

TRUSTYOU INC.

STANDARD CLIENT TERMS AND CONDITIONS

I. The Service

TrustYou, Inc., a Delaware corporation (“**Provider**”), will furnish Client with online subscription services to access one or more of Provider’s software applications, including TrustYou Analytics (Reputation management based on online traveler reviews), TrustYou Survey (Collection and analysis of verified reviews), TrustYou Marketing (Tools and widgets to market your own hotel reputation, and strengthen direct bookings), TrustYou Messaging (Real-time communication with guests prior and during their stay), TrustYou Operations (Optimization of internal processes through tasks management and internal communication) and TrustYou Connect (Partner platform for data exchange with the TrustYou Guest Feedback Platform) and any other products which Provider may furnish from time to time, to allow Client to collect and analyze guest satisfaction surveys, to monitor consumer generated hotel reviews, images and video on the Internet, and to communicate with guests through a variety of electronic channels (the “**Services**”). The specific services to which Client has subscribed are set forth on the separate specific terms entered into by TrustYou and Client in writing or by completion of an online form (the “**Specific Terms**”). The Specific Terms and these Standard Client Terms and Conditions, together, constitute the entire agreement (the “**Agreement**”) between the Client and Provider. Provider shall provide access to the Services to an agreed number of persons designated by Client who are employees of or consultants to Client (each, a “**Subscriber**”), as more fully described in the Specific Terms.

II. Term and Termination

- a. The delivery of Services to Client by Provider will commence on the date set forth in the Specific Terms and continue for the Term stated therein. If no Term is set forth in Specific Terms, then the Term will commence on the date on which Client is first granted access to the Services (the “**Effective Date**”) and will continue for twelve (12) months (the “**Initial Term**”), and, effective as of each anniversary of the Effective Date, the Agreement shall automatically extend for an additional one (1) year period (each such one-year period, a “**Renewal Term**”) unless written notice of non-renewal is provided by either party no later than 90 days prior to the end of the then current Term.
- b. Notwithstanding the foregoing, a subscription for the Messaging Service is valid for a period of twelve (12) months, or until Client uses the maximum number of messages permitted for the Messaging Tier selected by Client, whichever occurs first. If Client uses the maximum number of messages permitted for the Messaging Tier selected by Client prior to the expiry of the then- current twelve (12) month Term, Provider shall not be obliged to continue to provide the Messaging Service unless and until Client renews its subscription pursuant to Section III(b). Following such renewal, the Messaging Service shall be valid for another period of twelve (12) months, commencing on the date of such renewal, or until Client uses the maximum number of messages permitted for the Messaging Tier selected by Client, whichever occurs first.

- c. Provider may terminate the Agreement at any time upon ninety days' written notice to Client. No later than ten (10) days after expiry or termination of the Agreement, Provider shall purge any contents of Client's online dashboard or APIs and shall, if requested, certify same in writing to Provider. Notwithstanding any provision in the Agreement to the contrary, either party may suspend or terminate the Services at any time for the other party's breach of the Agreement, provided such party has not cured such breach within fifteen (15) days after written notice from the non-breaching party. In the event Client terminates the Agreement prior to the end of the Initial Term or any Renewal Term for any reason other than Provider's uncured breach of the Agreement, Client shall pay Provider a termination fee equal to the entire amount Client would have paid Provider under the Agreement through the end of the then current Term but for such termination.

