**FRAMEWORK TERMS & CONDITIONS**

**FOR CONNECTION TO TravelgateX SOFTWARE SOLUTION AS A SERVICE:**

**1. THE PARTIES:**

On one part, XML TRAVELGATE, S.L., a Spanish company registered in the Mercantile Register of Mallorca, with the reference T-2482 , F-215, S-8, H-PM 68734, and with Tax Number B-57737660, with address for contractual purposes at Edificio Europa local 2, Pta Baja, Ctra. De Valldemossa, Km 7,4 (07121) (hereinafter referred to as “TravelgateX”) and,

on the other part, and THE CONNECTED PARTNER (hereinafter referred to as TCP), IS A TRAVEL AGENCY OR TOURIST OPERATOR AND MEETS THE ADMINISTRATIVE REQUIREMENTS TO BE A TRAVEL AGENCY OR TOURIST OPERATOR OF THE PLACE IN WHICH ITS ADDRESS IS.

The person who accepts the present Terms & Conditions in behalf of the TCP declares that has full power, authority and right to enter into The Agreement, to carry out its obligations hereunder, and to grant the rights herein granted and that the execution and delivery of The Agreement does not and will not result in a breach, violation or default of its articles of incorporation, by-laws or other documents, or any agreement to which it may be bound.

**2. DEFINITIONS:**

In this Terms & Conditions, unless the context otherwise requires:

- “Account Management”: TravelgateX may make available its team to the TCP to offer optimisation guidance and work with TCP’s tech team for the best results possible. It can be a Dedicated Account Manager (which is a person that is specifically dedicated to that TCP, although this person may be dedicated to some TCPs, and it can be for a number of hours or full time), or a Pool Account Manager (which is a group of people that deals with a group of TCPs, without specific interlocutors). Ideally, both the TCP Premium Seller and the TCP Power Buyer have a Pool Account Manager. The Dedicated Account Manager (and the number of hours) will be an upgrade that will be contracted separately as an annex to this Framework Agreement.

- “Activation Fee”: means the one-off fee to be paid by the TCP to TravelgateX to activate the connection between the TCP and another TCP (usually, a TCP Standard Seller) to make possible for the TCP to book its tourist products and/or services through The Platform. The activation fee includes the configuration and rigorous testing of the TCP’s credentials to access the seller’s API and review of the requirements of the TCP’s system. It also includes management of static data and supplier certification if and when required.

- “Agreement”, means the contract that is established between TravelgateX and TCP through the acceptance of the present T&C by TCP. These T&C form a binding agreement (the “Agreement”) that sets the framework for the commercial relation between the parties and applies to all the commercial relations between the parties. The Agreement can be complemented by other Upgrade Agreements, which will be understood as part of The Agreement.

- “Alert/s”, mean/s message/s that are sent to the TCP when the circumstances are configured and that are parameterized by the TCP, such as, for example, excessive L2B ratio of a buyer. The alerts are merely informative. The fact that an alert is not sent does not imply that the TCP does not have the obligation to check the parameters of its activity on the intranet.

- “API”, means application programming interface. API is the set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application, or other service.

- “API development”, means the development that has to be executed by TCP or by third parties based on TravelgateX API interface for programmatic access to The Platform (but not for web access to The Platform).

- “API keys”, mean the access credentials. A TCP needs credentials to use the Platform, and an API Key that validates the TCP as a TCP. A TCP can ask for multiple API Keys, because the TCP may be interested in having several users enter the system, so that even if it operates with the same company, it can analyze the traffic as required. TravelgateX will decide freely if it grants one or several API Keys to TCP, depending on what is agreed by means of annexes between TravelgateX and TCP.

- “Booking fee”: is the fee to be paid by TCP to TravelgateX based on the number of bookings with valid reference number recorded on The Platform, which may or not take into consideration the L2B ratio.

- “Confidential Information” means any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, finances, affairs, tools (including those provided on a technology), products, services, personnel, customers, suppliers (including precincts, future and potential personnel, customers and suppliers), prices, commissions, rates, vendors, processes, or methods of one party, which is disclosed to or otherwise obtained by the other party in connection with the Agreement.

- “CPM”: definition of Cost Per Million of Requests.

- “Direct-X Service”: is the system of provision for TCP Standard Buyers of product of TCP Sellers with which the TCP Standard Buyers have no prior contract, and without the need to have previously exchanged the connection credentials between TCP Buyer and TCP Seller. Even in that case, the tourism product is always booked directly from the TCP Standard Buyer to the TCP Direct-X Seller. In no case will TravelgateX be held as intermediary of travel products.

- “Distribution-X”: is an optional interface that allows the TCP to set up business rules for all the channels purchasing its product through the Platform.

- "Effective Bookings" relates to all bookings once all cancellations of refundable bookings have been deducted.

- “Excess CPM”: fee charged per million searches when maximum L2B is reached.

- “ Trial Period”: a commercially defined period in which the TCP has no or partial costs.

