

## Software as a Service Agreement

This Software as a Service Agreement (the “**Agreement**”), effective as of the date its terms are accepted by clicking accept or agree below (the “**Effective Date**”), is by and between TripAround, Inc. a California Corporation with offices located at 300 Hamilton Avenue, Palo Alto, CA 94301, USA (“**TripAround**”) and the person or entity accepting this Agreement on or through an account profile with offices located at the address set forth in such account profile (“**Customer**”). If this Agreement is accepted on behalf of a company or other legal entity by a Representative (as defined below), such Representative represents and warrants that that it has the authority to bind such entity and its Affiliates to this Agreement.

**By agreeing to this Agreement as set forth below, Customer acknowledges that it has read and understands the terms of this Agreement and accepts and agrees to be bound and abide by all of its terms and conditions as set forth below. Unless and until Customer agrees to the terms of this Agreement, Customer explicitly agrees to not use or access the Services in any manner and TripAround hereby explicitly prohibits all access and use of the Services.**

**WHEREAS**, TripAround provides a Software-as-a-Service for the purpose of finding and booking Experiences (as defined below);

**WHEREAS**, TripAround provides access to its Software-as-a-Service offerings to certain hotels and travel professionals for the purpose of booking Experiences by or on behalf Guests;

**WHEREAS**, TripAround’s Software-as-a-Service also provides hotel operators and travel professionals with information regarding Guests’ prior Experiences so that hotels and travel professionals that subscribe to TripAround’s Software-as-a-Service may enhance their Guests’ travel experience by offering and booking similar Experiences during such Guests travel;

**WHEREAS**, Customer is a hotel operator or a travel professional;

**WHEREAS**, Customer desires to access those certain Software-as-a-Service offerings described above, and TripAround desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. DEFINITIONS.**

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, network links or connections, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise/ownership of more than 50% of the voting securities of a Person.

“**Aggregated Data**” means data and information related to Customer’s use of the Services that is used by TripAround in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“**Agreement**” has the meaning set forth in the Preamble.

“**Availability Exceptions**” has the meaning set forth in Section 4.1.

“**Availability Requirement**” has the meaning set forth in Section 4.1.

“**Available**” has the meaning set forth in Section 4.1.

“**Confidential Information**” has the meaning set forth in Section 7.

“**Customer**” has the meaning set forth in the Preamble.

“**Customer Data**” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer, by or through the Services. For the avoidance of doubt, Customer Data includes Personal Information of individuals who are not Guests but does not include Aggregated Data, Guest Data, or any other information reflecting the access or use of the Services by or on behalf of Customer.

“**Customer Indemnitee**” has the meaning set forth in Section 10.1.

“**Customer Systems**” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“**Disclosing Party**” has the meaning set forth in Section 7.

“**Documentation**” means any manuals, instructions, or other documents or materials that the TripAround provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or TripAround Materials.

“**Effective Date**” has the meaning set forth in the Preamble.

“**Experience**” means a travel activity for a Guest found and booked on or through the Services, including, without limitation, spa treatments, tours, sporting activities, restaurant reservations, and other similar travel/tourist activities.

“**Feedback**” has the meaning set forth in Section 8.4.

“**Fees**” has the meaning set forth in Section 6.1.

“**Force Majeure Event**” has the meaning set forth in Section 13.9.

“**GDPR**” means the EU General Data Protection Regulation (Regulation (EU) 2016/679) and all local laws, rules, or regulations implementing the foregoing.

“**Guest**” means a traveler who books, directly or indirectly (including through Customer or TripAround’s other customers), an Experience on or through the Services.

“**Guest Data**” means all information, data, and other content, in any form or medium, relating to Guests and any and all information, data, or other content derived therefrom.

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or

impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer from accessing or using the Services or TripAround Systems as intended by this Agreement.

“**Indemnitee**” has the meaning set forth in Section 10.3.

“**Indemnitor**” has the meaning set forth in Section 10.3.

“**Initial Term**” has the meaning set forth in Section 12.1.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Permitted Use**” means any use of the Services by Customer for the purpose of booking and managing Experiences directly for Guests.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Personal Information**” means names, addresses, email addresses, phone number(s), passport numbers, national ID card numbers, driver license numbers, travel interests, travel activities and any other information that, individually or in combination, does or can identify a specific individual or device or by or from which a specific individual or device may be identified, contacted, or located. Personal Information includes “personal data” as defined in the GDPR.

