



AGREEMENT FOR THE SUPPLY OF LIFTSHARE myPTP SERVICES

BACKGROUND

- 1 Liftshare operates a web-based journey planning facility known as "myPTP" through which individuals (Recipients) receive travel information.
- 2 Customer wishes to engage Liftshare to develop and operate a bespoke web-based journey planning facility which Customer employees, contractors, consultants and personnel (Administrators) may access with a view to searching for travel information for the intended Recipient.
- 3 Liftshare is prepared to accept such engagement, and to grant the relevant rights to Customer, subject to the terms and conditions of this Agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following definitions apply:
 - 1.1.1 "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
 - 1.1.2 "**Charges**" means the Operational Services Charges and the Set-Up Services Charges;
 - 1.1.3 "**Commencement Date**" means the date Customer Information Form is signed by both parties;
 - 1.1.4 "**Customer Information Form**" means the documentation that Liftshare uses to gather crucial information from Customer, where Customer writes the details of the products or services they wish to order;
 - 1.1.5 "**Facility**" means the web-based journey planning facility to be developed and operated by Liftshare in accordance with the terms of this Agreement and for which Liftshare shall provide the Services;

- 1.1.6 "**Facility Terms and Conditions**" means the terms and conditions applying to the access to and use of the Facility by any Administrator and the version of which in issue at the date of this Agreement shall be those terms and conditions set out in Schedule 2 in the Client Information form.
- 1.1.7 "**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.1.8 "**Recipient**" means any employee, consultant, contractor, agent or personnel of Customer who has received a travel plan;
- "**Administrator**" means any employee, consultant, contractor, agent or personnel of Customer who has been granted access to myPTP in order to administer the creation of travel plans for recipients.
- 1.1.9 "**Operational Services**" means the on-going marketing, training, reporting, hosting, maintenance and support services to be provided by Liftshare in respect of the Facility as further described in the Customer Information Form;
- 1.1.10 "**Operational Services Charges**" means the charges payable by Customer to Liftshare in respect of the Operational Services as set out in the Customer Information Form;
- 1.1.11 "**Project Plan**" means the plan describing the development, commissioning and establishment of the Facility and Set-Up Services and setting out: (a) the estimated timetable and responsibilities of the parties in relation to achieving that timetable; and (b) the detailed service levels that will be applicable to the Operational Services; all as detailed in the Customer Information Form (schedule 1).
- 1.1.12 "**Services**" means the Set-Up Services and the Operational Services and all other services to be provided by Liftshare under this Agreement;
- 1.1.13 "**Set-Up Services**" means the services to be provided by Liftshare to Customer relating to the development of the Facility and its testing and commissioning ready for use in an operational environment in accordance with the Project Plan;

1.1.14 "**Set-Up Services Charges**" means the charges payable by Customer to Liftshare in respect of the Set-Up Services as set out in the Customer Information and Booking Form.

1.2 In this Agreement, the following rules apply:

1.2.1 a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors and permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to "**writing**" or "**written**" includes faxes and emails.

2 OBJECTIVES

2.1 Liftshare acknowledges that the Services are being provided to Customer in order to enable Customer to meet the following objectives:

2.1.1 reduce local congestion;

2.1.2 provide greater accessibility to Customer's premises;

2.1.3 meet Customer's environmental objectives; and

2.1.4 to meet Customer's legal planning obligations.

2.1.5 other objectives as agreed in the client information form

2.2 Liftshare shall provide Customer with such assistance as it reasonably requires in respect of the provision of the Services to enable Customer to meet the objectives set out in clause 2.1 above.

3 SUPPLY OF SERVICES

- 3.1 In consideration of the payment of the Charges, Liftshare shall, during the Term, perform the Services in accordance with the Project Plan and the terms of this Agreement.
- 3.2 Customer acknowledges and agrees that Liftshare procures web hosting infrastructure and data centre management services from suitable third party subcontractors.
- 3.3 Liftshare shall have the right, upon notice in writing, to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 3.4 Each party shall appoint a service manager (“Administrator”) in respect of the Services and shall use reasonable endeavours to ensure that the same person acts as its service manager throughout the Term. Either party may replace its service manager from time to time where reasonably necessary upon notice in writing to the other party.
- 3.5 Each party shall comply with all of its obligations under the Data Protection Act 1998 in the event that any personal data is processed by one party on behalf of the other pursuant to this Agreement.

