



FAREHARBOR

## FAREHARBOR CONNECT PROVIDER AGREEMENT

This FAREHARBOR CONNECT PROVIDER AGREEMENT (the “Agreement”) is effective from the Effective Date and made **BETWEEN**

1. FareHarbor B.V., a Dutch private limited liability company with its principal place of business located at Herengracht 597, 1017 CE Amsterdam (“**FareHarbor**”); and
2. You, the sole proprietor or legal entity (by the designated account holder in the Stripe Know Your Customer documentation submitted as required during FareHarbor’s onboarding process) (“**Connected Provider**”).

Each referred to as a “**Party**” and collectively as “**Parties**”.

This Agreement governs Connected Provider’s decision to participate in the FareHarbor Connect Program (“**Program**”).

By clicking “I ACCEPT”, Connected Provider acknowledges that it has read and understood this Agreement, and agrees and consents to be bound by all of its terms.

### **RECITALS**

FareHarbor provides a comprehensive solution for businesses that desire an online booking reservation system. Specifically, FareHarbor provides various products and services to businesses and individual businesses in the (tourist) activity industry that may include—amongst other things—platform creation, on-platform reservation payment capability, online reservation systems and management solutions, marketing and promotions, performance reporting tools, pricing tools, website creation, website hosting, self-service knowledge bases, and distribution access tools, that allows businesses and individual businesses to list the availability of, to accept and manage reservations for, and to sell their products and services.

Connected Provider operates one or more tourism and activities businesses, is a current client of FareHarbor, and has agreed to the FareHarbor Terms of Service for Providers (“Terms of Service”), as may modified or updated from time to time, set forth at <https://fareharbor.com/legal/tos/providers> or such successor URL as FareHarbor may designate.

This Agreement is in addition to the Terms of Service, which apply *mutatis mutandis* to this Agreement, and sets out the terms and conditions for Connected Provider’s participation in the Program, which enables FareHarbor to make Provider Content (defined below) available to Connected Affiliates for the purpose of facilitating Bookings (defined below) on their Affiliate Platform (defined below). In consideration of the promises and covenants herein, the Parties agree as follows:

1. **DEFINITIONS.** The following definitions are used in this Agreement:
  - 1.1 “**Activities**” mean the products and/or services offered to customers by Connected Provider including, but not limited to tours, experiences, attractions, museums, guided excursions, expeditions, journeys, cruises, or adventures.
  - 1.2 “**Activity Rate**” means the prices for the Activities as listed by Connected Provider on the Service, as may be updated from time to time. This amount may include applicable sales, use, value-added and similar taxes that are levied or payable or collectible in connection with the Activities.
  - 1.3 “**Affiliate Platform**” means Connected Affiliate’s owned or operated online reservation platforms.
  - 1.4 “**Agreement**” means this FareHarbor Connect Provider Agreement, including the appendixes, as varied, novated, supplemented or replaced from time to time in accordance with its terms.
  - 1.5 “**Associated Company**” means, in relation to a Party, any other entity which directly or indirectly has Control, is under the Control of, or is under direct or indirect common Control with that party from time to time.
  - 1.6 “**Booking**” means obtaining (and paying for) a Connected Provider’s Activity, including a gift card for an Activity, on an Affiliate Platform by a customer.
  - 1.7 “**Booking Data**” means the data collected by Connected Affiliate and made available to FareHarbor pursuant to this Agreement in

connection with a Booking, which may include Personal data such as (a) a customer's name, email address, telephone number, and other contact information, (b) times, dates, and other scheduling information for the Activity, (c) information associated with billing and payment (d) information reasonably requested by Provider in connection with the Activity (e.g. life jacket size, weight, height, etc.), (e) information voluntarily submitted by a customer or (f) information generated in relation to a customer. Booking Data may contain personal identifiable information.

**1.8 "Commission"** means the applicable commission payable by Connected Provider to FareHarbor, as outlined in Section 7.

**1.9 "Connected Affiliate"** means a party that owns or operates an online reservation platform and has entered into an agreement with FareHarbor to participate in the Program.