- “Helpdesk Tickets”: are the tickets created in customer care. They are referred to by the SLA Annex to this Framework Agreement.

- “Hotel-X” is the API connection that allows the programmatic use of the platform. Alternatively TCP could search and book other TPC’s products using the credentials and directly from the TravelgateX website.

- “Inventory-X” is a solution aimed at those TCP Sellers wishing to connect their offline product to online TCP Buyers via database or product repository, which can be loaded by push (with API integration) or manually in the Inventory Interface..

- “Logs” are the internal records with traces of TCP activity.

- “Look-to-book” (L2B): number of searches required for a booking. It’s calculated by the total amount of searches divided by the total amount of effective bookings.

- “Maintenance fee”, means the monthly maintenance fee per connection. Maintenance Fee is the fee to be paid by TCP to TravelgateX to maintain the connections activated, and includes integration updates, enhancements as well as error fixing.

- “Mappea” is the collaborative tool that helps partners to increase the accuracy of their mapping.

- “Minimum Fee”: minimum amount to be charged in a settlement period if sum of fees in this settlement period does not exceed the minimum settled from the parties.

- “Optimization Reports”, are reports that TravelgateX issues to TCP to give the TCP information about how to sell or buy optimally.

- “Other Connected Partners” means the other providers, sellers and buyers of tourism products and/or tourism services that are also connected partners to the Platform.

- “Request” is any call including but not limited to search, quote and book, made by TCP to the TravelgateX system.

- “Response Time'', means the length of time between a ticket being logged in the Customer Care Portal of TravelgateX, containing all necessary details required to begin investigation and the first update being added to the ticket by the TravelgateX Service Desk. It will be measured and reported by the TravelgateX Support System.

-“Search”: It is a call to the API of TravelgateX by a TCP Buyer, and includes the response of the TCP Seller in case there is a response. If there is no response, or the answer is erroneous, the search will only be the call to the API of TravelgateX by a TCP Buyer.

- “Set up fee”: is a one-off fee for a particular project or product.

- “Speed-X” is the service of cache that allows TravelgateX improve the speed of TCP's requests, applied to individual connections as a TCP Buyer or as TCP Seller.

- “Usage Fee”: is the fee to be paid by TCP to TravelgateX based on the total number of requests made per month by TCP to other TCPs or to third parties. It is calculated based on Cost Per Million Requests (CPM).

- “TCP” (The Connected Partner), is a travel agency or tourism operator and meets the administrative requirements to be a travel agency or tourism operator in the place in which its address is.

- “TCP Content” means the database(s) of tourism products and/or services offered by TCP to the Other Connected Partners, including information, content descriptions and pictures.

- “TCP Standard Buyer”, means the TCP of the basic category that, for not having contracted an upgrade to another category, can only use the Platform to acquire tourism products of TCP Premium Sellers or from the Direct-X system.

- “TCP Standard Seller”: a TCP utilising the Platform to sell tourism products to TCP Power Buyers only.

- “TCP Power Buyer”, means the TCP that has contracted the possibility of using the Platform to acquire tourism products from TCP Standard Sellers.

- “TCP Premium Seller”, means the TCP that has contracted the possibility of being connected to sell tourism products to all TCP Standard Buyers.

- “The Business Relationships”, means commercial relationships between TCP and Other Connected Partners related to providing services, purchasing and/or selling tourism products. TravelgateX is not part of, affected by and/or bound by said Business Relationships.

- “The Connection”, means each online integration of one seller with one buyer, inside The Platform.

- “The Platform”, means the technological platform based on a hub using connectors for the online integration of sellers and buyers of tourism products developed by TravelgateX.

- “Tourism product”, means accommodation services and/or any other kind of travel services owned and/or operated by TCP and by Other Connected Partners.

- “Traffic Dashboard”, is the 24x7 available dashboard of each TCP on TravelgateX website, to which the TCP has access. It contains relevant technical performance information to the TCP.

- “Upgrade agreement/s”, means the agreement/is made through an/various annex/es to the Agreement by which TCP contracts to TravelgateX or to a TravelgateX provider an additional service or upgrade, or some additional services or upgrades, within the T & C and the Agreement.

- “Usage Fee”: is the fee to be paid by TCP to TravelgateX based on the total number of any kind of requests made per month by TCP to the other TCP. It is calculated based on Cost Per Million Requests (CPM).

**3. PURPOSE OF THE AGREEMENT:**

3.1. The corporate purpose of TravelgateX is to research, develop, market, distribute, sell, intermediate and/or use apps and computer and multimedia programmes as well as to offer consulting and training services related thereto. In addition, TravelgateX has developed The Platform based on a hub using connectors for the online integration of suppliers and buyers of tourism products.

3.2. TCP wishes (1) to offer tourism products and/or services to buyers and/or (2) to buy tourism products and/or services from sellers and/or providers, via the connections available through The Platform.