“**Privacy Laws**” means all Laws that relate to the confidentiality, integrity, availability, processing and/or protection of Personal Information, consumer information, electronic data privacy, trans-border data flow or data protection.

“**Process**” means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any Personal Information, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy.

“**Processing**” and “**Processed**” have correlative meanings.

“**Processed**” has the meaning set forth in the definition of Process.

“**Processing**” has the meaning set forth in the definition of Process.

“**Receiving Party**” has the meaning set forth in Section 7.

“**Renewal Term**” has the meaning set forth in Section 12.2.

“**Representatives**” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“**Scheduled Downtime**” has the meaning set forth in Section 4.2.

“**Service Suspension**” has the meaning set forth in Section 2.7.

“**Services**” means TripAround’s Software-as-a-Service offering described in the Preamble and in the Documentation.

“**Subcontractor**” has the meaning set forth in Section 2.6.

“**Support Hours**” has the meaning set forth in Section 4.3.

“**Term**” has the meaning set forth in Section 12.2.

“**Third-Party Materials**” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to TripAround.

“**TripAround**” has the meaning set forth in the Preamble.

“**TripAround Indemnitee**” has the meaning set forth in Section 10.2.

“**TripAround Materials**” means the Services, Documentation, and TripAround Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by TripAround or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or TripAround Systems. For the avoidance of doubt, TripAround Materials include Aggregated Data and any information, data, or other content derived from TripAround’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“**TripAround Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of TripAround or any Subcontractor.

“**TripAround Systems**” means the information technology infrastructure used by or on behalf of TripAround in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by TripAround or through the use of third-party services.

## 2. SERVICES.

**2.1. Access and Use.** Subject to and conditioned on Customer’s compliance with the terms and conditions of this Agreement (including the payment of Fees), TripAround hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 13.8) right to access and use the Services and TripAround Materials and Guest Data during the Term, solely for use by Customer for the Permitted Use and in accordance with the terms and conditions herein. Such use is limited to Customer’s internal use.

**2.2. Documentation License.** TripAround hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13.8) license to use the Documentation during the Term solely for Customer’s internal business purposes in connection with its use of the Services.

- 2.3. Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties: (a) TripAround has and will retain sole control over the operation, provision, maintenance, and management of the TripAround Materials; and (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the TripAround Materials by any Person by or through the Customer Systems or any other means controlled by Customer, including any: (i) information, instructions, or materials provided by any of them to the Services or TripAround; (ii) results obtained from any use of the Services or TripAround Materials; and (iii) conclusions, decisions, or actions based on such use.
- 2.4. Reservation of Rights.** TripAround reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third-party, any Intellectual Property Rights or other right, title, or interest in or to the Services, TripAround Materials, Guest Data, or Third-Party Materials.
- 2.5. Changes.** TripAround reserves the right, in its sole discretion, to make any changes to the Services, Guest Data, and TripAround Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of TripAround’s services to its customers; (ii) the competitive strength of or market for TripAround’s services; or (iii) the Services’ cost efficiency or performance; or (b) to comply with applicable Law.
- 2.6. Subcontractors.** TripAround may from time to time in its discretion engage third parties to perform Services (each, a “**Subcontractor**”). TripAround shall: (a) ensure each Subcontractor complies with all relevant terms of this Agreement, including all provisions relating to Customer Data, Guest Data, or other Confidential Information of Customer; and (b) TripAround shall remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor’s employees and agents, who, to the extent they are involved in providing any Services, are deemed TripAround Personnel) to the same extent as if such acts or omissions were by TripAround.
- 2.7. Suspension.** Notwithstanding anything to the contrary in this Agreement, TripAround may temporarily suspend Customer’s access to any portion or all of the Services if: (a) TripAround reasonably determines that: (i) there is a threat or attack on any of the TripAround Materials or Guest Data; (ii) Customer’s use of the TripAround Materials or Guest Data disrupts or poses a security risk to the TripAround Materials or Guest Data or to any other customer or vendor of TripAround; (iii) Customer is using the TripAround Materials or Guest Data for fraudulent, misleading, or illegal activities; (iv) Customer has failed to comply with any material term of this Agreement, or accessed or used the Services, TripAround Materials, or Guest Data beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Documentation; (v) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (vi) TripAround’s provision of the Services to Customer is prohibited by applicable Law; (b) any vendor of TripAround has suspended or terminated TripAround’s access to or use of any third-party services or products required to enable Customer to access the

Services; (c) TripAround receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires TripAround to do so; or (d) in accordance with Section **Error! Reference source not found.**(c) (any such suspension described in the foregoing subclauses, a “**Service Suspension**”). TripAround shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. TripAround shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. TripAround will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a Service Suspension. This Section 2.7 does not limit any of TripAround’s other rights or remedies, whether at law, in equity, or under this Agreement.