III. Fees and Billing

- a. Certain of the Services may, in Provider's sole discretion, be provided without charge. In respect of Services for which Provider charges fees, in consideration of Provider providing such Services and access to the Services, (i) Client shall pay to Provider the fees set forth in the Specific Terms in accordance with the payment schedule specified therein, or (ii) if the Specific Terms do not set forth a payment schedule, Client shall prepay Provider by valid credit card, through electronic funds transfer ("**EFT**"), the annual or monthly subscription charges for the Services selected.
- b. In respect of the Messaging Service, each subscription fee payment is valid for a period of twelve (12) months, or until Client uses the maximum number of messages permitted for the Messaging Tier selected by Client, whichever occurs first. If Client has used the maximum number of messages permitted for its Messaging Tier prior to the conclusion of such twelve (12) month period, Client must renew its subscription and pay subscription fees in order to continue using the Messaging Service (provided that Client may select a different Messaging Tier).
- c. At any time and from time to time after the Initial Term, Provider reserves the right to modify its fees, including instituting new fees or Services, upon thirty (30) days' prior written notice to Client, and such revised fees shall be deemed to automatically amend the Specific Terms for all purposes hereunder, effective for the next billing period.
- d. In the event Provider is unable to successfully charge Client's credit card via EFT, or an invoice is not paid within thirty (30) days after the date of delivery of such invoice, Provider reserves the right to terminate or suspend Client's access to the Services. Unless an invoice specifies otherwise, payment is due in advance on the first day of the Initial Term and of each Renewal Term. Fees paid for Services are non-refundable.
- e. Any Client fees more than thirty (30) days past due are subject to a finance charge of 1.5% per month for each month or part thereof that payment hereunder is past due, or the highest rate allowed by law.

IV. Service Deliverables

Provider shall provide Services to Client with the following specifications:

- a. Provider will provide Subscribers with access to the Services, which shall be password protected for the exclusive use of Subscribers through the internet. Client may revise its designation of Subscribers upon prior written notice to Provider.
- b. Provider shall use commercially reasonable efforts to provide comprehensive and accurate Services, subject to the disclaimers set forth in Section VI hereof; provided, however, Provider cannot assure that all relevant hotel reviews, videos, images, blog entries, article postings, references and other information will be found or delivered, or that irrelevant hotel reviews, videos, images, blog entries, article postings, references and other information will not be delivered. From time to time delivery of the Services may be delayed due to scheduled or unscheduled maintenance or factors beyond Provider's control, and Provider's failure to deliver the Services in such event or events shall not constitute a breach of the Agreement.

V. Client's Acknowledgments and Agreements

- a. Client shall provide Provider with the following prior to the commencement of Services: (i) applicable hotel name(s), (ii) hotel website(s), (iii) the names of three of Client's competitors, and (iv) e-mail addresses of all Subscribers.
- b. Client acknowledges that Provider aggregates and provides, but does not generate, the content underlying the Services, and that information furnished by Provider represents the opinions of others and may contain inaccuracies, libelous material, profanity, and pornography. Provider may block certain comments using specific keywords, and Client will have the ability to control the blocking of key words.
- c. Client understands and acknowledges that the Services (other than Messaging) and the information provided in connection therewith are for internal review, analysis, and research only, and Client agrees, represents, and warrants to not redistribute such information, in whole or in part, to others, or publish, broadcast, or sell any material received hereunder, or in any manner infringe on any copyrights or proprietary interests of any third party from which data or other information accessible via the Services was generated.