**1.10 "Control"** means the direct or indirect power to determine the management and policies of an entity or the composition of its board of directors or equivalent body, whether through the ownership of shares, by contract, or otherwise.

**1.11 "Effective Date"** means the date that the Connected Provider clicked the "I ACCEPT" button for this Agreement.

**1.12 "Intellectual Property"** means any patents, copyrights, trademarks and service marks, trade secrets, moral rights, and any other intellectual property or proprietary rights arising at any time under the laws of any applicable jurisdiction(s), including the FareHarbor API, Provider Content and any APIs tools, or other technology made available by FareHarbor or Connected Provider.

**1.13 "Provider Content"** means all information and content made available by Connected Provider to FareHarbor, which may include (a) Connected Provider's name, trademarks, and logos; (b) images, photographs, and descriptions of Connected Provider and Activities; and (c) rates, pricing, schedules,

capacities, and other information relating to reservation availability for Activities.

**1.14 "Process, Processed and Processing"** means any operation or set of operations which is performed on Booking Data (as defined in Section 6 of the Terms of Service) whether or not by automated means, such as the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**1.15 "Service"** means FareHarbor's online reservation software through which providers of Activities can list the availability of their products and services, and through which customers can reserve and submit payments for said providers' Activities.

**1.16 "Taxes"** means any national, governmental, provincial, state, municipal or local taxes, levies, imports, duties, (sur)charges, fees and withholdings of any nature imposed by any governmental, fiscal or other authority, including VAT, GST, sales and use tax, ITBIS, withholding tax or other similar taxes.

## **2. INTERPRETATION.** In this Agreement:

**2.1** references to a specific law include that law as amended from time to time, or any law that replaces or amends it;

**2.2** definitions stated in this Agreement apply equally to both the singular and the plural forms of the definitions;

**2.3** the words "including" or "for example" (or similar) should not be given a restrictive meaning because they are followed by particular examples;

**2.4** section, schedule and paragraph headings shall not affect the interpretation of this Agreement; and

**2.5** unless the context requires otherwise, references to a notice or approval means a notice or approval given in writing.

## **3. LICENSE TO PROVIDER CONTENT.**

**3.1 License Grant.** Subject to the terms and conditions of this Agreement, Connected Provider grants to FareHarbor a worldwide, non-exclusive license in any and all media now or later known or developed during the term of this

Agreement to:

- (a) use, reproduce, display, modify, create derivative works of (including translations), distribute, and transmit Provider Content; and
- (b) sublicense all the foregoing rights to Connected Affiliates and their authorized channel partners, affiliated entities, and agents for the purpose of promoting Connected Provider and Activities and obtaining Bookings on Connected Affiliates.

**3.2 Ownership; Reserved Rights.** Subject to the licenses granted under this Agreement, Connected Provider reserves all right, title and interest in and to its Intellectual Property. Subject to Connected Provider's rights, FareHarbor or the Connected Affiliate, as applicable, will retain all right, title, and interest in and to all modifications, improvements on, and derivatives of the Provider Content, including any translations. Connected Provider represents and warrants that: (a) it is the sole and exclusive owner of its Intellectual Property and the Provider Content; (b) it has all necessary rights to grant to FareHarbor the licenses granted under this Agreement; (c) no consents from or payments to any third-party are required for Connected Provider to exercise the rights granted; (d) FareHarbor and Connected Affiliate's use of its Intellectual Property or Provider Content will not infringe upon any trademark, trade name, service mark, copyright, trade secret, or other proprietary right of any other person or entity.

**4. DISTRIBUTION OF PROVIDER CONTENT.** Connected Provider acknowledges and agrees that FareHarbor may, at its sole discretion: (1) select the Connected Affiliates and (2) cease making any or all Activities available on any Affiliate Platform at any time without notice to Connected Provider. For the avoidance of doubt, FareHarbor does not guarantee that Activities and Provider Content will be distributed on any Affiliate Platform at all. Connected Provider may request that FareHarbor cease making certain Activities available on all Affiliate Platforms at any time, and FareHarbor will use commercially reasonable efforts to honor all such requests.