**2.8. Transactions Conducted on or Through the Services.** The Services include various product and service offerings that allow Customer to enter into online transactions with third-parties (including such transactions on behalf of Customer’s Guests) upon terms and conditions determined by Customer and/or such third-parties. While this Agreement establishes the terms and conditions for Customer’s interaction with the Services, the specific terms and conditions of the transactions (such as pricing, refunds, etc) entered into between Customer and such third-parties are established separately by Customer and such third-parties. Customer acknowledges and agrees that TripAround is not a party or an agent of any transactions conducted via the Services. TripAround does not set, control, or endorse the price, contract terms, quality, safety conformance, or legality of the products or services advertised or offered for sale via the Services. As between TripAround and Customer, Customer takes sole responsibility for any claims made by its Guests regarding their participation in an Experience. Customer further agrees and acknowledges that the applicable third-party takes sole responsibility for any products and services provided or made available by such third-parties on or through the Services. In no event shall TripAround be responsible for any liability resulting from or related to such products or services or for a Guest’s participation in an Experience.

**2.9. Use Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Services, Guest Data, or TripAround Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works or improvements of the Services, Guest Data, or TripAround Materials in whole or in part; (b) except for Permitted Uses, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services, Guest Data, or TripAround Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services, Guest Data, or TripAround Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services, Guest Data, or TripAround Materials or access or use the Services, Guest Data, or TripAround Materials other than by Customer through the use of Customer’s own then valid Access Credentials; (e) input, upload, transmit, or otherwise provide to or through the Services or TripAround Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Guest Data, TripAround Systems, or TripAround’s provision of services to any third party,

in whole or in part; (g) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services, Guest Data, or TripAround Materials, including any copy thereof; (h) access or use the Services, Guest Data, or TripAround Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other TripAround customer or that violates any Person's right to privacy), or that violates any applicable Law; (i) access or use the Services, Guest Data, or TripAround Materials for purposes of competitive analysis of the Services, Guest Data, or TripAround Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the TripAround's detriment or commercial disadvantage; or (j) otherwise access or use the Guest Data beyond the scope of authorization granted under Section 8 or otherwise access or use the Services or TripAround Materials beyond the scope of the authorization granted under this Section 2.9.

### 3. CUSTOMER OBLIGATIONS.

3.1. **Customer Systems and Cooperation.** Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.

### 4. SUPPORT; SERVICE LEVELS.

4.1. **Service Levels.** Subject to the terms and conditions of this Agreement, TripAround will use commercially reasonable efforts to make the Services Available at least ninety-five percent (95%) of the time as measured over the course of each calendar month during the Term, excluding unavailability as a result of any of the Availability Exceptions described below in this Section 4.1 (the "**Availability Requirement**"). "**Available**" means the Services are available for access and use by Customer over the Internet and operating in material accordance with the Documentation. For purposes of calculating the Availability Requirement, the following are "**Availability Exceptions**" to the Availability Requirement, and the Services will not be considered un-Available in connection with any failure to meet the Availability Requirement or impaired ability of Customer to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer; (b) Customer's Internet connectivity; (c) a Force Majeure Event; (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by TripAround pursuant to this Agreement; (e) Scheduled Downtime; or (f) disabling, suspension, or termination of the Services pursuant to Section 2.7.

4.2. **Scheduled Downtime.** TripAround will use commercially reasonable efforts to: (a) schedule downtime for routine maintenance of the Services between the hours of 3:00 a.m. and 5:00 a.m. in UTC; and (b) give Customer at least twenty-four (24) hours prior notice of all other scheduled outages of the Services ("**Scheduled Downtime**").