- d. Client agrees to indemnify, defend, and hold harmless Provider, its owners, employees, governing persons, affiliates, agents, successors, assigns, and attorneys from and against any and all claims, suits, demands, actions, proceedings, costs, damages, expenses (including, but not limited to, legal fees and out-of-pocket expenses) and losses incurred by any of such parties arising out of or related to or occurring in connection with (i) Client's breach or alleged breach of any of its obligations arising out of or in connection with the Agreement, including Client's publication, transmission, delivery, or other use of any information or material contained provided or furnished to Client pursuant to the Agreement, (ii) Client's access to and use of the Services; (iii) any Client Content (as defined below); and (iv) Client's violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights). Upon written request from Provider, Client shall promptly defend or settle such claim, suit, demand, action, or proceeding at Client's sole expense through counsel reasonably acceptable to Provider; provided, however, Client may not settle or compromise any claim without the prior written consent of Provider, which consent shall not be unreasonably withheld. In the event Client elects, for any reason or for no reason, not to defend any claim hereunder, Provider may settle, compromise, or defend such claim, and shall be entitled to recover from Client the amount of any final settlement or judgment, as well as all costs and fees incurred by Provider in connection with such settlement or defense, including reasonable attorney's fees and expenses. The foregoing notwithstanding, nothing herein shall prevent Provider, in its sole discretion, from defending or settling any such claim, suit, demand, action, or proceeding at its own expense and through its own counsel. The indemnification obligations set forth in this Section V(d) shall survive the termination or expiration of the Agreement.
- e. Client shall not solicit reviews from customers by use of means which might reasonably be expected to impair or unduly influence the judgment of the reviewer and therefore the accuracy or veracity of the review. Practices that are deemed likely to so impair or influence a review include, without limitation:
- (i) Compensation payable to the reviewer which is dependent on the content of the review or which constitutes an immoderate incentive;
 - (ii) Exerting pressure on guests to alter or withdraw a review, including through unjustified threat of legal action;
 - (iii) Offering incentives for positive reviews, or for changing negative reviews;
 - (iv) Soliciting or knowingly publishing reviews created by people other than hotel guests, or by insiders or other parties affiliated with Client; and
 - (v) Soliciting reviews only from guests already identified as satisfied or otherwise likely to post a positive review.

- f. Client represents and warrants that Client's access to and use of the Services will comply with all applicable laws, rules and regulations, including but not limited to those that relate to privacy and data protection and electronic communications. Client further represents and warrants that Client has all necessary permissions to allow Provider to receive and process Client Content and send communications to individuals on Client's behalf. Client (and not Provider) is responsible for ensuring that Client meets all notice and consent obligations for sending communications to individuals in the jurisdictions where they reside. Client is solely responsible for determining whether the Services are suitable for Client to use in light of any laws and regulations that govern Client, its industry, or its relationship with its customers, including but not limited to consumer protection, privacy, advertising, intellectual property or other laws. Client may not use the Services for any unlawful or discriminatory activities.

VI. Disclaimers and Limited Warranties

- a. Provider shall make no effort, and shall not be required hereunder, to substantiate the truthfulness of any information provided in connection with the Services, and Provider does not endorse, warrant, attest to, or make any judgment about any such information.
- b. **CLIENT'S USE OF THE SERVICES IS AT CLIENT'S SOLE RISK. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." PROVIDER MAKES NO WARRANTY HEREUNDER OF ANY KIND, EXPRESS OR IMPLIED, TO CLIENT WITH RESPECT TO THE SERVICES AND/OR THE INFORMATION PROVIDED IN CONNECTION THEREWITH. PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER EXPRESSLY DISCLAIMS RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, TIMELINESS, OR ADEQUACY OF THE SERVICES OR THE INFORMATION FURNISHED PURSUANT TO THE AGREEMENT. PROVIDER CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CLIENT AGREES THAT IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY LOSS OR DAMAGES ARISING FROM THE USE OF THE SERVICES OR RELIANCE ON INFORMATION PROVIDED IN CONNECTION THEREWITH.**

VII. Limitation of Liability

IN NO EVENT WILL PROVIDER BE LIABLE TO CLIENT FOR ANY DAMAGES INCLUDING, WITHOUT LIMITATION, ANY DIRECT OR INDIRECT DAMAGES, WHETHER FORESEEABLE OR NOT, OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, SOFTWARE, OR HARDWARE, LOSS OF USE OF PRODUCTS, DOWNTIME, PROPERTY DAMAGE, OR LIABILITY OF ANY KIND RELATING TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, IN EACH CASE ARISING FROM THE PROVISION OF SERVICES HEREUNDER, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROVIDER BE LIABLE TO CLIENT, UNDER ANY THEORY OF LAW, WHETHER IN CONTRACT OR TORT, IN AN AMOUNT GREATER THAN THE AGGREGATE AMOUNT OF THE FEES PAID TO PROVIDER BY CLIENT HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO SUCH LIABILITY.