3.3. TravelgateX hereby grants TCP non-exclusive partial access to The Platform, so that TCP may connect with Other Connected Partners in order to offer or buy tourist products and/or services according to the provisions contained herein.

3.4. Should TCP wish to offer a tourism product and/or service through The Platform, TCP hereby grants TravelgateX total access to the TCP Content.

3.5. Both parties hereby agree that the integrations described in The Agreement as well as those that may be agreed in the future under The Agreement are subject to non-exclusivity. Therefore, TravelgateX reserves the right to offer and provide Agreements for connection to software solutions as a service to any other third party it deems appropriate.

3.6. The use of the Platform under The Agreement does not imply the transfer of the computer system, software, connections or apps thereof - in its broadest sense – or of any of the exclusive rights held by TravelgateX in that respect. Therefore, TCP shall under no circumstances transfer, resell, and rent or provide the software and/or The Platform for which access has been granted.

**4. INTELLECTUAL PROPERTY:**

4.1. Intellectual Property ownership:

TCP acknowledges that The Platform and all software, processes, procedures, techniques, technologies, and other content therein are valuable Intellectual Property of TravelgateX.

TravelgateX acknowledges that the TCP Content includes Intellectual Property rights of TCP.

Other than the rights specifically granted herein, no right, title or interest in The Platform or the TCP Content is transferred to TCP or TravelgateX, respectively.

4.2. Intellectual Property Use:

During the Term of The Agreement, either party may use the industrial and intellectual property rights, copyright, patents, trademarks, trade secret, service marks, and other proprietary words and symbols which the other may adopt from time to time or any other secret arising in connection with The Agreement solely in order to fulfil its obligations under The Agreement, subject to the other party’s guidelines for display and in accordance with any limitations contained in The Agreement. Nothing contained herein shall confer to a party any right, title or interest in any of the other party’s Intellectual Property. All use of a party’s Intellectual Property as permitted in The Agreement shall accrue to the benefit of the owner of such Intellectual Property.

Either Party must take the corresponding internal measures in order to cause its employees or agents to comply with its obligations under The Agreement.

**5. COMMERCIAL RELATIONSHIP BETWEEN TCP AND ITS PROVIDERS AND/OR CLIENTS (BUSINESS RELATIONSHIPS):**

5.1. The Platform consists of connectors allowing the integration of computer systems of different connected partners and facilitates commercial relationships between them related to providing services, purchasing and/or selling tourist products.

5.2. TCP understands and agrees that the Platform and/or TravelgateX are not part of, affected by and/or bound by said Business Relationships. This means that TCP and the Other Connected Partner (with which TCP has agreed the Business Relationship), are the sole contractual parties of the Business Relationship, are the ones bound by, and liable for any rights and obligations of said Business Relationships, agreed through the Platform. TCP understands and agrees that the payment of said tourist products and/or services and any consequences derived from said Business Relationship, including but not limited to any dispute between TCP and the Other Connected Partner, for any reason, for example, including but not limited to: deficiencies in the service provision, delays in payment of the tourist products/services and/or in the fulfillment of their legal obligations, even extracontractual relationships (tort) between TCP and Other Connected Partner, such as acts of unfair competition, limitations on the right of competition, Most Favoured Nation (MFN) clauses (minimum price), restrictions by markets, etc. are not responsibility of the Platform and/or TravelgateX, and therefore, TCP agrees not to claim against TravelgateX for any Losses regarding said Business Relationships and will indemnify, defend and hold TravelgateX harmless from any claim regarding said Business Relationships and/or any breach of the obligations imposed to TCP according to this clause.

5.3. In the case of bookings made in the Direct-X model, the Standard Buyer knows that it is his obligation to transfer the necessary information so that the service provider can provide the service. In bookings made in the Direct-X model, the TCP Buyer and TCP Seller will enter into a contract with each other tacit and simultaneously with the formalization of the reservation through the Direct-X model, and the provisions of the previous paragraph continue to apply. In the case of bookings made in the Direct-X system, the Standard Buyer will be able to know TCP Direct-X SELLER’s SLA, H & S policy, as well as the general conditions that TCP Buyers have to take into consideration and accept when booking the tourism product of TCP Direct-X Seller through Direct-X System.

5.4. In addition and finally, TCP understands and agrees that TravelgateX has no obligation to keep the logs of information regarding said Business Relationships between TCP and Other Connected Partners.

5.5. TravelgateX may provide TCP with the current list of the Other Connected Partners, and may inform the Other Connected Partners about TCP. TravelgateX cannot guarantee that the Other Connected Partners remain in The Platform.

**6. FEES TO BE CHARGED AND PAYMENTS BY TravelgateX TO TCP.**

6.1. Becoming a TCP Standard Buyer or TCP Standard Seller is free.

The TCP Standard Seller will have three different ways to load its product:

1) Loading into Inventory-X (free)

2) TravelgateX develops the Supplier API (This development may or may not incur a fee.