4.3. **Support Hours.** TripAround will provide email, web support ticket, phone, and web conferencing based support services to Customer. Support services shall be available during Support Hours. "**Support Hours**" are 9:00 a.m. – 6:00 p.m. UTC, Monday through Friday, excluding days recognized by TripAround or its services personnel as a non-business day. TripAround shall make reasonable efforts to respond to client requests for support services made within the foregoing hours on the same business day, and the next business day for all support requests placed outside of the foregoing hours.

## 5. SECURITY; PRIVACY.

- 5.1. TripAround Systems and Security Obligations.** TripAround will employ security measures in accordance with applicable industry practice. TripAround's safeguards for the protection of Customer Data shall include: (a) limiting access of Customer Data to authorized personnel; (b) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (c) implementing network, application, database, and platform security; (d) securing information transmission, storage, and disposal; (e) implementing authentication and access controls within media, applications, operating systems, and equipment; (f) encrypting sensitive Customer Data stored on any mobile media; (g) encrypting Customer Data transmitted over public or wireless networks; (h) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at TripAround's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (i) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (j) providing appropriate privacy and information security training to TripAround's employees.
- 5.2. Privacy.** To the extent applicable under Privacy Laws, the parties agree and acknowledge that, subject to the terms and conditions of this Agreement: (a) each party has the right to, and hereby does, independently and without direction from the other party, determine the means and purposes of the Processing of Guest Data in such party's possession, custody, or control; (b) neither party has the right to determine the means or purpose of the Processing of the Guest Data in the other party's possession, custody, or control; (c) each party Processes the Guest Data on its own behalf or on the behalf of the Guest and neither party Processes Guest Data on behalf of, or subject to the instructions of, the other party; (d) to the extent relevant under applicable Privacy Laws, neither party is, or shall claim to be, a Processor of, or joint Controller along with, the other party; and (e) to the extent relevant under applicable Privacy Laws, each party is a separate and independent Controller for the Processing of Guest Data and each party has distinct and independent obligations with respect to its Processing of Guest Data under Privacy Laws. Without limiting any other obligation of a party under applicable Privacy Laws, each party acknowledges and agrees that, at its sole cost and expense, it is solely responsible for its compliance with, and shall comply with, all obligations of a Controller under applicable Privacy Laws related to its Processing of Personal Information and each party is solely responsible for obtaining all necessary consents, authorizations, orders, and approvals from all governmental authorities that are or may become necessary for that party's execution and delivery of the information provided to the other party under this Agreement. Customer is solely responsible for informing Customer that its participation in an Experience is not confirmed unless and until Customer confirms it has read, understood, and accepts the terms of TripAround's services and TripAround's privacy policy. The terms of Exhibit A of this Agreement shall apply solely to the extent required under Privacy Laws for the provision of the Services and, if such terms apply, shall take precedence over the terms and conditions of the main body of this Agreement.
- 5.3. Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data and Guest Data provided by Customer, including its content and obtaining all necessary consents for its use by Customer and TripAround; (b) all information, instructions, and materials provided by or on behalf of Customer in connection with the Services; (c) Customer Systems; (d) the security and use of Customer's Access Credentials; and (e) all access to and use of the Services and TripAround Materials



directly or indirectly by or through the Customer Systems or its Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

- 5.4. **Access and Security.** Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services or Guest Data; and (b) control the content and use of Customer Data and Guest Data, including the uploading or other provision of Customer Data and Guest Data provided by Customer for Processing by the Services.

## 6. FEES AND PAYMENT.

- 6.1. **Fees.** Customer shall pay TripAround the standard fees set forth in TripAround's then-current service fee schedule available online at [www.triparound.com/pricingplans](http://www.triparound.com/pricingplans) or as otherwise specified in Customer's online profile page ("**Fees**") in accordance with this Section 6.
- 6.2. **Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, value added and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on TripAround's income.
- 6.3. **Payment.** Unless otherwise agreed upon by TripAround in writing, we accept all major credit cards for payment for Services. TripAround shall charge all Fees to Customer's credit card on file with TripAround as they are incurred. Customer represents and warrants that: (a) at all times during the Term the credit card information on file for Customer is true, correct, and complete; (b) the person or entity providing the credit card information is duly authorized to use such credit card for the Services; (c) all Fees and other charges incurred by Customer will be honored by Customer's credit card company; and (d) Customer will pay all Fees and other charges incurred by Customer, including all applicable taxes as described in Section 6.2, if any, regardless of the service fee schedule at the time the Services are provided.
- 6.4. **No Deductions or Setoffs.** All amounts payable to TripAround under this Agreement shall be paid by Customer to TripAround in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).
- 6.5. **Fee Increases.** Unless otherwise agreed upon by the parties, the Fees for any Renewal Term will be as set forth in TripAround's then-current service fee schedule available online at [www.triparound.com/pricingplans](http://www.triparound.com/pricingplans).
7. **CONFIDENTIALITY.** From time to time during the Term of this Agreement and for a period of five (5) years thereafter, either party (as the "**Disclosing Party**") may disclose or make available to the other party (as the "**Receiving Party**") information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information shall not include information that, at the time of disclosure: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 7 by

