 4.8 that, in the Client's reasonable opinion, materially affects the nature, quality or performance of the Services or the Specification, the Client may terminate this Agreement in full without liability (including any liability for future fees that would have otherwise become payable for the unexpired portion of the Term) on providing not less than 30 days written notice to Journey.

Journey is not obligated to provide Updates, but warrants to the Client that the version / edition of the Platform as made available to the Client as at the Commencement Date will continue to be supported by Journey throughout the Initial Term. Journey further warrants that it shall notify the Client not less than 120 days prior to expiry of the Initial Term if there are proposals for Journey (during the Extended Term) to discontinue its support of the version / edition of the Platform in use by the Client.

- 4.9 The Client acknowledges that the Services do not include any services, software or equipment required to access the internet (and that the Client is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and charges incurred by it in connection with the use of the Services).

## 5. Client Obligations

- 5.1 The Client shall ensure the terms of the Order are complete and accurate.

- 5.2 The Client must not, and must not enable or allow any third party to:

- 5.2.1 attempt to copy, modify, duplicate, create derivative works from, mirror, republish, download, display, transmit or distribute all or any portion of the Platform in any form or media or by any means;
- 5.2.2 reverse engineer or attempt to reverse engineer the Services or the Platform;
- 5.2.3 use the Services to engage in any activity that is illegal, fraudulent, deceptive, or harmful; or
- 5.2.4 perform or attempt to perform any action that interferes with the normal operation of the Services or affects other Journey user's use of Journey's services.

- 5.3 The Client shall:

- 5.3.1 be responsible for the timely delivery of text, graphics, logos, images, photographs, and all other related input requirements necessary for Journey to deliver the Services;
- 5.3.2 appoint a sole representative with full authority to provide any necessary information and approvals that may be required by Journey;
- 5.3.3 ensure that the Client's personnel are available as may be reasonably required by Journey to efficiently complete the Services. This includes attendance and participation in scheduled calls and meetings, the provision of timely information, agreed feedback and the completion of mutually agreed responsibilities;
- 5.3.4 provide all necessary access to such information as may be required by Journey in order to provide the Services;
- 5.3.5 be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its Platforms, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or caused by the internet;
- 5.3.6 use reasonable endeavours to prevent any unauthorised access to, or use of, the Platform and notify Journey promptly of any such unauthorised access or use.

- 5.4 The Client acknowledges that its timely participation and cooperation is necessary for Journey to provide the Services, and that failure to do so may create delays, hinder the performance and results of the Services, and impact the Fees.

- 5.5 The Client warrants that at all times during the Term:

- 5.5.1 it has the right, power, and ability to enter into and perform under this Contract;
- 5.5.2 it is a business eligible to use the Services;
- 5.5.3 it has all necessary rights, consents, licences and approvals for the operation of its business and to allow it to access and use the Services in compliance with this Contract;
- 5.5.4 all information it provides to Journey is, to the best of its knowledge, accurate and complete

- 5.6 The Client acknowledges that:

- 5.6.1 the Service has been developed to meet the requirements of the hospitality sector, and that it is the Client's responsibility to ensure that the facilities and functions of the Service meet the Client's requirements;
- 5.6.2 whilst Journey tests across a wide range of browser and device combinations it is not possible to



test the Service in advance in every possible operating combination and environment; and

5.6.3 it is not possible to produce a Platform known to be error free in all circumstances.

5.7 The Client warrants that the Client Materials that the Client provides in connection with the Service are not protected by third party Intellectual Property Rights, and that Journey can use such material lawfully.

5.8 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

5.8.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

5.8.2 facilitates illegal activity; or

5.8.3 is otherwise illegal or causes damage or injury to any person or property,

and Journey reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause 5.8.

5.9 The Client agrees to the collection and use of anonymised statistics from the Platform and Services by Journey in order to develop and improve the efficiency of the Platform and Services provided that such data does not identify the Client or its end-user customers.