4 CUSTOMER'S OBLIGATIONS

- 4.1 Customer shall:
 - 4.1.1 cooperate reasonably with Liftshare in all matters relating to the Services;
 - 4.1.2 provide Liftshare with such information and materials as Liftshare may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - 4.1.3 provide Liftshare, its employees, agents, consultants and subcontractors, with access to Customer's premises, office accommodation and other facilities as reasonably required by Liftshare;

4.2 If Liftshare's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation ("**Customer Default**"):

4.2.1 Liftshare shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until Customer remedies Customer Default, and to rely on Customer Default to relieve it from the performance of any of its obligations to the extent Customer Default prevents or delays Liftshare's performance of any of its obligations; and

4.2.2 Liftshare shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from such failure or delay in Liftshare's performance of its obligations.

5 CHARGES AND PAYMENT

5.1 Liftshare shall be entitled to submit its invoices for the Charges in accordance with the payment schedule set out in Customer Information and Booking Form. The Charges do not include VAT which shall be payable in addition.

5.2 Liftshare's invoices shall be payable in full without any set-off or withholding within 30 days of Customer's receipt of the invoice. Liftshare may charge interest on any late payment that is not the subject of a bona fide dispute from the due date for payment until payment is received in full at a rate of 4% per annum above the base rate of Barclays Bank plc from time to time, calculated daily.

6 WARRANTIES

6.1 Liftshare warrants to Customer that:

6.1.1 the Facility shall be free from all viruses, malware, malicious and harmful code;

6.1.2 use of the Facility by Customer, Administrators and Recipients in accordance with the terms of this Agreement (including the Facility Terms and Conditions) shall not infringe the Intellectual Property Rights of any third party; and

6.1.3 the Services will be provided using reasonable care and skill using appropriately qualified and trained personnel.

6.2 Liftshare does not represent or warrant that Customer's, Administrators' and Recipients' access to the Facility will be free from defects, continuous, timely or error free or that defects will be corrected in a timely manner or at all.

6.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights of either party in existence at the date of this Agreement are and shall remain the exclusive property of the party owning them.

7.2 All Intellectual Property Rights arising out of or in connection with the performance of the Services, including all Intellectual Property Rights in the Facility and any associated Documentation, are and shall remain the exclusive property of Liftshare.

7.3 Liftshare hereby grants to Customer a non-transferable, non-exclusive, royalty free licence (without any right to grant sublicences) during the Term to use the Facility, and to make the Facility available to Administrators and Recipients, subject to the terms and conditions of this Agreement.

7.4 Each party hereby reserves all rights not expressly granted to the other party pursuant to this Agreement.

8 CONFIDENTIALITY

8.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those

which bind the Receiving Party. This clause 8 shall survive termination of this Agreement.

8.2 Customer consents to the use by Liftshare of Customer's name and trade mark, together with a description of the Services provided by Liftshare pursuant to this Agreement, in any case study example described in Liftshare's marketing materials and/or on Liftshare's website. Save as aforesaid, neither party shall disclose any usage data or performance results relating to the Services to any third parties without the prior written consent of the other party.

9 LIABILITY

9.1 The following provisions set out the entire financial liability of Liftshare (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Customer in respect of: (a) any breach of this Agreement; (b) any use made by Customer, Administrator or Recipients of the Facility or the results of the Services; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

9.2 Liftshare shall not be liable, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of goods; (f) loss of contract; (g) loss of use; (h) loss or corruption of data or information; (i) any special, indirect or consequential loss or damage.

9.3 Liftshare's total aggregate liability under this Agreement arising in connection with the performance or contemplated performance of this Agreement, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited to the total Charges paid by Customer to Liftshare pursuant to this Agreement.