**5. BOOKINGS AND CUSTOMER SUPPORT.**

**5.1 Booking Process.** Connected Provider acknowledges and agrees that Connected Affiliates may facilitate Bookings for Activities on their Affiliate Platform based on the Provider Content. Connected Affiliates will collect payment for the Activities from customers at the time of Booking and collect and transmit Booking Data to FareHarbor for access and use by Connected Provider, who will ensure that the identifying number generated by the applicable Connected Affiliate is validated before providing the Activities.

**5.2 Booking Data.** Connected Provider shall use Booking Data solely for the purpose of providing the Activities to the applicable customer(s), and not for any other purpose.

**5.3 Booking Fulfillment.** Connected Provider will honor all Bookings made on the Affiliate Platform and will only cancel a Booking if Connected Provider is unable to provide the Activity due to circumstances beyond Connected Provider's control and the cancellation is permissible under Connected Provider's cancellation policy in effect at the time the Booking was made. Connected Affiliates' default cancellation policies for all Activities under this Program is up to forty-eight (48) hours before the start time of the Activity. Connected Provider acknowledges and agrees that it will provide the same level of service to customers who book Activities via the Program that it provides to any other customers, including with respect to overbooking, customer service, and cancellations. Connected Provider will not direct customers to book Activities outside of the Affiliate Platform. If Connected Provider fails to honor any Bookings or deliver any Activities for any reason, Connected Provider will compensate the affected customer by providing (a) a comparable replacement Activity (or if necessary, third-party service) of equal or greater value, or (b) a full refund.

**5.4 Cancellations.** If, in accordance with the Connected Provider's cancellation policy, a customer cancels a Booking or payment for a Booking before the Activity is provided, Connected Affiliate will communicate said cancellation information to Connected Provider via the Booking Data made available in the Service.

**5.5 No Minimum Sales.** FareHarbor makes no representations or warranties regarding the level of service provided by Connected Affiliates and does not guarantee any minimum number of Bookings to be made via a Connected Affiliate or revenue to be earned.

**5.6 Customer Service and Support.** Connected Provider will respond to and resolve customer complaints with

respect to the Activities in a prompt and reasonable manner. Connected Provider will assist FareHarbor as necessary to investigate, respond to, and resolve any customer inquiries or complaints received by FareHarbor or a Connected Affiliate with respect to Connected Provider, Provider Content, or the Activities.

**5.7 Refunds.** If a refund is legitimately granted to a customer after the Commission has been paid, FareHarbor and Connected Affiliate will reverse the corresponding Commissions and credit the Commission amount to Connected Provider's applicable merchant account used for the Service. Connected Provider shall be responsible for any cost of conversion built into a bank's exchange rate or other fees charged by Connected Provider's banks or other financial institutions.

## **6. PRICING FOR ACTIVITIES.**

**6.1 Online Rate.** Connected Provider agrees that price rates for Activities made available to Connected Affiliates shall not exceed the Activity Rates listed on the website integrated with the online reservation system created for Connected Provider by FareHarbor, unless otherwise mutually agreed to in writing by the Parties to this Agreement.

**6.2 Pricing Obligations.** Connected Provider is responsible for setting the Activity Rate and all applicable Taxes and fees that are levied or payable or collectible. Connected Affiliates may elect to sell Activities at lower prices than the Activity Rates set by Connected Provider but are responsible for payment in full of the applicable Activity Rate amount(s) set by Connected Provider, minus the applicable Commission(s).

## **7. COMPENSATION.**

**7.1 Authorization.** Connected Provider expressly authorizes any Connected Affiliate: (a) to act on Connected Provider's behalf and for its account as a commercial agent, (b) to conclude transactions directly between Connected Provider and customers, and (c) to collect payments from customers in relation to Connected Provider's Activities.