5.10 If without prior notice the Client disables, limits or diverts to telephone bookings the available Inventory in any month following the commencement of the Service Period and during the Term, the Client will pay to Journey on demand a sum of £300 per month per Module as liquidated damages. The liquidated damages in this clause 5.10 represents a genuine pre-estimate of Journey's loss arising from the Inventory being disabled or limited and the parties acknowledge and agree that this does not impose a detriment on the Client which is disproportionate to the legitimate interests of Journey.

5.11 If Journey's performance of any of its obligations under the Contract is prevented or delayed (including making the Platform available to the Client on the Target Go-Live Date) by any act or omission by the Client, or a failure by the Client to perform its obligations under this Contract (**Client Default**):

5.11.1 without limiting or affecting any other right or remedy available to it, Journey shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations, but only to the extent that such Client Default actually causes Journey to become unable to perform its obligations;

5.11.2 Journey shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Journey's failure or delay to perform any of its obligations as set out in this clause 5;

5.11.3 the Client shall reimburse Journey on written demand for any costs or losses sustained or incurred by Journey arising directly or indirectly from the Client Default; and

5.11.4 notwithstanding the generality of clause 5.11.1, if the Client Default occurs during the Set Up Period and this results in either (i) a delay to the Target Go-Live Date, or (ii) termination of this Contract, the Client shall pay Journey on written demand the Set Up Fee(s) that would have been payable to Journey as set out in the Order in accordance with clause 7.1 of these Terms.

5.12 If Journey fails to make all Modules of the Platform available for the Client to use in its business by the Target Go-Live Date due to a Client Default, the Client will pay to Journey on demand for each month Journey is delayed in making all Modules available to the Client via the Platform from the Target Go-Live Date, a sum of £300 per month per Module as liquidated damages. Where the Platform is made available part-way through the month, the amount payable by the Client under this clause 5.12 shall be calculated on a pro-rata basis.

5.13 The parties acknowledge and agree that the liquidated damages payments in clause 5.12 represent a genuine pre-estimate of Journey's loss as a result of a delay in making the Platform available and the parties agree that this does not impose a detriment on the Client which is disproportionate to the legitimate interests of Journey in making the Platform available for use by the Client and the commencement of payment of the Service Fees.

5.14 The monies payable under clause 5.10 and clause 5.12 have been arrived at:

5.14.1 as fair, given the nature and circumstances (including the payment terms); and

5.14.2 as neither excessive, extravagant, unconscionable or oppressive in all the circumstances.

## 6. Supplier obligations

6.1 Journey will assign qualified personnel to perform the Services in a professional manner, and in accordance with the standard of care, skill, and knowledge generally prevailing in the industry.

6.2 Journey does not warrant that:

6.2.1 the Client's use of the Services will be uninterrupted or error free;

6.2.2 the Services and/or the information obtained by the Client (or its customers) through the



Services will meet the Client's (or its customer's) requirements;

6.3 Journey is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 This Contract shall not prevent either party from entering into similar agreements with third parties.

6.5 Except as expressly provided in this Contract, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

## 7. Fees and Payments

7.1 The fees for the Services shall be as set out in the Order (**Fees**). The Client shall pay the Fees to Journey in accordance with this clause 7.

### 7.2 Set-Up Fee.

7.2.1 Subject to clause 7.2.2, the Set Up Fee set out in the Order(s) will be invoiced on the date of signing the Order.

7.2.2 If Journey agrees to waive the Set Up Fee in writing, Journey will not invoice the Client for the Set Up Fee in accordance with clause 7.2.1, unless the Platform cannot be set up on the Target Go-Live Date due a Client Default in which case the Set Up Fee shall become payable and Journey shall raise an invoice which will be payable immediately on receipt by the Client.

7.3 **Service Fees.** The amount of service fees payable shall be calculated at the percentage rate set out in the Order on each product and/or service bought by an end customer of the Client via the Platform (**Service Fees**). The Service Fees shall be paid at the point of transaction via the Platform through Journey's payment platform as detailed in the Order, excluding purchases that are subsequently cancelled or refunded in full in accordance with the Client's prevailing terms and conditions of sale as apply to its end user customers from time to time.