the Receiving Party or any of its Representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third-party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party or its Representatives before being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Receiving Party shall be responsible for any breach of this Section 7 caused by any of its Representatives. On the expiration or termination of the Agreement, the Receiving Party shall promptly return, and shall require its Representatives to return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition to all other remedies available at law, the Disclosing Party may seek equitable relief (including injunctive relief) against the Receiving Party and its Representatives to prevent the breach or threatened breach of this Section 7 and to secure its enforcement. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 7 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

## 8. INTELLECTUAL PROPERTY RIGHTS.

**8.1. TripAround Materials.** All right, title, and interest in and to the TripAround Materials and Guest Data, including all Intellectual Property Rights therein, are and will remain with TripAround and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the TripAround Materials or Guest Data except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 2.9. All other rights in and to the TripAround Materials and Guest Data are expressly reserved by TripAround. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to TripAround an assignment of all right, title, and interest in and to the Aggregated Data and all Guest Data provided by Customer, including all Intellectual Property Rights relating thereto.

**8.2. Customer Data.** As between Customer and TripAround, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 8.3. Notwithstanding anything to the contrary, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all data that is identical or similar to Guest Data maintained by Customer separately and apart from the Services, provided, however, that such Guest Data is independently developed by

Customer without reference to any Guest Data provided on or through the Services or any TripAround Materials.

- 8.3. Consent to Use Customer Data.** Customer hereby grants to TripAround a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for TripAround, TripAround Personnel, or TripAround's Subcontractors to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Data.
- 8.4. Feedback.** If Customer or any of its employees or contractors sends or transmits any communications or materials to TripAround by mail, email, telephone, or otherwise, suggesting or recommending changes to the TripAround Materials, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), TripAround is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assigns to TripAround on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and TripAround is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other Intellectual Property Rights contained in the Feedback, for any purpose whatsoever, although TripAround is not required to use any Feedback.

## **9. REPRESENTATIONS AND WARRANTIES.**

- 9.1. Mutual Representations and Warranties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its Representative agrees to this Agreement as set forth below has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.
- 9.2. Additional Customer Representations, Warranties, and Covenants.** Customer represents, warrants, and covenants to TripAround that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data and Guest Data provided by Customer so that, as received by TripAround and Processed in accordance with this Agreement, such Customer Data and Guest Data provided by Customer do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.
- 9.3. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9.1, ALL SERVICES, GUEST DATA, AND TRIPAROUND MATERIALS ARE PROVIDED "AS IS." TRIPAROUND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, TRIPAROUND MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, GUEST DATA, OR

TRIPAROUND MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY SERVICES ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS OR SERVICES IS STRICTLY BETWEEN CUSTOMER AND/OR CUSTOMER'S GUESTS OR TRAVEL CLIENTS ON ONE HAND AND THE THIRD-PARTY OWNER, PROVIDER, OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS OR SERVICES ON THE OTHER HAND.

