

## **FAREHARBOR DISTRIBUTION NETWORK**

### **Affiliate Participation Agreement**

This FareHarbor Affiliate Participation Agreement (this “**Agreement**”) is a binding agreement between FareHarbor B.V., a Netherlands limited company (“**FareHarbor**”) and you, or if you are entering into this Agreement on behalf of an organization, the organization you represent (“**Affiliate**”). This Agreement governs your participation in the FareHarbor Distribution Network (“**Program**”) and is effective when you click “accept”. BY CLICKING “I ACCEPT”, YOU (A) AGREE TO PARTICIPATE IN THE FAREHARBOR DISTRIBUTION NETWORK AS AN AFFILIATE; (B) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (C) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF YOU ARE ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE AUTHORITY TO BIND THAT ORGANIZATION; AND (D) AGREE THAT YOU ARE BOUND BY THIS AGREEMENT’S TERMS. FAREHARBOR RESERVES THE RIGHT TO MODIFY OR AMEND THIS AGREEMENT FROM TIME TO TIME WITH 15 DAYS’ NOTICE (“**Opt-out Period**”). YOUR CONTINUED USE OF THE SERVICE FOLLOWING THE OPT-OUT PERIOD WILL MEAN YOU ACCEPT THOSE CHANGES.

This Agreement is in addition to FareHarbor’s terms of service, set forth at <https://fareharbor.com/legal/tos/> or such successor URL as FareHarbor may designate, as such terms of service may be amended or modified from time to time (the “**TOS**”), which governs Affiliate’s use and FareHarbor’s provision of the Service. Any conflict between the terms of this Agreement and the TOS will be resolved in favor of this Agreement.

1. **Scope.** FareHarbor provides an online, software-enabled service that providers of tourist activities and attractions (“**Providers**”) may use to list the availability of, and to accept and manage reservations for, their services (the “**Service**”). FareHarbor and Affiliate would like to enable Affiliate to promote and enable its customers to make reservations for Providers’ services (“**Bookings**”) on Affiliate’s website or in Affiliate’s emails via the Service in exchange for a Referral Fee (defined below).
2. **Program Participation.** Affiliate acknowledges and agrees that, through the Service, FareHarbor may (a) display content on Affiliate’s website and emails to promote Providers, including without limitation, the Providers’ names and logos and (b) enable guests to make Bookings through Affiliate’s website and emails. Affiliate will cooperate with and provide assistance to FareHarbor as necessary for FareHarbor to integrate the Service into Affiliate’s website.
3. **Affiliate’s website.** As between FareHarbor and Affiliate, Affiliate is solely responsible for the design and operation of its website. FareHarbor may terminate this Agreement, in its sole discretion, if FareHarbor determines that the website is unsuitable for any reason, including that it: (a) promotes or presents sexually explicit materials; (b) promotes or presents violence; (c) promotes or presents discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; (d) illegal activities; or (e) violates intellectual property, personality, publicity, or third party right. Affiliate agrees not to engage in any of the foregoing activities.
4. **Affiliate Content.** Subject to the terms and conditions of this Agreement, Affiliate grants to FareHarbor a worldwide, nonexclusive license in any and all media now or later known or developed during the term of this Agreement to use, reproduce, display, modify, create derivative works (including translations), distribute and transmit Affiliate Content. “Affiliate Content” means all information, data, and content made available by Company to FareHarbor in connection with the FareHarbor Service, which may include Affiliate’s name, trademarks, and logos.
5. **Responsibility for Bookings.** Each Provider is responsible for all aspects of processing Bookings for its activities, including cancellations, returns, and any related customer service. FareHarbor makes no representations regarding the level of service offered by a Provider.
6. **Reporting.** FareHarbor will track the Bookings generated by Affiliate’s website and will make reports summarizing Booking activity available to Affiliate through the Service. The form, content, and frequency of the reports may vary from time to time at FareHarbor’s discretion, however, at a minimum, such reports will be provided monthly and contain the amount of Referral Fees owed to Affiliate.
7. **Compensation.** For Bookings made for Provider services through Affiliate’s website, FareHarbor will pay to Affiliate a referral fee (“**Referral Fee**”) in an amount equal to 15% of Net Service Fees. “**Net Service Fees**” means all amounts actually charged by Providers for Bookings made by customers through Affiliate’s website, less any applicable taxes, fees, or gratuity.