7.4 **Integration Fees.** The Client shall be responsible for paying all integration fees as detailed in the Order direct to the relevant third party providers in accordance with their terms of business and the Client shall indemnify Journey against all liabilities, costs and losses suffered or incurred by Journey arising out of or in connection with any claim made against Journey by a third party provider for failure to pay the integration fees.

7.5 The Client shall promptly notify Journey in writing of the following:

7.5.1 each transaction completed via the Platform;

7.5.2 the amount of the payments due for the products and/or services sold via the Platform to the Client's end customers; and

7.5.3 the Service Fees payable to Journey.

7.6 Without prejudice to clause 7.5, the Client shall permit the duly appointed representative of Journey at all reasonable times on not less than 10 Business Days prior notice to inspect the Client's accounts and records and take copies of them for the purpose of verifying the Service Fees payable to Journey. All rights in such records shall remain the property of the Client.

7.7 All Fees are exclusive of VAT which shall be added at the prevailing rate.

7.8 In addition to Fees, the Client shall reimburse Journey for all reasonable expenses incurred by Journey in performance of the Services. Journey shall agree any such expenses with the Client in advance.

7.9 The Fees shall be payable to Journey in pound sterling.

7.10 If Journey has not received payment within five days of any due date, and without prejudice to any other rights and remedies Journey may have:

7.10.1 Journey shall be under no obligation to provide any or all of the Services while the Fees concerned remain unpaid and at Journey's discretion may suspend the Services; and

7.10.2 interest will accrue on a daily basis at an annual rate of 8% over the Bank of England's current base lending rate commencing on the due date and continuing until fully paid.

7.11 The Client acknowledges and agrees that Journey reserves the right to review and increase all of the fees under this agreement at the end of the initial term, and any time thereafter by giving no less than 95 days written notice.

7.12 In addition to Clause 7.11 Journey may also increase the Fees on an annual basis with effect from each anniversary of the Commencement Date provided that such increase shall not exceed the percentage change in the Retail Prices Index in the preceding 12-month period based on the latest available figure for the percentage increase at the beginning of the month in which the anniversary of the Commencement Date falls.

7.13 Clause 7.10 (inclusive) shall not apply where the Client has raised a bona fide dispute in good faith in



respect of any Fees calculated or charged under this Agreement provided that the Client has notified Journey of the dispute and the reasons for it.7.

7.14 **Offboarding Fees.**

7.14.1 If The Client chooses to terminate the agreement in line with Clause 15 set out in the terms and would like to transfer content and or data pursuant to Clauses 5, 9 and 11 of this agreement then an offboarding fee will be applicable if Journey who under no obligation to do so can provide.

**8. Confidentiality**

8.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the exercise of its rights and performance of its obligations under this Contract.

8.2 Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, representatives, agents, and contractors, advisers, consultants and auditors and those of its Group to whom and to the extent to which such disclosure is necessary for the purposes contemplated under the Contract and procure that such persons are made aware of, and agree in writing to, observe obligations in this clause 8.

8.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.

8.4 The provisions of this clause 8 shall not apply to information which:

8.4.1 is or comes into the public domain through no fault of the recipients, its officers, employees, agents or contractors;

8.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;

8.4.3 is independently developed by the recipient, without access to or use of such Confidential Information; or

8.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.

8.5 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

8.6 The obligations under this clause 8 shall survive the variation and expiry or termination of this Contract for a period of five (5) years after its expiry or termination (as the case may be).

**9. Intellectual Property Rights**

9.1 Except as expressly stated in this clause 9, no Intellectual Property Rights of either party are transferred or licenced as a result of this Contract.

9.2 Journey and its licensors shall retain ownership of all Intellectual Property Rights in the Journey Materials, the Platform and the Services (excluding the Client Materials).

9.3 Journey grants the Client or shall procure the direct grant to the Client of a fully paid-up, non-exclusive, royalty-fee licence during the term of this Contract to use the Platform and the Services in its business.