## 10. INDEMNIFICATION.

- 10.1. TripAround Indemnification.** TripAround shall indemnify, defend, and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors, and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by a Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's use of the Services, Documentation, Guest Data, or TripAround Materials (excluding Customer Data, Guest Data provided by Customer, and Third-Party Materials) in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) Third-Party Materials, Guest Data provided by Customer, or Customer Data; (b) access to or use of the TripAround Materials in combination with any hardware, system, software, network, or other materials or service not provided by TripAround or specified for Customer's use in the Documentation; (c) modification of the TripAround Materials other than: (i) by or on behalf of TripAround; or (ii) with TripAround's written approval in accordance with TripAround's written specifications; (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of TripAround; or (e) act, omission, or other matter described in the subclauses of Section 10.2, whether or not the same results in any Action against or Losses by any TripAround Indemnitee.
- 10.2. Customer Indemnification.** Customer shall indemnify, defend, and hold harmless TripAround and its Subcontractors, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**TripAround Indemnitee**") from and against any and all Losses incurred by such TripAround Indemnitee resulting from any Action by a third party (other than an Affiliate of a TripAround Indemnitee) that arise out of or result from, or are alleged to arise out of or result from: (a) Customer Data and/or Guest Data provided by Customer, including any Processing of Customer Data or Guest Data provided by Customer by or on behalf of TripAround in accordance with this Agreement; (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer, including TripAround's compliance with any specifications or directions provided by or on behalf of Customer; (c) allegation of facts that, if true, would constitute Customer's material breach of any of its representations, warranties, covenants, or obligations under this Agreement; (d) any violation of any applicable Law by Customer, including any failure to provide any notice or obtain to or obtain any necessary consent from any Person as required under applicable Privacy Law; (e) negligence or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Customer in connection

with this Agreement; or (f) bodily injury, death of any Person, or damage to real or tangible personal property resulting from the willful, fraudulent, or grossly negligent acts or omissions of a Guest.

- 10.3. Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 10.1 or Section 10.2, as the case may be. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee’s prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate in the Indemnitee’s sole discretion, and Indemnitee will be entitled to receive indemnification therefore from Indemnitor. The Indemnitee’s failure to perform any obligations under this Section 10.3 will not relieve the Indemnitor of its obligations under this Section 10, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.
- 10.4. Mitigation.** If any of the Services or TripAround Materials are, or in TripAround’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer’s use of the Services or TripAround Materials is enjoined or threatened to be enjoined, TripAround may, at its option and sole cost and expense:
- (a) obtain the right for Customer to continue to use the Services and TripAround Materials materially as contemplated by this Agreement;
  - (b) modify or replace the Services and TripAround Materials, in whole or in part, to seek to make the Services and TripAround Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and TripAround Materials, as applicable, under this Agreement; or
  - (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and TripAround Materials, and require Customer to immediately cease any use of the Services and TripAround Materials or any specified part or feature thereof.
- 10.5. SOLE REMEDY.** THIS SECTION 10 SETS FORTH CUSTOMER'S SOLE REMEDIES AND TRIPAROUND'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND TRIPAROUND MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 11. LIMITATIONS OF LIABILITY.

- 11.1. **EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 11.3, IN NO EVENT WILL TRIPAROUND OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (C) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (D) COST OF REPLACEMENT GOODS OR SERVICES; (E) LOSS OF GOODWILL OR REPUTATION; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 11.2. **CAP ON MONETARY LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 11.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF TRIPAROUND AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO TRIPAROUND UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR ONE-HUNDRED THOUSAND DOLLARS (\$100,000), WHICHEVER IS LESS. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 11.3. **Exceptions.** The exclusions and limitations in Section 11.1 and Section 11.2 do not apply to: (a) Losses arising out of or relating to a material breach of Section 7 or Exhibit A (if applicable); (b) Customer's misuse or misappropriation of TripAround's Intellectual Property, including TripAround Materials and Guest Data; (c) Losses arising out of or relating to that party's gross negligence or willful misconduct; or (d) Losses arising from or relating to a party's violation of Law.

## 12. TERM AND TERMINATION.

- 12.1. **Initial Term.** The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for the initial subscription period registered for in the Customer profile page (the "**Initial Term**").
- 12.2. **Renewal Term.** This Agreement will automatically renew for additional successive terms equal to the Initial Term unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