3) Supplier developing TravelgateX's API (Supporting this development may or may not incur a fee)

6.2. Through Upgrade Agreement/s, the TCP may acquire the status of Power Buyer, Premium Seller and/or Direct-X Seller, depending on the agreements contained in the respective commercial proposal and/or annexes to this T&C, whose acceptance will be regulated by this T&C in everything not expressly provided in the commercial proposals and/or annexes.

The Upgrade Agreement shall set the fee to be paid by TCP to TravelgateX. The fee may be defined and calculated per connection/connection groups, booking, traffic levels or even other upgrades to the services offered by TravelgateX according to The Agreement. The fee to be paid may be different depending on the type of sellers and buyers.

The above-mentioned Upgrade Agreement/s shall also set the settlement periods and payment methods.

6.3. Unless otherwise provided in the Upgrade Agreement/s or in the commercial proposal/s, payments to TravelgateX shall be made by TCP through the online payment gateway of TravelgateX’s software application, by SEPA B2B direct, or by bank transfer if the online payment gateway of TravelgateX’s software application and/or SEPA B2B direct can not be used.

In order to comply with this obligation, TCP must have opened a bank account with permits and licences to operate online by electronic banking with any of the credit institutions with which the TravelgateX platform has been integrated.

6.4. In the event of SEPA B2B DIRECT DEBITS, TCP must have opened a bank account with any of the entities attached to the B2B instrument,confirm that it wishes to authorise the charge for the B2B debit for TravelgateX charges, and to sign, if necessary, the mandate of acceptance of operations in B2B mode and Direct Debit order in said mode which may be appropriate at all times. In the event of SEPA B2B DIRECT DEBITS, TCP expressly states that it waives the right to be reimbursed by its financial institution once the charge has been made and that it knows that for other reasons the transaction may be rejected or returned only up to 2 interbank business days after the expiration. It is also expressly agreed that the pre-notification procedure of the debt shall be considered fulfilled by TravelgateX with reference to the periodic settlement which by means of the annex to The Agreement is regulated, and that the anticipated advance notice is replaced in the B2B system by an advance notice of twenty-four hours from the expiry of the debt.

TravelgateX may instruct TCP regarding the modification or replacement by other means of this payment system mentioned above, with thirty days' prior notice. In any case, the invoices will be paid, by whatever means, within a maximum period of ten days from their issuance.

**7. EFFECTIVE DATE, TERM, SUSPENSION AND EARLY TERMINATION OF THE AGREEMENT.**

7.1. The Agreement shall enter into force immediately on acceptance by TCP, and shall continue in full force and effect for a period of ONE (1) year. Upon the expiration of The Agreement, this may be automatically extended for periods of equal duration, except for the express written notice from either of the parties at least thirty (30) days prior to the expiration date. The initial term and its additional extensions are together referred in The Agreement as to the Term. The termination of The Agreement or any of its extensions shall not entitle any indemnity or compensation other than what is expressly stated in The Agreement.

7.2. However, either party may terminate The Agreement at any time without cause by giving at least three months’ notice to the other party. Should either party fail to give such notice, said party will have to pay a penalty for the remaining days of advance notice until the three-month notice period is reached. The penalty to be paid by the party not giving said notice shall be calculated on a fee per day basis to be applied to the average of the invoice issued by TravelgateX in the previous three months (meaning: the sum of all invoices issued in the last three months divided by 90 days will be the fee/day basis for the calculation of the penalty).

7.3. In the case that TCP breaches its obligations under The Agreement – including payment obligations – TravelgateX reserves the right to immediately suspend TCP access to The Platform and, therefore, to prevent (i) TCP to offer TCP products and/or services to Other Connected Partners and/or (2) TCP to purchase tourist products and/or services from Other Connected Partners. The Agreement will be either restarted once the issue leading to the suspension has been removed or the Agreement shall be terminated after two weeks from notification that TCP has breached its obligations under The Agreement. In such case, TCP shall pay any outstanding fees due to TravelgateX according to The Agreement together with, if applicable, payment of Losses caused to TravelgateX.

For the purpose of the preceding paragraph, the parties hereby agree that the use of The Platform, and connections and integrations described in The Agreement for a different purpose other than that established herein shall be considered as a material breach of The Agreement. In such case TravelgateX reserves the right to (1) immediately remove TCP access to The Platform and to its connectors; (2) immediately terminate The Agreement and/or (3) claim for the damages caused to TravelgateX.

7.4. The suspension and/or termination of The Agreement shall not imply any right to perceive any compensation for damages other than expressly established in The Agreement.

**8. ADDITIONAL EXEMPTIONS FOR TravelgateX.**

8.1. TravelgateX has signed agreements for the services with one or several providers of data traffic and/or hosting to host The Platform. Therefore, it will manage the data traffic required for the effective and proper functioning of The Platform and its connectors. Any error in the connections or data traffic due to issues related to the provider(s) of data traffic or hosting shall not be considered as a breach of The Agreement by TravelgateX.