9.4 In relation to the Client Materials and the Client Marks, the Client grants to Journey a fully paid-up, non-exclusive, royalty-free licence to use the Client Materials and the Client Marks for the Term for the purpose of providing the Services to the Client only.

9.5 The Client warrants that the receipt and use of the Client Materials in the performance of this Contract by Journey, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.

9.6 Journey warrants that (i) the receipt and use of the Services and the Platform by the Client in accordance with the terms of this Contract shall not infringe the rights, including any Intellectual Property Rights, of any third party and that (ii) Journey is the owner or duly authorised licensee of the Platform and all Intellectual Property Rights comprised therein.

**10. Announcements**

10.1 The Client hereby grants Journey the right to use the Client's Marks in media announcements, on its website and in its sales collateral in order to announce the relationship between the parties. Journey will



consult with the Client on the timing and content of any announcement.

- 10.2 The Client acknowledges and agrees that all branded widgets used to access the Platform on the Client's website must be branded as "Powered by OneJourney".

## **11. Third Party Providers**

- 11.1 The Client acknowledges that the Platform integrates with other third party software and that the Platform may enable the Client (and its customers) to access the product, content or services, of third parties. Journey makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third party system, or any contract entered into by the Client with any such third party.
- 11.2 Where any part of the Services requires input from a third party, the Supplier will provide support as deemed necessary by the Supplier in accordance with this agreement and may require access to the third party system upon request in accordance with Clause 8.
- 11.3 Any contract entered into, and any transaction completed via a third party, is between the Client and the relevant third party provider, and not Journey. Journey recommends that the Client refers to the third party's terms and conditions and privacy policy. Journey does not endorse or approve any third party, nor the content (including goods or services sold) on any of the third party systems made available via the Services.
- 11.4 Journey shall not be liable for any losses sustained or incurred by the Client arising directly or indirectly from:
- 11.4.1 the acts or omissions of the third party providers, except where any third party providers are acting as appointed subcontractors or agents for Journey in respect of the performance of Journey's obligations under this agreement, the delivery of the Services or operation of the Platform;
  - 11.4.2 a failure in the third party systems; or
  - 11.4.3 a failure by the third party providers to provide Journey with the necessary application programme interface keys to provide access to the third party systems as part of the Services.

## **12. Support Access and Service Levels**

### **12.1 Provision of Support**

- 12.1.1 Journey will provide the Client with support to resolve issues relating to the Client's use of the Services and in accordance with the incident and request descriptions, severities and target initial response times set out in clause 12.2, save that Journey shall not provide support in relation to any third party systems made available via the Services, and the Client should refer to the third party provider's terms and conditions in relation to the support provided by such third parties.
- 12.1.2 Journey support operates between 9am to 5pm, Monday to Friday (excluding UK bank holidays) and are contactable through various channels following our incident management process (for latest version, see [www.journey.travel/incidentmanagement](http://www.journey.travel/incidentmanagement)).
- 12.1.3 Journey support provides assistance to the Client. Journey is not responsible for providing support to the Client's end customers and the Client is wholly responsible for providing support and contacting end customers.
- 12.1.4 The Client acknowledges that we provide no warranty that all or any bugs or errors in the Service will be corrected.
- 12.1.5 Journey shall use reasonable endeavours to notify the Client in advance of scheduled maintenance of the Platform but the Client acknowledges that it may receive no advance notification for downtime caused by force majeure or for other emergency maintenance.

### **12.2 Incidents, Requests and target initial response times**

- 12.2.1 Critical (Severity 1). A critical production issue that severely impacts your use of the Platform. The situation halts your business operations and no procedural workaround exists. For instance, the Platform is down or unavailable preventing orders and payments to be completed. Severity 1 issues may require the Client to have resources available to work on the issue on an ongoing basis with Journey if required. Target response time is under 4 Business Hours.
- 12.2.2 Major (Severity 2). Major functionality is impacted or significant performance degradation is experienced. The situation is causing a high impact to business operations and no reasonable



workaround exists. For instance, orders cannot be fulfilled or prices cannot be changed. Target response time is under 1 Business Day.