**7.2 Commission.** For each Booking made on the Affiliate Platform, FareHarbor shall pay out to Connected Provider the entire Activity Rate amount including any applicable Taxes and fees, *minus* the applicable Commission(s). In consideration of the services provided for under this Agreement, FareHarbor is entitled to the following Commission:

**(a) Outside the United States:** FareHarbor is entitled to twenty five percent (25%) Commission on the total of all Activity Rate amounts (including any applicable Taxes and fees) relating to the Bookings made on the Affiliate Platform in the relevant period.

**(b) Within the United States:** FareHarbor is entitled to twenty five percent (25%) Commission on the total of all Activity Rate amounts (excluding any applicable Taxes and fees) relating to the Bookings made on the Affiliate Platform in the relevant period.

## **7.3 Invoicing and payment.**

**(a) Invoice.** FareHarbor will issue an Invoice to Connected Provider for the applicable Commission no later than twenty (20) days following the conclusion of each calendar month in which the Activity was delivered to the applicable customer.

**(b) Payment.** The applicable Activity Rate amounts including any applicable Taxes and fees, *minus* the applicable Commission(s) will be paid by FareHarbor to Connected Provider's Stripe account within 15 days after the invoice date under Section 7.3(a) within the Stripe ecosystem.

**7.4 Taxes.** All amounts, consideration and services under this Agreement shall be exclusive of Taxes. Each Party will be responsible for and will pay all applicable Taxes imposed in connection with this Agreement, including taxes based on or measured by income, profits or gross receipts, franchise, doing business, ad valorem, property, payroll, employment or similar taxes or taxes in lieu thereof. All Parties agree that any applicable sales, use, value added or similar Taxes that are levied on Connected Provider's services will be collected and remitted in accordance with all applicable laws.

## **8. AUDIT AND REPORTING.**

- 8.1 Reporting.** Within the Service, FareHarbor will make available to Connected Provider reports summarizing Booking activity, if any. FareHarbor is not obligated to provide reports for months in which there is no Booking activity. The form, content, and frequency of Booking activity summary reports may vary from time to time at FareHarbor's discretion, however, such reports will be made available on a continuous basis.
- 8.2 Tax Reporting.** FareHarbor or any of its Group Companies may be required by applicable laws to collect and/or report information related to Taxes. In such instances, all Parties agree to promptly cooperate and provide the other Party with information and/or records as may be reasonably requested by FareHarbor, or any of its affiliates, to comply with such requirements and facilitate accurate tax reporting, to conform with the applicable laws.
- 8.3 Records and Audit.** During the term of this Agreement, FareHarbor may, at its own expense, conduct or authorize a Connected Affiliate or an independent third party to conduct an operational audit of Provider Content to validate the quality and description of such Provider Content. Based on the results from said operational audit, FareHarbor may request operational changes with respect to the Provider Content. Connected Provider's failure to implement the requested operational changes within a commercially reasonable amount of time shall constitute a material breach of this Agreement.
- 9. CONFIDENTIALITY.** Section 12 of the Terms of Service ("Confidentiality") applies *mutatis mutandis* to this Agreement, and is incorporated with the same force and effect as though fully set forth herein.
- 10. DATA PROTECTION.**
- 10.1** With respect to any Booking Data that FareHarbor Processes pursuant to this Agreement, Parties acknowledge and agree that:
- (a) such Processing of Booking Data is subject to Section 6 of the Terms of Service; and
  - (b) Connected Provider is the Controller and FareHarbor is the Processor in respect of Booking Data.
- 11. LIMITATION OF LIABILITY.** In no event shall FareHarbor be liable for any special, incidental, indirect, compensatory, or consequential damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss), however caused and on any legal or equitable theory of liability, connected with Connected Provider's participation in, or inability to participate in, the Program, even if FareHarbor has been advised of the possibility of such damages. Notwithstanding the foregoing, the maximum, aggregate liability of FareHarbor for all claims related to this Agreement is limited to the greater of (a) EUR 1,000, or (b) the Commission amounts Connected Provider paid to FareHarbor during the 12 months preceding the event giving rise to the claim.
- 12. WARRANTIES AND DISCLAIMERS.**
- 12.1 FareHarbor Disclaimer.** FareHarbor shall provide the Program to Connected Provider on an "as is" basis. FareHarbor does not guarantee that the Program will be error-free, or that availability will be uninterrupted or that they will meet Connected Provider's requirements, specifications, or expectations. In the event that any Connected Affiliate fails to remit payment to FareHarbor, FareHarbor makes no representations or warranties about the suitability, reliability, timeliness nor accuracy, for any purpose, of the Program. FareHarbor disclaims all warranties, either express or implied, regarding the Program and expressly disclaims the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
- 12.2 Connected Provider Warranties.** Connected Provider represents and warrants that all individuals having access to the Service, or the Program will observe, adhere to, and perform its obligations under this Agreement. Connected Provider shall, at its own expense, promptly enforce the restrictions in this Agreement against any person who improperly gains access to the Service or the Program with or without Connected Provider's permission or while in the agency of employ of Connected Provider.
- 12.3 Mutual Warranties.** Both parties represent and warrant to the other that, at all times:
- (a) it has all necessary rights, approvals, permits and consents to enter into and perform under this Agreement, and to grant the rights and licenses referred to in it;
  - (b) it will materially comply with all applicable laws in relation to performance of this Agreement and its