**12.3. Termination.** In addition to any other express termination right set forth elsewhere in this Agreement: (a) TripAround may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder (including any rejection of a charge to Customer's credit card), and such failure continues more than fifteen (15) days after TripAround's delivery of written notice thereof; (ii) requests a chargeback of, or otherwise challenges, a charge made to a credit card in accordance with this Agreement; or (iii) breaches any of its obligations under Section 2.9 or Section 7; (b) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and (c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**12.4. Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;
- (b) TripAround shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) promptly return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems TripAround directly or indirectly controls, provided, however, that for clarity, TripAround's obligations under this Section 12.4(b) do not apply to any Aggregated Data or Guest Data (including any Guest Data received from Customer);
- (c) Customer shall immediately cease all use of any Services, Guest Data, or TripAround Materials and (i) promptly return to TripAround, or at TripAround's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any TripAround Materials, Guest Data, or TripAround's Confidential Information; and (ii) permanently erase all TripAround Materials, Guest Data, and TripAround's Confidential Information from all systems Customer directly or indirectly controls;
- (d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; and (ii) TripAround may retain Customer Data; (iii) Customer may retain Guest Data and TripAround Materials, in the case of each foregoing subclauses (i), (ii), and (iii) in its then current state and solely to the extent and for so long as required by applicable Law, as necessary for the performance of this Agreement or any other agreement to which Customer or TripAround is a party, or as necessary for the establishment,

exercise, or defense of legal claims; (iv) TripAround may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this Section 12.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

- (e) TripAround may disable all Customer access to the TripAround Materials;
- (f) if Customer terminates this Agreement pursuant to Section 12.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and TripAround will refund to Customer Fees paid in advance for Services that TripAround has not performed as of the effective date of termination; and
- (g) if TripAround terminates this Agreement pursuant to Section 12.3(a) or Section 12.3(b), all previously-accrued but not yet paid Fees will become immediately due and payable on Customer's receipt of TripAround's invoice therefore.

**12.5. Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this Section 12.5 and Sections 1, 2.9, 5.2, 6, 7, 8.3, 8.4, 9.3, 10, 11, 12.4, and 13.

### **13. MISCELLANEOUS.**

- 13.1. Further Assurances.** On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.
- 13.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 13.3. Public Announcements.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that TripAround may, without Customer's consent, include Customer's name and other indicia in its lists of TripAround's current or former customers of TripAround in promotional and marketing materials.
- 13.4. Notices.** Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 13.4):



If to TripAround:	TripAround, Inc. 300 Hamilton Avenue Palo Alto, 94301 USA
If to Customer:	At Customer's physical address listed in Customer's profile.

Notices sent in accordance with this Section 13.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

- 13.5. Interpretation.** For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (i) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
- 13.6. Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 13.7. Entire Agreement.** This Agreement any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments, and appendices (other than an exception expressly set forth as such therein), the following order of precedence governs: (a) first, Exhibit A (if it applies), (b) second, this Agreement, excluding its exhibits, schedules, attachments, and appendices; (c) third, the exhibits (other than Exhibit A), schedules, attachments, and appendices to this Agreement as of the Effective Date; and (d) fourth, any other documents incorporated herein by reference.
- 13.8. Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without TripAround's prior written consent, which consent shall not be unreasonably withheld,

conditioned, or delayed. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which TripAround's prior written consent is required. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 13.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

**13.9. Force Majeure.**

13.9.1. No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more.

13.9.2. Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**13.10. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**13.11. Amendment and Modification; Waiver.** No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**13.12. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable

such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

- 13.13. Governing Law; Submission to Jurisdiction.** Except for Actions arising out of or related to Exhibit A (if applicable) or GDPR, this Agreement is governed by and construed in accordance with the internal laws of California, United States without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of California, United States, provided, however, that all Actions arising out of or related to Exhibit A (if applicable) or the GDPR shall be governed by and construed in accordance with the internal laws of Greece, without giving effect to any choice or conflict of law provision or rule that would require the application of the laws of any other jurisdiction for such claims. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the courts of United States in each case located in the city of San Francisco, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.
- 13.14. Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 7 or, in the case of Customer, Section 2.9, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- 13.15. Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy (including an electronically signed copy as described below) of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 13.16. Electronic Signatures.** Each party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

By typing "I AGREE" and clicking "submit" Customer hereby agrees to the terms of this Agreement as of the current date.

Type "I AGREE" \_\_\_\_\_

[SUBMIT]

**Exhibit A**

**SET II**

**Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)**

*Data transfer agreement*

between

*Entity listed in Customer Profile through which the Agreement that this Exhibit is agreed to (name)*

*Address listed in Customer Profile (address and country of establishment)*

hereinafter “data exporter”)

and

*TripAround, Inc. (name)*

*A California Corporation with offices located at 300 Hamilton Avenue, Palo Alto, CA 94301, USA  
(address and country of establishment)*

hereinafter “data importer”

each a “party”; together “the parties”.