12.2.3 Minor (Severity 3). There is a partial, non-critical loss of use of the service with a medium-to-low impact on your business, but your business continues to function. For instance, new products cannot be added to the Platform. Target response time is under 2 Business Days.

12.2.4 Cosmetic (Severity 4). Inquiry regarding a routine technical issue; information requested on application capabilities or configuration; bug affecting edge cases. Acceptable workaround available. For instance a query on user permissions, or informing Journey of a change in client escalation team. Target response time is under 4 Business Days.

### 12.3 Journey contacts and escalation path

12.3.1 All incidents and requests should be logged via Journey support using the process described at [www.journey.travel/incidentmanagement](http://www.journey.travel/incidentmanagement).

12.3.2 The Client will provide names and contact details for their current escalation team, which will be used by the Journey support team as appropriate. Changes to contact details should be notified by email to [support@journey.travel](mailto:support@journey.travel). It is the Client's responsibility to ensure the contacts are kept up to date.

## 13. Indemnity

13.1 Each party shall indemnify and keep indemnified the other party against all losses, claims, damages, liability, costs (including legal fees) and expenses incurred by the other party as a result of or in connection with:

13.1.1 any claim made against the other party for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with:

13.1.2 Where the Client is the indemnifying party and Journey the indemnified party, Journey's use of the Client Materials or the Client's Marks and any claim made against Journey by a third party arising out of or in connection with any products sold, advertised or otherwise made available by the Client via the Platform.

13.1.3 Where Journey is the indemnifying party and the Client the indemnified party, the Client's receipt and use of the Services, the Platform or any materials provided by Journey.

## 14. Limitation of Liability

14.1 Nothing in this Contract excludes or limits any liability of either party which cannot legally be excluded or limited, including liability for:

14.1.1 death or personal injury caused by negligence;

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.1.4 under any indemnity given under clause 13.1 above.

14.2 Journey does not have and will not assume any responsibility for, or liability related to, any product or service offered, sold or provided by the Client via the Platform.

14.3 Except as expressly provided in this Contract and to the fullest extent permitted by applicable law:

14.3.1 Journey shall not be responsible for actions taken by the Client, any customer of the Client or any other third party when using the Platform; and

14.3.2 Journey shall have no liability for any damage caused, or loss suffered, by the Client or any customer of the Client arising from information or instructions provided to Journey by the Client in connection with the Services, or any product or service offered by the Client to its customers via the Platform;

14.3.3 the Services are provided to the Client on an "as is" basis, except where expressly provided otherwise herein.

14.4 Subject to clause 14.1, the total liability of either party shall not exceed the total Fees paid by the Client to Journey in the 12 months preceding the date on which the claim arose.

14.5 Subject to clause 14.1, neither party shall be liable for consequential, indirect or special losses.

14.6 Subject to clause 14.1, neither party shall be liable for any of the following (whether direct or indirect):

14.6.1 loss of profit;

14.6.2 loss of revenue;

14.6.3 loss or corruption of data;



- 14.6.4 loss or corruption of software or Platforms;
- 14.6.5 loss of contract;
- 14.6.6 harm to reputation or loss of goodwill.

## **15. Termination**

- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party at least ninety (90) days prior written notice.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 15.2.1 the other party commits a material or persistent breach of any term of the Contract which they fail to remedy (if remediable) within 14 days after the service of written notice requiring them to do so; or
  - 15.2.2 the other party becomes insolvent or unable to pay their debts (within the meaning of section 123 of the Insolvency Act 1986), takes any step or action in connection with its entering into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt;
  - 15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 15.3 Without prejudice to any other right or remedy available to it:
  - 15.3.1 Journey may suspend access to the Platform(s) and/or terminate the Contract immediately for any violation by the Client of Journey's Intellectual Property Rights other than as permitted under clause 9 of these Terms; and
  - 15.3.2 Journey may terminate the Contract, or suspend the Services, in its discretion, at any time if the Client fails to pay any amount due under the Contract on the due date for payment.