relationship with its own customers; and,

- (c) it has, and shall retain for the term of this Agreement, qualified and dedicated staff with the appropriate level of expertise, skills and knowledge to perform the obligations and meet the requirements contemplated in this Agreement in a timely and diligent manner.

**13. INDEMNIFICATION.** Connected Provider agrees to defend, indemnify and hold FareHarbor and any affiliated company or individual harmless from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, related to or in connection with: (a) Activities made available for Booking, (b) Connected Provider's violation of any term of this Agreement, including without limitation, breach of any of the representations and warranties above; (c) Connected Provider's violation of any third-party right, including without limitation any right of privacy, publicity rights, or intellectual property rights; and (d) Connected Provider's violation of any applicable laws.

**14. COMPLIANCE.** Section 14 of the Terms of Service ('Compliance Warranties') applies *mutatis mutandis* to this Agreement, and is incorporated as if fully set forth herein.

**15. TERM AND TERMINATION.**

**15.1 Term.** This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with these terms.

**15.2 Voluntary Termination.** Either Party may terminate this Agreement at any time by providing the other Party with thirty (30) days written notice of termination. If Connected Provider terminates this Agreement due to the discontinuation of Activities or a cessation of its business operations, Connected Provider shall notify FareHarbor in writing so that FareHarbor has an opportunity to facilitate cancellations with Connected Affiliates. If Connected Provider terminates this Agreement for any other reason, Connected Provider shall provide Activities to customers for any and all Bookings made under this Agreement prior to termination.

**15.3 FareHarbor Termination Rights.** FareHarbor is entitled to suspend or terminate Connected Provider's rights under this Agreement in whole or in part with immediate effect, without a notice of default being required and without incurring any obligation to compensate for any damages, if any of the following circumstances occurs:

- (a) Connected Provider materially breaches this Agreement;
- (b) Connected Provider's (filing of a request for) bankruptcy or suspension of payment (or similar action) in respect of the other Party; or,
- (c) Connected Provider's company is terminated or transferred in whole or in part to a third-party.

**15.4 Consequences of termination.** Upon termination of this Agreement, Connected Provider will promptly remove and cease use of all names, logos, and trademarks provided under this Agreement in connection with the Program.

**16. INJUNCTIVE RELIEF.** Each Party agrees that, because of the unique nature of the services, the other Party may suffer irreparable injury in the event the Party fails to comply with any of the terms of this Agreement, and that monetary damages would be inadequate to compensate the non-breaching Party for any such breach. Accordingly, the non-breaching Party will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief, without posting a bond, to enforce the terms of this Agreement.

**17. DISPUTE RESOLUTION.**

**17.1 Applicable Law and Forum.** This Agreement shall be exclusively governed by and construed in accordance with the laws of the Netherlands. Any disputes arising out of or in connection with this Agreement shall exclusively be submitted to and dealt with by the competent court in Amsterdam, the Netherlands.

