

TrustYou GmbH

STANDARD CLIENT TERMS AND CONDITIONS

I. The Service

TrustYou GmbH, a Munich corporation (“**Provider**”) will furnish Client with online subscription services to Provider’s product known as TrustYou ReviewAnalyst™ to allow Client to monitor consumer generated hotel reviews, images and video on the Internet, all as more fully set forth on Exhibit A (“**Exhibit A**”) to the Client Agreement (the “**Agreement**”) between the Client and Provider (the “**Services**”). The Services shall include monitoring select web sites for those hotel properties of Client set forth on Exhibit A (and derivatives of the names of such properties) using established search engines and Provider’s proprietary filtering technologies. Provider shall provide access to the Services to one (1) person designated by Client who is an employee of or consultant to Client (the “**Subscriber**”) via an online dashboard, as more fully described in Exhibit A (the “**Dashboard**”).

II. Term and Termination

The delivery of Services to Client by Provider will commence on the Effective Date and will continue for the Initial Term set forth in Section 1 of the Agreement. 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**”) until such time as the Agreement is terminated by either Provider or Client by delivery of written notice to the other no later than ninety (90) days prior to the end of the then current Renewal Term. Provider may terminate the Agreement at any time upon ninety (90) days’ written notice to Client. Ten (10) days after termination of the Agreement, Provider shall purge any contents of Client’s online dashboard and shall, if requested, certify same in writing to Provider. Notwithstanding any provision in the Agreement to the contrary, either party reserves the right to 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 five (15) days 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

In consideration of Provider providing the Services and access to the Dashboard, Client agrees to prepay Provider, by valid credit card, through electronic funds transfer (“**EFT**”) debit, or through invoicing payable by credit card or check, the annual and other subscription charges set forth in Exhibit A attached hereto and made a part hereof for all purposes. 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 Exhibit A for all purposes hereunder. 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 Period and of each Renewal Period. Fees paid for Services are non-refundable.

IV. Service Deliverables

Provider shall provide Services to Client with the following specifications:

- a. Provider will provide Subscriber with access to the Services via the Dashboard, which shall be password protected for the exclusive use of Subscriber. Client may revise its designation of Subscriber upon prior written notice to Provider.
- b. Provider shall use good faith 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 name of three of Client’s competitors, and (iv) e-mail addresses of all Subscriber.
- 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 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 Dashboard 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 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. 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 pay all amounts due upon receipt of any invoice from Provider for Services rendered hereunder, or, in the event Client authorizes Provider to debit via EFT Client's credit card on the first day of the Initial Period and each Renewal Period, to provide Provider with a valid credit card with sufficient credit to effect each such EFT transfer.
- f. Any Client invoices 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.

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. **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 OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER EXPRESSLY DISCLAIMS RESPONSIBILITY FOR THE ACCURACY, TIMELINESS, OR ADEQUACY OF THE SERVICES OR THE INFORMATION FURNISHED PURSUANT TO THE AGREEMENT. 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

BECAUSE CLIENT IS ACQUIRING THE SERVICES FOR INTERNAL USE ONLY, AND BECAUSE PROVIDER IS ACTING SOLELY AS AN AGGREGATOR OF CONTENT EXISTING ON THE WORLD WIDE WEB, 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 PROVIDING 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 HEREUNDER.

VIII. Intellectual Property Rights

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 and all code, copy, compositions, business systems, sales and other data (including, without limitation, any data collected via Provider's "ReviewAnalyst Survey" application or similar), 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 (the "**Provider IP**"). 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.

IX. Confidential Information

- a. "**Confidential Information**" for purposes of the Agreement includes information that (a) 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, (b) is not readily available to the public and not generally ascertainable by proper means by the public, (c) if disclosed to the public, would be harmful to the interests of a party or an affiliate of a party, or (d) is treated or designated by a party hereto or an affiliate of a party hereto as being confidential.
- 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.

- c. The agreement of the parties contained in this Section IX shall survive the termination or expiration of the Agreement.

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 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 Germany, 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 BAVARIA SITTING IN MUNICH. EACH PARTY HERETO AGREES TO SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION OVER MUNICH, 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. The Agreement may be executed in counterparts, including without limitation by facsimile or electronic signature, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement.
- k. The Agreement may not be amended except by an instrument in writing signed by a duly authorized representative of each party hereto.
- 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 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.