VIII. Intellectual Property Rights

- a. Provider is and shall be the sole owner of all of its trademarks, service marks, patents, patent applications, copyrights, trade secrets and other intellectual property, including without limitation any and all code, copy, compositions, business systems, sales and other data (including, without limitation, any data collected via the Services), developed by, for or on behalf of Provider whether now existing or later developed and whether or not relating to Client, and all derivatives thereof, other than Client Content, as defined below (the “**Provider IP**”). In addition, the look and feel of the Services, including without limitation, all page headers, custom graphics, button icons and scripts, constitute the service mark, trademark or trade dress of Provider and may not be copied, imitated or used, in whole or in part, without Provider’s prior written permission. Nothing contained in the Agreement is intended to convey, or shall be construed to convey, to Client any right, title or interest in or to the Services or the Provider IP, the information gathered or provided in connection therewith, or any of the software underlying the gathering of information in connection with the Services. For all purposes of the Agreement, all right, title and interest in and to the Services and the Provider IP and any information gathered or provided in connection therewith is owned exclusively by Provider.
- b. Client retains all rights in and to the content Client provides through the Services, including but not limited to Client’s logos, designs, text, graphics, images, customer lists, messaging content and other campaign materials (collectively, “**Client Content**”) and Provider does not claim any ownership interest in or to Client Content. However, by using the Services, Client grants to Provider a limited, nonexclusive, revocable license to access, use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display Client Content solely for purposes of providing and improving the Services. By uploading Client Content to the Services or otherwise submitting it to Provider, Client represents and warrants that (i) Client owns and controls all of the rights to the Client Content or otherwise has all necessary rights to provide such Client Content; (ii) Client authorizes Provider to use such Client Content for the purposes described in this Agreement; (iii) the Client Content is accurate and not misleading or harmful in any manner; and (iv) the Client Content, and Client’s use and submission thereof, does not and will not violate this Agreement or any applicable law, rule, regulation or third party right.

IX. Confidential Information

- a. “**Confidential Information**” for purposes of the Agreement includes information that (i) has been or is developed or is otherwise owned by either party hereto or any of their respective affiliates, whether developed by such party or an affiliate of such party or by any other person for or on behalf of such party or affiliate of such party, (ii) is not readily available to the public and not generally ascertainable by proper means by the public, (iii) if disclosed to the public, would be harmful to the interests of a party or an affiliate of a party, or (iv) is treated or designated by a party hereto or an affiliate of a party hereto as being confidential. Confidential Information shall not include any information that (A) is or becomes publicly available, other than through the fault or negligence of the receiving party; (B) was known to the receiving party, without restriction, at the time of receipt; (C) is rightfully and lawfully obtained by the receiving party from a third party rightfully and lawfully possessing the same without restriction; (D) is independently developed by the receiving party without having had access to the information disclosed hereunder; or (E) is obligated to be produced under an order of a court of competent jurisdiction, provided that the disclosing party is immediately notified by the recipient.

- b. Each party hereto agrees that such party will not, directly or indirectly, at any time disclose to any person, or take or use for any purpose, other than for purposes in accordance with the intent of the Agreement, any Confidential Information. The obligations of the parties in this Section IX apply to, and are intended to prevent, the direct or indirect disclosure of any Confidential Information to any person where such disclosure of the Confidential Information would reasonably be considered to be useful to the competitors of a party or a party's affiliates or to any other person to become a competitor based, in whole or in part, on such Confidential Information.