**17.2 Attorney's Fees and Costs.** If FareHarbor or Connected Provider employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

**18. FORCE MAJEURE EVENTS.** Section 13 of the Terms of Service ('Force Majeure') applies *mutatis mutandis* to this Agreement, and is incorporated as if fully set forth herein.

**19. SURVIVAL.** The Sections entitled “Limitation of Liability”, “Indemnification”, “Survival”, “Data Protection”, “Warranties and Disclaimers”, “Term and Termination”, “Dispute Resolution”, and “Miscellaneous” will survive any termination or expiration of this Agreement. Any additional provisions herein that could be reasonably interpreted to survive the termination or expiration of this Agreement shall remain in effect until all applicable statutes of limitations have expired.

**20. MISCELLANEOUS.**

**20.1 English Language.** This Agreement has been executed in English. In the event of a dispute about the content or interpretation of this Agreement or in the event of a discrepancy between the English version and any other language version of this Agreement, the English language version will prevail.

**20.2 Modification and Amendment.** FareHarbor reserves the right to modify or amend this Agreement from time to time with at least thirty (30) days’ written notice to Connected Provider. If Connected Provider disagrees with the amended or modified terms, Connected Provider may terminate this Agreement as provided for herein. If Connected Provider does not object to any of the modifications or amendments to this Agreement within the prescribed notice period, this shall constitute Connected Provider’s acceptance of such changes.

**20.3 Severability.** If any of the provisions of this Agreement is to be held illegal, void, or unenforceable in any jurisdiction, such provision shall have no effect in that jurisdiction, but the remainder of this Agreement shall remain in effect. The invalid or unenforceable provision shall be either: (i) amended and limited to the minimum extent necessary to ensure its validity and enforceability and best preserve the intent of this Agreement; or, if this is not possible, (ii) eliminated and this Agreement construed as if such provision if never been contained therein.

**20.4 Assignment.** Connected Provider may not assign its rights under this Agreement, including, without limitation, by operation of law or merger, without FareHarbor’s prior written approval, and any attempt to assign this Agreement without such prior approval is void. FareHarbor may, at its sole discretion and without Connected Provider’s consent, assign its rights under this Agreement to an Associated Company or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

**20.5 No Partnership or Agency.** Nothing in the Agreement is intended to or will be deemed to: (a) establish any partnership or joint venture between FareHarbor and Connected Provider, or (b) make one Party the agent of the other. Neither Party has the authority or power to bind, create a liability for, or enter into any commitments for or on behalf of, the other Party.

**20.6 Waiver.** Either Party’s failure or delay to enforce any rights or provisions in this Agreement shall not constitute a waiver of such provision, or any other provision of this Agreement.

**20.7 No Disparagement.** Connected Provider will not (i) make, publish, or communicate, in any online or other public forum, any disparaging, defamatory, maliciously false, or disparaging remarks, comments, or statements concerning, or (ii) engage in any action that is unfair, misleading, deceptive, or that tends to disparage, or dilute the value of, or reflect negatively upon the Service, Providers, Connected Affiliates, FareHarbor, or its Associated Companies and their respective directors, officers, agents, personnel, products, services, vendors, customers, or partners.

**20.8 Entire Agreement.** Unless stated otherwise in this Agreement, this Agreement constitutes the whole and only agreement between the parties relating to the subject matter described herein, and supersedes and excludes all prior agreements or arrangements relating to said subject matter. This Agreement shall prevail over any inconsistent terms or conditions contained or referred to in any terms implied by law, trade custom, practice or course of dealing.

**20.9 Notices.** Any notice required or permitted to be given under this Agreement must be written in English. FareHarbor may send notices to Connected Provider to the current contact email address provided in the Service, and Connected Provider consents to receiving electronic communications from FareHarbor. Connected Provider shall send notices to FareHarbor at the following email address: notices@fareharbor.com. Notices will be deemed given when sent. Connected Provider agrees that any notices, agreements, disclosures, or other communications that FareHarbor sends electronically will satisfy any legal communication requirements, including that such communications be in writing.