## **16. Effects of Termination**

- 16.1 Upon termination of the Contract:
  - 16.1.1 The Client shall stop accessing or using the Platform and notify all users to do the same;
  - 16.1.2 The Client shall delete or return any Journey Materials. If the Client fails to do so, Journey may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the Contract.
  - 16.1.3 Journey shall delete or return any Client Materials at the Client's election. Until they have been returned, Journey shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the Contract.
- 16.2 On expiry or termination of this Contract for any reason, any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of expiry or termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of expiry or termination shall not be affected or prejudiced.
- 16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall survive termination or expiration. These include but are not limited to clauses 8 (Confidentiality), 9 (Intellectual Property Rights), 11 (Third Party Providers), 13 (Indemnity), 14 (Limitation of Liability), 16 (Effects of Termination), 20 (Non-solicitation), 29 (Governing Law), and 30 (Jurisdiction).

## **17. Transfer of rights and obligations**

Neither party may transfer, assign, novate, charge or otherwise dispose of this Contract or any other rights or obligations arising hereunder, without prior written consent from the other party.

## **18. Third Party Rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## **19. Independent Contractors**



The relationship of the parties is that of independent contractors, and neither party will incur any debts or make any commitments for the other party except to the extent expressly provided in this Contract. Nothing in this Contract is intended to create or will be construed as creating between the parties the relationship of joint ventures, co-partners, employer/employee or principal and agent.

**20. Non-solicitation**

Neither party shall, without the prior written consent of the other party, from the Commencement Date to the expiry of 12 months following termination or expiry of this Contract, solicit or entice away from the other party any person who is, or has been, engaged as an employee of the other party in the provision of the Services.

**21. Notices**

21.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to:

21.1.1 [notice@journey.travel](mailto:notice@journey.travel), in respect of notices given to Journey; and

21.1.2 the email address set out in the Order, in respect of notices given to the Client.

21.2 Any notice shall be deemed to have been received:

21.2.1 if delivered by hand, at the time the notice is left at the proper address;

21.2.2 if sent by next working day delivery service, at 9.00am on the second Business Day after posting; or

21.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

**22. Variation**

22.1 Journey may vary these Terms from time to time on giving the Client at least 30 days' notice in writing. The Client may, within thirty (30) days of being notified of the variation (Review Period), terminate this Contract on written notice to Journey. The Client's continued use of the Services and/or the Platform after the end of the Review Period will constitute the Client's acceptance of the variation. No variation shall take effect until expiry of the Review Period.

22.2 Except as set out in clause 22.1, no variation of this Contract shall be effective unless it is in writing and signed by the parties.

**23. Entire Agreement**

23.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance of warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

**24. Force Majeure**

Neither Party will be liable or responsible for any failure to perform, or delay in performance of, any of their obligations hereunder that is caused by events outside their reasonable control. Such causes include, but are not limited to power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, plague, pandemic, governmental action or any other event that is beyond the control of the party in question.

**25. Severability**

If any provision or part-provision of this Contract is illegal, invalid or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision or part-provision of this Contract is deleted under this clause 25, the parties shall negotiate in good faith to agree to a replacement provision that, to the greatest extent possible, achieves the



intended commercial result of the original provision.

**26. Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**27. Data Protection**

The parties agree that the Client is a Controller and that Journey is a Processor for the purposes of processing Personal Data pursuant to the Contract. The parties acknowledge and agree to the terms of Journey's data processing agreement, the terms of which are set out in:

<https://journey.travel/data-processing-agreement/>.

**28. Conflicts**

In the event of any conflict or inconsistency, the following descending order of priority applies:

- (a) any Special Terms set out in a completed Order;
- (b) the terms set out in the Order;
- (c) these Terms (Master Service Agreement).
- (d) Product or Service Specific Terms and Conditions

**29. Governing Law**

The Contract and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

**30. Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).