9.4 Nothing in this Agreement limits or excludes Liftshare's liability: (a) for death or personal injury caused by Liftshare's negligence; (b) for fraud or fraudulent misrepresentation; or (c) for any other liability that cannot lawfully be excluded or limited.

10 TERMINATION

10.1 The Agreement shall commence on the Commencement Date and shall continue for the period stated and agreed in the Project Plan, unless terminated in accordance with its terms (the "**Initial Term**").

10.2 Following expiry of the Initial Term, Liftshare shall have the right to terminate this Agreement on at least 60 days' written notice to Customer, such notice period to expire on the date of expiry of the Initial Term or any Renewal Term.

10.3 This Agreement may be terminated in any of the following circumstances:

10.3.1 by either party immediately upon notice in writing to the other in the event that that other party is in breach of its obligations under this Agreement and, in the case of a breach which is not persistent and can be remedied, that party has not remedied such breach within 10 Business Days of receipt of a written notice specifying the breach and requiring its remedy; or

10.3.2 by either party immediately upon notice in writing in the event that the other party goes into compulsory or voluntary liquidation (except for the purposes of solvent reconstruction or amalgamation) or a receiver, administrative receiver or administrator is appointed in respect of the whole or any part of its assets or in the event that it makes an assignment for the benefit of or composition with its creditors generally or engages in or suffers any similar procedure in any jurisdiction.

11 CONSEQUENCES OF TERMINATION

11.1 On termination of this Agreement for any reason:

11.1.1 each party shall immediately cease using and shall return or destroy (at the other party's sole option) all materials in their possession that embody the other party's Intellectual Property Rights or Confidential Information;

11.1.2 Customer shall immediately pay to Liftshare all of Liftshare's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Liftshare shall submit an invoice, which shall be payable by Customer immediately on receipt;

11.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and

11.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12 NOTICES

12.1 Any notice, consent, agreement or official communication under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Customer Information Form. A notice, consent, agreement or official communication delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 09.00 on the first Business Day following delivery). A correctly addressed notice, consent, agreement or official communication sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice, consent, agreement or official communication sent by email shall be deemed to have been received at the time of transmission provided that no message is received by the sender evidencing a delivery failure.

13 DISPUTE RESOLUTION

13.1 In the event of any dispute or difference arising out of or in connection with this Agreement which the parties cannot resolve by amicable negotiation within 6 weeks of the onset of the dispute, the parties agree prior to any litigation first to try in good faith to settle the dispute or difference by mediation in accordance with the Mediation Rules published by the Centre for Dispute Resolution ("**CEDR**"). In the absence of agreement as to the appointment of the mediator, the mediator shall be nominated by CEDR. The parties agree to bear equally the administrative costs of the mediation and the mediator's fees. Each party further agrees to bear its own fees and costs. The venue for any mediation shall be England. Nothing in this Agreement shall prevent either party from seeking equitable relief (including without limitation injunctive relief) from any court of competent jurisdiction.

14 GENERAL

- 14.1 Any variation of this Agreement shall be in writing and signed by or on behalf of the parties.
- 14.2 Liftshare shall have no liability to Customer under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.
- 14.3 A person who is not a party to this Agreement shall not have any rights under or in connection with it, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise. Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any such third party.
- 14.4 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 14.5 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.6 Customer shall not, without the prior written consent of Liftshare, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Liftshare may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

- 14.7 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.8 This Agreement constitutes the entire and only agreement between the parties in relation to its subject matter and replaces and extinguishes all prior or simultaneous agreements, undertakings, arrangements, understandings or statements of any nature made by the parties or any of them whether oral or written (and, if written, whether or not in draft form) with respect to such subject matter, including any confidentiality or non-disclosure agreements. Each of the parties acknowledges that they are not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter of this Agreement, save those expressly set out in this Agreement, and that they shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement save to the extent that they arise out of the fraud or fraudulent misrepresentation of another party.
- 14.9 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. Subject to clause 13 above, the parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).