X. Miscellaneous Provisions

- a. The Agreement may be assigned in whole or in part by Provider at any time. Client may not assign the Agreement without the prior written consent of Provider. A sale of all or substantially all of the assets of Client or a sale of all or a controlling interest in Client shall for all purposes hereunder be deemed an assignment of the Agreement.
- b. Provider is, and for all purposes hereunder shall be deemed, an independent contractor, and not an agent, partner or joint venturer of Client. Neither party shall make any warranties or representations of any kind, express or implied, to third parties in the name of the other party, nor shall any party hereunder assume or create, or attempt to assume or create, any obligation of any kind on behalf of the other party.
- c. Accessing or using the Services signifies the acceptance of the Agreement by Client.
- d. No delay or omission by either party in exercising any right under the Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on any one occasion is effective only on that occasion, and shall not be construed as a waiver of that right or consent as to any other occasion or any other breach. No course of dealing between the parties will give rise to any implied amendment or waiver.
- e. If any provision of the Agreement is found to be unenforceable or invalid, such provision shall be modified to the least extent necessary to make it enforceable or valid, and the remaining provisions of the Agreement will remain in full force and effect.
- f. Neither party shall be in default by reason of failure in performance of the Agreement if such failure arises, directly or indirectly, out of causes beyond the reasonable or foreseeable control of either party, including but not limited to, default by suppliers, acts of hackers, problems associated with the Internet or a telecommunications service provider, acts of God, acts of terrorism or the public enemy, U.S. or foreign governmental acts in either a sovereign or contractual capacity, transportation contingencies, fire, flood, epidemic, restrictions and strikes.
- g. The Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of New York, United States, without regard to the conflicts of laws rules or principles thereof that would require the application of the laws of another jurisdiction.

- h. ANY PARTY BRINGING A LEGAL ACTION OR PROCEEDING AGAINST ANOTHER PARTY FOR THE RESOLUTION OF ANY DISPUTE ARISING IN CONNECTION WITH THE INTERPRETATION, CONSTRUCTION, OR ENFORCEMENT OF THE AGREEMENT SHALL BRING SUCH LEGAL ACTION OR PROCEEDING IN ANY COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT HAVING JURISDICTION OVER NEW YORK COUNTY, NEW YORK. EACH PARTY HERETO AGREES TO SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION OVER NEW YORK COUNTY, NEW YORK FOR THE RESOLUTION OF ALL DISPUTES ARISING IN CONNECTION WITH THE INTERPRETATION, CONSTRUCTION, AND ENFORCEMENT OF THE AGREEMENT, AND HEREBY WAIVES THE CLAIM OR DEFENSE THEREIN THAT SUCH COURTS CONSTITUTE AN INCONVENIENT FORUM. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR LATER HAVE TO THE LAYING OF VENUE OF ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT BROUGHT IN ANY SUCH COURTS.**
- i. If litigation, or any form alternative dispute resolution, is necessary to enforce the terms of the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, court costs, and costs of any alternative dispute resolution.
- j. Client's use of the Services, and Provider's provision of the Services, will signify the parties' assent to and acceptance of the terms of this Agreement.
- k. Provider reserves the right to amend the terms of use of the Services at any time and without notice, and it is Client's responsibility to review this Agreement for any changes. Client's use of the Services following any amendment of the posted terms of this Agreement will signify Client's assent to and acceptance of the revised terms of any component thereof.
- l. Any and all notices, requests, claims, demands and other communications required or permitted hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile, by nationally recognized overnight courier, or by express, registered or certified mail to the respective party at the address or facsimile number first set forth above (or at such other address as a party shall specify in a written notice given in accordance with this paragraph).
- m. The Agreement, together with any Specific Terms or attachments referred to herein, constitutes the entire agreement between the parties with respect to the delivery of Services, and the information provided in connection therewith, and supersedes all prior or contemporaneous agreements, proposals, negotiations, representations or communications, whether written or oral, relating to such subject matter. The parties acknowledge and agree that they have not been induced to enter into the Agreement by any representations or promises not specifically stated herein.
- n. The agreement of the parties contained in Sections V(d), VI, VII, VIII, IX and X shall survive the termination or expiration of the Agreement.