These TicketGuardian Affiliate Terms and Conditions (these “Terms”) govern the Agreement between the parties identified on the cover page hereof (the “Cover Page”). Capitalized terms not defined in these Terms have the meanings given on the Cover Page.

A. TicketGuardian sells insurance to consumers covering certain risks.

B. Affiliate has relationships with merchants whose offerings may involve risks that may be insurable through TicketGuardian’s insurance products.

C. TicketGuardian desires to sell its insurance products through the Web sites of such merchants and Affiliate desires to refer such merchants to TicketGuardian.

1. DEFINITIONS.
   1. “Referred Merchant” means a merchant referred by Affiliate that agrees to include and includes a TicketGuardian Module in its checkout process for the purchase of tickets in accordance with such merchant’s Merchant Agreement.
   2. “Merchant Agreement” means an agreement between TicketGuardian and a merchant for the offering of TicketGuardian insurance products to merchant’s customers.
   3. “TicketGuardian Module” means TicketGuardian’s checkout module (together with any APIs or related code that may be provided by TicketGuardian), in such form and format as TicketGuardian makes available to merchants in its discretion, for the purchase of TicketGuardian insurance products.
2. Affiliate Relationship.
   1. Appointment. TicketGuardian authorizes Affiliate to market and promote the TicketGuardian Module to merchants and to distribute the TicketGuardian Module to Referred Merchants. Affiliate agrees to represent TicketGuardian on an exclusive basis and, during the Term, will not market, promote, distribute, or otherwise offer for sale to any merchant or consumer any third-party insurance product that TicketGuardian offers currently or during the term of this agreement.
   2. Pricing. TicketGuardian will have sole discretion in setting the range of pricing for its insurance products as well as the commercial terms of its Merchant Agreements. Affiliate shall have the right to offer Referred Merchants pricing within the ranges set forth in Exhibit A, as such Exhibit may be updated by TicketGuardian from time to time in its sole discretion.
   3. Negative Claims Experience. In the event that TicketGuardian’s claim percentage (the amount of claims paid divided by premiums collected) for Referred Merchants exceeds 80%, the parties will renegotiate the Placement Fees set forth on the Cover Page. If the parties are unable to reach agreement on revised Placement Fees after good faith efforts to do so, TicketGuardian may terminate this Agreement upon written notice to Affiliate.
3. LICENSE TO USE TICKETGUARDIAN'S TRADEMARKS.
   1. License Grant. During the Term and subject to the restrictions and conditions set forth below, TicketGuardian grants to Affiliate, a non-exclusive, non-assignable, non-transferable, non-sublicensable, royalty-free license to display TicketGuardian’s trademarks, trade names, service marks, service names and Internet domain names (collectively, the “Trademarks”) for the sole purpose of promoting the TicketGuardian Module. As between TicketGuardian and Affiliate, any goodwill resulting from Affiliate’s use of any Trademarks will inure to the benefit of TicketGuardian and will automatically vest in TicketGuardian upon use by Affiliate. Affiliate will not engage in any action it has reason to know that may dilute, diminish, or otherwise damage TicketGuardian’s rights and goodwill in the Trademarks. Affiliate will abide by the trademark quality control guidelines, if any, for TicketGuardian that are provided to Affiliate during the Term.
   2. No Assertions as to Trademarks. Affiliate will not (a) assert any trademark or other intellectual property or proprietary right in the Trademarks or in any element, derivation, adaptation, variation or name thereof; (b) contest the validity of any of the Trademarks; (c) contest TicketGuardian’s or its licensors’ ownership of any of the Trademarks; or (d) in any jurisdiction, adopt, use, register, or apply for registration of, whether as a corporate name, trademark, service mark or other indication of origin, or as a domain name, any Trademarks, or any word, symbol or device, or any combination confusingly similar to, or which includes, any of the Trademarks.
   3. Ownership of Trademarks. As between TicketGuardian and Affiliate, all right, title and interest in the Trademarks are exclusively owned by TicketGuardian or its licensors. TicketGuardian grants no rights to the Trademarks except for the limited license granted above. TicketGuardian reserves any rights not expressly granted and disclaims all implied licenses.