8.2. Unless agreed upon in an annex attached hereto and/or an upgrade of the SLA is requested, TravelgateX shall under no circumstances be held liable for the temporary unavailability of The Platform, even if such unavailability is attributable to TravelgateX. Likewise, TravelgateX shall guarantee TCP technical support by phone or any other way as included in the corresponding Upgrade Agreement/s.

8.3. TravelgateX shall not be held liable for the technical issues affecting the TCP’s computer system and/ or Other Connected Partners’ computer systems.

8.4 TravelgateX is not responsible for TCP Content (including but not limited to the data and features of the tourist products entered into the system by TCP) and that might contain errors. Therefore, TravelgateX shall not be held liable for inaccurate TCP Content in The Platform.

8.5. TravelgateX shall only be held liable for damages caused due to the extra charges applied to TCP as a result of related fee issues and that are the sole responsibility of TravelgateX. The maximum amount of responsibility of TravelgateX shall be up to the maximum amount shown in the invoice issued by TravelgateX to TCP on the same month the error was detected, with a limit of FIVE THOUSAND EUROS (5.000,00.- €) or its equivalent in the currency used in the in the corresponding Upgrade Agreement/s.

8.6. In the application of the Purpose of The Agreement, the anonymous Data (not personal data) of the transactions made from or to TCP and that pass through the platform may be used for reporting purposes.

**9. ADDITIONAL OBLIGATIONS AND PROHIBITIONS OF TCP.**

9.1. TCP is not allowed to install a copy of The Platform and/or the integrations or connections in its computers.

9.2. TCP shall be responsible for the data and prices displayed on the Platform. TCP may publish prices, availability, offers, etc. Since control over the published price lies with TCP, it shall be liable in front of TCP Buyers for the prices that appear on the Platform.

In any case, TCP both states and guarantees that it has the requisite permits to provide and publish information, content descriptions and pictures, and that none of the said material infringes the rights of Third Parties. TCP shall hold TravelgateX harmless from any claim in this respect.

9.3. TCP shall not reverse engineer, decompile or deconstruct The Platform and/or the integrations or connections under The Agreement.

9.4. Non Solicitation: During the Term of The Agreement and over a period of two more years afterwards, TCP is not permitted to contract any type of service from a TravelgateX employee, either directly or indirectly, and regardless of the type of contract, i.e. employment, civil or commercial agreement. A breach of this non solicitation clause, shall grant TravelgateX the right to receive a compensation from the TCP equivalent to ten (10) times the annual gross salary of the TravelgateX employee.

**10. INDEMNIFICATION.**

10.1. Indemnification by TCP.

TCP will indemnify, defend and hold TravelgateX and its affiliates, officers, directors, partners, shareholders, employees, agents, and their successors and assigns (each, a “TravelgateX Indemnitee”) harmless from and against any and all costs, liabilities, losses, damages and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, “Losses”) resulting from any claim, suit, action, or proceeding (each, an “Action”) brought by any third party against the TravelgateX Indemnitee: (i) arising out of any breach by TCP of its representations, warranties or obligations under The Agreement; (ii) alleging or arising out of the violation of any data protection right by TPC; or (iii) alleging or arising out of any fraud, misrepresentation or violation of applicable law or regulation by TCP.

10.2. Indemnification by TravelgateX.

Except for and subject to (i) Article 8 “Additional exemptions for TravelgateX” above and (ii) Article 12 “Limitations of liability” below, TravelgateX will indemnify, defend and hold TCP and its affiliates, officers, directors, partners, shareholders, employees, agents, and their successors and assigns (each, a “TCP Indemnitee”) harmless from and against any and all Losses resulting from any Action brought by any third party against the TCP Indemnitee: (i) arising out of any breach by TravelgateX of its representations, warranties or obligations under The Agreement; (ii) alleging or arising out of the violation of any data protection right by TravelgateX; or (iii) alleging or arising out of any fraud, misrepresentation or violation of applicable law or regulation by TravelgateX.

10.3. Indemnification Procedures.

To obtain the benefit of the foregoing indemnification, the party seeking indemnification (“Indemnitee”) must (i) promptly provide notification of the claim and reasonable cooperation to the indemnifying party (“Indemnitor”); (ii) tender to Indemnitor complete control of the defense, settlement and compromise of the claim; and (iii) not make any admissions to any third party regarding the claim or settle any indemnified claim except as approved by Indemnitor in writing (which approval shall not be unreasonably withheld or delayed). Indemnitee may participate in its defense at its own cost and expense. Nothing contained in this provision or Agreement is, however, intended to require Indemnitor to pay to Indemnitee any amount other than (A) for the costs of Indemnitee’s defense, if Indemnitor elects not to defend; and (B) such amounts actually paid by Indemnitee to the third party claimant, if Indemnitor fails to pay the third party claimant directly for any settlement approved by Indemnitor or any finally awarded judgment in favor of the third party claimant.