8. **Payments.** FareHarbor will calculate charges and remit payments on a monthly basis. FareHarbor will pay Referral Fees to Affiliate within 30 days following the month in which the Provider provided the service related to the Booking. However, if the Referral Fees payable to Affiliate for any calendar month are less than \$5.00, those Referral fees will be rolled forward into next month's payment. Referral Fees do not include any taxes, levies, duties or other governmental assessments of any nature, including but not limited to value-added, sales, use, general excise, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction. If a Booking is cancelled by the customer or a refund is otherwise granted by the Provider, and the Referral Fee has already been remitted to Affiliate, FareHarbor will reverse the corresponding Referral Fee and deduct the amount from Affiliate's bank account that is linked to the Service. Affiliate is only eligible to earn Referral Fees on Bookings that occur during the Term. FareHarbor may withhold Affiliate's final payment for a reasonable time to ensure that the correct amount is paid.
9. **Term.** This Agreement begins on acceptance and is effective until terminated.
10. **Termination.** Either party may terminate this Agreement for any reason or no reason by providing at least 30 days' prior written notice. Affiliate may terminate this Agreement immediately by providing notice within an Opt-out Period. Upon any termination or expiration of this Agreement, each party will promptly remove and cease use of any and all names, logos, and trademarks provided under this Agreement in connection with the Program. The provisions of this Agreement which, by their terms, require performance after the termination or expiration of this Agreement, or have application to events that may occur after the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement.
11. **Representations & Warranties.** Each party warrants (a) that its performance under this Agreement will not violate any agreement between the party and any third party or any obligation owed by the party to any third party; (b) that it has all right, power, and authority necessary to enter into this Agreement; and (c) that it will not use any material or information provided pursuant to this Agreement in any commercially unreasonable manner or in any manner that would disparage or discredit the other party or Providers.
12. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY'S PRODUCTS AND SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR COURSE OF PERFORMANCE.
13. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, ARISING OUT OF THE USE OF THE CONTENT OR MATERIALS PROVIDED OR PRODUCED BY EITHER PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. The maximum, aggregate liability of either party to the other, and all third parties for all claims related to this Agreement, is limited to the greater of (a) \$1,000 and (b) the amounts Affiliate received under this Agreement during the 12 months preceding the event giving rise to the claim.
14. **Indemnity.** Affiliate will defend and indemnify FareHarbor (and its directors, officers, employees, affiliates, and agents) from and against all claims, demands, suits, or other assertions of rights by any third party, and all resulting judgments, settlements, and expenses (including attorneys' fees and costs), that arise out of or relate to Affiliate's participation in the Program or Affiliate's breach of this Agreement.
15. **Confidential Information.** Affiliate may be exposed to or be furnished with confidential or proprietary information or material relating FareHarbor or its business activities. Except as may be required by law, Affiliate will keep confidential and not reveal or disclose any of said information or material or the terms of this Agreement ("**Confidential Information**") during the term of this Agreement or thereafter to any third party, except to Affiliate's attorneys, accountants and other professional representatives with a bona fide need to know such information and who agree to use such information only as necessary in rendering services to Affiliate and not to disclose any such information to any third party. Affiliate will ensure that each such representative does not use any such information other than as necessary in rendering services to Affiliate and does not disclose any such information to any third party. If Affiliate is required by law to disclose any Confidential Information, Affiliate shall, to the extent not prohibited by law, notify FareHarbor in writing of the disclosure

requirement as far in advance as is reasonably possible and cooperate with FareHarbor in any effort FareHarbor may deem necessary to seek to avoid or limit the scope of such disclosure (e.g., seeking a protective order).

16. **Assignment.** Neither party may assign this Agreement or any right or obligation of this Agreement without the prior written consent of the other party except that FareHarbor may, without Affiliate's consent, assign this Agreement (a) to any Related Entity or (b) pursuant to a merger, acquisition or to a purchaser of all or substantially all of FareHarbor's assets or equity securities. "**Related Entity**" means any entity in which FareHarbor has a 50% or greater ownership interest. Any attempt to assign in violation of this section is void.
17. **Notices.** All notices to Affiliate may be provided either by electronic or physical mail to the address associated with Affiliate's account. Each party may change the persons to whom notices will be sent by giving notice to the other. All notices to FareHarbor may be provided electronically to [notices@fareharbor.com](mailto:notices@fareharbor.com), or by any other method as FareHarbor may, in its sole discretion, agree to from time to time.
18. **Governing Law; Venue.** This Agreement will be governed by, and construed in accordance with the laws of the State of New York without giving effect to any conflict of laws principles to the contrary. The parties further consent to exclusive jurisdiction and venue in the federal courts sitting in New York, New York unless no federal subject matter jurisdiction exists, in which case the parties consent to exclusive jurisdiction and venue in the state courts located in New York, New York. The parties hereto waive all defenses of lack of personal jurisdiction and *forum non conveniens*.
19. **Miscellaneous.** Each party is an independent contractor to the other and has no authority to act on behalf of or bind the other, and this Agreement does not create any other relationship (e.g., employment, partnership or joint venture). All rights and remedies under this Agreement are cumulative. Each party will pay its own costs to perform (except if expressly stated otherwise). This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the parties hereto. Only written waivers are effective. This Agreement is (a) the parties' entire agreement on this subject and merges and supersedes all related oral understandings, representations, prior discussions, letters of intent, or preliminary agreements; (b) is formed as of the Effective Date; and (c) may be executed in counterparts.