**Definitions**

For the purposes of the clauses:

- (a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
- (b) “the data exporter” shall mean the controller who transfers the personal data;
- (c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;
- (d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

**I. Obligations of the data exporter.**

The data exporter warrants and undertakes that:

- (a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- (b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.

- (c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- (d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- (e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## II. **Obligations of the data importer.**

The data importer warrants and undertakes that:

- (a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- (b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- (c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- (d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- (e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of Section I(e).
- (f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).

- (g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- (h) It will process the personal data, at its option, in accordance with:
  - (i) the data protection laws of the country in which the data exporter is established, or
  - (ii) the relevant provisions<sup>(1)</sup> of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data<sup>(2)</sup>, or
  - (iii) the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: (iii)

Initials of data importer: *Electronically executed*;
- (i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
  - (i) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - (ii) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - (iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - (iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

### III. Liability and third party rights.

- (a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by

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<sup>1</sup> “Relevant provisions” means those provisions of any authorisation or decision except for the enforcement provisions of any authorization or decision (which shall be governed by these clauses).

<sup>2</sup> However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected.

any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.

- (b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and Section I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

#### **IV. Law applicable to the clauses.**

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under Section II(h), which shall apply only if so selected by the data importer under that clause.

#### **V. Resolution of disputes with data subjects or the authority.**

- (a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- (b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- (c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

#### **VI. Termination.**

- (a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- (b) In the event that:
  - (i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
  - (ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;

- (iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
- (iv) a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
- (v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- (c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- (d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under Section VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

## **VII. Variation of these clauses.**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

## **VIII. Description of the Transfer.**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under Section I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.



**Dated:** As of the Effective Date set forth in the Software as a Services Agreement to which this document is attached.

*TripAround*

*“Company”*

FOR DATA IMPORTER

FOR DATA EXPORTER

*Executed Electronically*  
*TripAround, Inc.*  
*300 Hamilton Avenue*  
*Palo Alto, 94301*  
*USA*

*Executed Electronically*  
*Address in profile*

## Annex A

### DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. provided, however, that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.
8. Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work,

creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:

- (a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and
- (ii) (the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

or

- (b) where otherwise provided by the law of the data exporter.

**ANNEX B**  
**DESCRIPTION OF THE TRANSFER**

*(To be completed by the parties)*

**Data Subjects**

The personal data transferred concern the following categories of data subjects:

*Guests (as defined in the main body of this Agreement to which this Exhibit A is attached to) who stay at Customer's (as defined in the main body of this Agreement to which this Exhibit A is attached to) hotel properties or otherwise use Customer's travel services and who book travel activities on or through the Services.*

*Also Customer Data (as defined in the main body of this Agreement to which this Exhibit A is attached to)*

**Purposes of the transfer(s)**

The transfer is made for the following purposes:

*To provide Guests who book, directly or indirectly, Experiences (as defined in the main body of this Agreement to which this Exhibit A is attached to) on or through the Services with such Experiences and to enable Customers to enhance such Guests' travel experience by suggesting new activities similar to what a Guest may have enjoyed previously.*

**Categories of Data**

The personal data transferred concern the following categories of data:

*Names, addresses, email addresses, phone number(s), passport number(s), national ID card number(s), drivers' license number(s), travel interests, travel activities.*

**Recipients**

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

*Third-party providers of Experiences and other customers of TripAround. Also to all potential recipients disclosed to data subjects through data importer's (TripAround's) privacy policy made available to such data subjects.*

**Sensitive data** (if appropriate)

The personal data transferred concern the following categories of sensitive data:

*The Services do not require the provision of sensitive data (as defined in GDPR), although Guests may occasionally provide sensitive data when necessary or useful for the fulfilment of an Experience or to provide them offers for new Experiences. For example, a Guest may indicate their religious beliefs so that an Experience may provide them facilities to observe such beliefs such as places of worship or specific dietary requirements.*

**Data protection registration of data exporter** (where applicable)

*As set forth in Customer's account profile (if necessary)*

**Additional useful information** (storage limits and other relevant information)

.....  
.....

**Contact points for data protection enquires**

**Data importer**

*As set forth in the main body of the Agreement.*

**Data exporter**

*As set forth in Customer's account profile.*