**11. LIMITATIONS OF LIABILITY.**

11.1. No Consequential Damages. UNDER NO CIRCUMSTANCES WILL TravelgateX BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF GOODWILL, USE OF OR RELIANCE ON THE SERVICES PROVIDED HEREUNDER, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE.

11.2. Cap on Damages. IN NO EVENT WILL THE AGGREGATE LIABILITY TRAVELGATE MAY INCUR IN ANY ACTION OR PROCEEDING BROUGHT BY TCP EXCEED THE GREATER OF THE TOTAL AMOUNT PAYABLE TO TravelgateX BY TCP DURING THE PRECEDING TWELVE MONTH PERIOD OR FIVE THOUSAND EUROS (€5,000).

11.3. Force Majeure. If either party is unable to perform any of its obligations under The Agreement (other than any payment obligation) due to any cause beyond the reasonable control of the party invoking this provision, including without limitation any act of God, war, riot, seizures, acts of civil, government, or military authorities, fire, flood, earthquake, explosion, terrorist act, strikes, lockouts, shortage of transportation facilities, fuel, energy, labor or material or failures or interruptions of telecommunications or electrical power supplies, then the affected party's performance shall be extended for the period of delay or inability to perform due to such occurrence so long as such party takes all reasonable steps to avoid or remove such causes of non-performance and immediately continues performance whenever and to the extent such causes are removed. A party whose performance is affected by a force majeure condition shall notify the other party immediately and in writing upon the occurrence of the event.

11.4. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THE AGREEMENT.

**12. CONFIDENTIALITY**

12.1. Each party shall keep the other's Confidential Information confidential and shall not divulge the same to any third party except for the purposes of The Agreement without the prior written consent of the other party.

Notwithstanding the above, it shall not apply to any Confidential Information that the receiving party can show:

(a) is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of The Agreement or any other obligations of confidentiality;

(b) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;

(c) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);

(d) is approved for disclosure in writing; or

(e) was developed independently of and without reference to Confidential Information disclosed by the other party, provided that a particular disclosed or discovered use, combination, analysis, form or collection of information will not be in the public domain simply because it could be re-created using information in the public domain.

Each party shall give the other as much notice of any disclosure required under this clause as is reasonable and lawful in the circumstances (if any) and shall provide the other with reasonable assistance in avoiding or limiting the required disclosure.

Each party shall be entitled to divulge the other party's Confidential Information to its agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with The Agreement (unless otherwise specified) provided that the receiving party shall ensure that such persons are aware of and, shall procure that such persons comply with, these obligations as to confidentiality.

12.2. As provided in the clause 5.5, TravelgateX may report to Other Connected Partners or to third parties interested in becoming connected partners, the existence of The Agreement, which will not be considered confidential for the purpose of The Agreement.

**13. DATA PROTECTION.**

13.1. Both parties, considered separately, undertake to comply with the obligations imposed on them by the Regulation (EU) 2016/679 (GDPR) or by any other European regulations which may complete, update or replace it in respect of any personal data it processes under or in relation to The Agreement, as well as, insofar as they are applicable to the parties, by the rules of protection of personal data enforced in their respective legal orders (hereinafter, “Data Protection Regulation”). TCP is particularly obliged to transfer to its clients and its agents whatever data that is required by the Data Protection Regulation to comply with the duty of information, including data provided by TravelgateX, as well as to obtain the consent of the interested parties in order to process their personal data, whenever required by the aforementioned regulation. TCP must keep all the necessary information to demonstrate compliance with these obligations.

13.2. The terms “Personal Data”, “process”, “Data Controller”, “Data Processor”, “data subject”, “EEA”, “breach of security” and “supervisory authority” shall have the meanings set out in the Data Protection Legislation. TCP shall be the data controller and TravelgateX shall be the data processor in respect of personal Data processed by TravelgateX on TCP’s behalf in performing its obligations under The Agreement.

13.3. The parties may undertake and enter into as many contracts or comply with as many additional formalities as required by the GDPR to ensure the correct execution of The Agreement. Without prejudice to the foregoing, TravelgateX shall not process TCP Personal Data in a manner that will or is likely to result in TCP breaching its obligations under the Data Protection Legislation.

13.4. Those who intervene on behalf of the parties, or where appropriate directly as individuals, are hereby informed that their personal data will be processed by each of them for the management and control of this contractual relationship. The legal basis of the process is the execution of The Agreement and compliance with legal obligations. Data shall only be transferred when legally required to do so or to other group companies into which the parties are integrated for administrative purposes.

13.5. As provided in the clause 5.5 and 12.2, TravelgateX may report to Other Connected Partners, the existence of The Agreement, including the e-mail address of the person with whom said Other Connected Partners should contact for the purpose of asking information about the possibility of starting a business relationship between TCP and that Other Connected Partner. TCP expressly consents to the transfer of said email addresses.

13.6. Data shall be retained for the duration of the legal relationship and, in all cases, for the periods stipulated in the applicable legal provisions and for the time needed to address any potential liabilities arising from the processing. Interested parties have the right to request the data controller for access to and the rectification of or suppression of their personal data, limiting the processing of, and the right to object to it being processed, as well as to lodge a complaint to a supervisory authority. They may also request the right to data portability as soon as the GDPR has been applied.

13.7. The categories of TCP personal data to be processed by TravelgateX and the processing activities to be perform under The Agreement are the following:

1. Subject matter: Customer Hotel Reservation Data
2. Duration: Annually renewed until such point as the contract is terminated.
3. Nature and purpose: The sending of customer names, dates of travel and where under the age of 18, their age, to an onward data controller for the purposes of making hotel reservations.
4. Data categories: Client name, Client age where they are under the age of 18.
5. Data subjects: Customers of TCP who have expressly requested to make a hotel reservation in their name or on behalf of a child within their authority.

13.8. TravelgateX warrants and undertakes in respect of all TCP personal data that at all times it shall:

* + 1. only process TCP Personal Data in accordance with the documented instructions given from time to time by the TCP, including with regard to transfers, unless required to do otherwise by EU law or Spanish law. In which event, TravelgateX shall inform TCP of the legal requirement before processing TCP Personal Data other than in accordance with the TCP’s instructions, unless that same law prohibits TravelgateX from doing so on important grounds of public interest;
    2. implement appropriate technical and organisational measures to protect any TCP Personal Data processed by it against unauthorised and unlawful processing and against accidental loss, destruction, disclosure, damage or alteration.
    3. not publish, disclose or divulge (and ensure that its personnel do not publish, disclose or divulge) any TCP Personal Data to a third party unless TCP has given its prior written consent;
    4. make available to TCP all information necessary to demonstrate compliance with their obligations and allow for and contribute to audits, including inspections, conducted by TCP or another auditor instructed by TCP
    5. ensure the necessary training regarding the protection of personal data of the people authorized to process the Personal Data.
    6. ensure that only such of its personnel who may be required by TravelgateX to assist it in meeting its obligations under The Agreement will have access to TCP Personal Data and that such personnel are bound by appropriate obligations of confidentiality, and take all reasonable steps in accordance with best industry practice to ensure the reliability of such personnel;
    7. inform TCP promptly by contacting the designated contact person at TCP and in any event within two (2) business days, of any enquiry or complaint received from a data subject or supervisory authority relating to TCP Personal Data;
    8. at no additional cost, provide full cooperation and assistance to TCP as TCP may require to allow TCP to comply with its obligations as a data controller, including in relation to data security; data breach notification; data protection impact assessments; prior consultation with supervisory authorities; the fulfilment of data subjects’ rights; and any enquiry, notice or investigation by a supervisory authority; and
    9. at the request and option of TCP (whether during or following termination of this Agreement), promptly and as specified by TCP return or destroy all TCP Personal Data in the possession or control of TravelgateX.

13.9. Subprocessors:

Notwithstanding any provisions of the Agreement, TravelgateX shall be able to appoint any third party to process TCP Personal Data (“Subprocessor”), imposing legally binding contract terms on the Subprocessor which are the same as those contained in The Agreement.

13.10. Security Breaches:

TravelgateX shall implement the level security measures applicable according to Data Protection Regulation and any country applicable binding legislation, or by any other standard that comes to complete, modify or replace it. When the services must be provided by remote access to the TCP systems, using their systems or media, TravelgateX must comply with the security measures indicated by TCP, preventing TravelgateX from incorporating the Personal Data object of treatment to systems or supports other than those of TCP, unless expressly authorized by the latter.

TravelgateX shall notify TCP in the most expedient time possible under the circumstances of becoming aware of any actual or suspected accidental, unauthorized, or unlawful destruction, loss, alteration, or disclosure of, or access to, TCP Personal Data ("Security Breach"). TravelgateX shall also provide TCP with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach and (to the extent known to TravelgateX) the identity of each affected person, as soon as such information can be collected or otherwise becomes available, as well as all other information and cooperation which TCP may reasonably request relating to the Security Breach.

TravelgateX agrees to take action immediately, at its own expense, to investigate the Security Breach and to identify, prevent and mitigate the effects of any such Security Breach and, with TCP’s prior agreement, to carry out any recovery or other action necessary to remedy the Security Breach.

13.11. Data Transfers:

TCP authorizes TravelgateX to transfer worldwide TCP Personal Data to Other Connected Partners and/or third-party tourist or technological products or services for the execution of The Agreement. TCP also authorizes TravelgateX to transfer TCP Personal Data to third parties (including and not limited to: auditors, lawyers, external services providers of management services…) in order to comply with legal obligations, related to The Agreement.

TCP hereby consents to TCP Personal Data being transferred outside the EEA, subject to the TravelgateX implementing a legal transfer mechanism in accordance with the requirements of the Data Protection Legislation in respect of Customer Personal Data.

TravelgateX shall make available to TCP all information necessary to demonstrate compliance with this clause and allow for and contribute to audits, including physical inspections, conducted by TCP or its representatives bound by appropriate obligations of confidentiality.

13.12. The data subjects may exercise their right of access, rectification, cancellation and opposition by sending a written notice and a copy of their ID to the other party at the registered office indicated at the top of The Agreement.

13.13. Services of the Association for Electronic Information and Commerce:

In accordance with article 13 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), and Spanish applicable law, each party hereby expressly authorises the other party to send advertising or promotional communications regarding their own or third-party tourist or technological products or services either by email or by any other equivalent electronic means of communication.

TravelgateX shall provide all reasonable assistance to enable TCP to respond to requests of exercising the rights of the data subjects according to the Data Protection Legislation and must comply with the instructions indicated by TCP.

In accordance with articles 10 and 11 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, and Spanish applicable law, both parties are hereby exempt from the fulfilment of the obligations provided for in the above-mentioned articles.

**14. MISCELLANEOUS.**

14.1.Changes:

TravelgateX may make changes to these T & C from time to time. In that case, TravelgateX will notify the TCP of any changes and provide the TCP with a copy of the revised terms by email by giving at least one month’s notice to the TCP. In that case, the TCP may terminate The Agreement within that month. If the TCP does not terminate the Agreement within this time period it shall be deemed to have accepted the changes and the changes will come into effect.

Except as otherwise provided above, any waiver, amendment or other modification of The Agreement will not be effective unless in writing and signed by the party against whom enforcement is sought. If any provision of The Agreement is held to be unenforceable, in whole or in part, by a court or other tribunal of competent jurisdiction, such holding will not affect the validity of the other provisions of The Agreement.

14.2. Headings are for convenience only and do not affect interpretation.

14.3. The following rules of interpretation apply unless the context requires otherwise:

1. the singular includes the plural and conversely;
2. a gender includes all genders;
3. a reference to a person includes a body corporate, an unincorporated body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;
4. a reference to a clause or annex is to a clause of or annex to The Agreement;
5. a reference to any party to The Agreement or any other agreement or document includes the party’s successors and permitted assigns;
6. a reference to any legislation or to any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
7. a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
8. a reference to a party is a party to The Agreement or any person who executes a deed of accession to The Agreement;
9. If any payment by a party under The Agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day; and
10. if an obligation must be performed by 2 or more persons it binds them jointly and individually.

14.4. Relationship of the Parties.

Nothing contained in The Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever.

14.5. No assignment

TCP may not assign, novate, or transfer The Agreement without the prior written consent of TravelgateX. Any purported assignment in violation of this clause will be null and void.

14.6. Independent contractors

TravelgateX and TCP are independent contractors and nothing in The Agreement will be deemed to create a partnership, joint venture, franchise or any agency (except where stated otherwise) or employment relationship between TravelgateX and TCP.

14.7. No Waiver

No waiver of any provision of The Agreement will be valid unless made in writing and signed by the waiving party. No failure or delay by any party at any time to enforce one or more provisions of The Agreement will constitute waiver of such provision(s) or preclude such party from requiring performance by the other party at any time. If any provision of The Agreement is held to be invalid or unenforceable, then such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision.

14.8. Termination Consequences.

Upon the expiration or termination of The Agreement for any reason: (i) any rights granted will immediately cease; (ii) TCP shall immediately discontinue use of The Platform; (iii) all unpaid fees through the effective date of termination will be invoiced and paid in accordance with The Agreement; and (iv) each party shall immediately discontinue use of the other party’s Intellectual Property rights and shall return to the other party their respective Confidential Information or destroy the same, at the disclosing party’s option. The provisions of: Article 8: Additional exemptions for TravelgateX; Article 9: Additional obligations and prohibitions of TCP; Article 10: Indemnification; Article 11: LIMITATIONS OF LIABILITY; Article 12: Confidentiality; Article 13: Data Protection; Article 14 (Miscellaneous); and Article 15 (Applicable Law and Jurisdiction) shall survive expiration or termination of The Agreement.

**15. APPLICABLE LAW AND JURISDICTION.**

The Agreement is to be deemed as an untypical business contract. It shall be governed by and construed in accordance with the Spanish law.

Should one or more of the provisions contained in The Agreement become invalid, illegal or unenforceable by rule of law, it/they shall be regarded as ineffective but will not affect other provisions of the Agreement, which will remain in full force and effect. The undersigned agree to replace the invalid, illegal or unenforceable provision(s) by others provisions with as similar economic conditions as possible to those being replaced.

The undersigned hereby agree to submit to the jurisdiction and competence of the Judges and Courts in Palma de Mallorca for the purpose of solving any dispute, disagreement or claim resulting from the interpretation and implementation of The Agreement, or that is directly or indirectly related to it or to their business relationship, waiving any other jurisdiction that may correspond to them.

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Name: Anna Igual

Title: Director of Growth

Company: XML Travelgate

This proposal is valid for 30 days from the day of receipt.