4. INTELLECTUAL PROPERTY RIGHTS. Affiliate acknowledges that, as between Affiliate and TicketGuardian, title and full ownership in and to the TicketGuardian Module, and all intellectual property and proprietary rights in and to the TicketGuardian Module will remain with TicketGuardian, whether or not any portion thereof is or may be validly copyrighted, patented, trademarked or otherwise protected. Except as expressly set forth in this Agreement, no rights or licenses, express or implied, are granted to Affiliate in or to the TicketGuardian Module or any intellectual property or other proprietary rights of TicketGuardian.
5. TERM AND TERMINATION.
   1. Term. The Agreement will commence on the Effective Date and continue for a period of three years, unless earlier terminated as provided herein (the “Initial Term”). This Agreement will automatically renew for successive one-year periods (each a “Renewal Term”), unless either party provides notice of its intent not to renew at least 60 days prior the expiration of the then-current Term. “Term” means the Initial Term and any Renewal
   2. Termination. Either party may terminate this Agreement in the event of a material breach by the other party that is not cured within 15 days of written notice describing such breach.
   3. Effect of Termination. Upon termination of this Agreement for any reason, Affiliate will immediately stop using, and either return to TicketGuardian, or destroy and remove from all computers, hard drives, networks, and other storage media, all copies of any Confidential Information (as defined in Section 9) in Affiliate’s possession, and shall certify to TicketGuardian that such actions have occurred. Those provisions of this Agreement that contemplate a continuing obligation shall survive the termination or expiration of this Agreement and remain in full force and effect, including, but not limited to, the Sections titled “Representations and Warranties”, “Indemnification”, and “Confidentiality”.
6. REPRESENTATIONS, WARRANTIES, AND COVENANTS.
   1. Affiliate represents, warrants, and covenants that (i) it has the right, power and authority to enter into this Agreement; (ii) its entering this agreement will not breach any other agreement to which it is a party; (iii) it will perform under this Agreement at all times in a professional manner and in accordance with all applicable laws, rules and regulations; (iv) all communications with merchants regarding TicketGuardian and its products and services will be true and correct in all material respects; and (v) it will not otherwise take any action reasonably likely to cause economic or reputational harm to TicketGuardian.
   2. TicketGuardian represents, warrants, and covenants that (i) it has the right, power and authority to enter into this Agreement and (ii) its entering this agreement will not breach any other agreement to which it is a party.
   3. DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TICKETGUARDIAN MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OR OTHERWISE. TICKETGUARDIAN SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TICKETGUARDIAN DOES NOT WARRANT THAT THE OPERATION OF THE TICKETGUARDIAN MODULE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE OR HARDWARE, OR THAT IT WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA.
7. LIMITATION OF LIABILITY.
   1. NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT, REVENUE OR CONTENT) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
   2. LIMITATION OF DAMAGES. TICKETGUARDIAN’S CUMULATIVE, AGGREGATE LIABILITY TO AFFILIATE OR ANY OTHER PARTY FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS RETAINED BY TICKETGUARDIAN RESULTING FROM THIS AGREEMENT DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE ACTION GIVING RISE TO SUCH LIABILITY.
   3. EXCEPTIONS. The foregoing exclusions and limitations of liability will not apply to (a) a breach by a party of its confidentiality obligations; (b) a breach by a party of its indemnification obligations or any amounts paid or payable in connection with such obligations; or (c) a party’s gross negligence or willful misconduct.
8. INDEMNIFICATION.
   1. By TicketGuardian. TicketGuardian agrees to indemnify, defend, and hold Affiliate harmless from and against any liability, damage, loss or expense (including reasonable attorneys’ fees and costs) (collectively, “Losses”) incurred by or imposed upon Affiliate in connection with any third-party claim, action or proceeding (a “Claim”) arising from or in connection with any allegation that the TicketGuardian Module as made available to Affiliate by TicketGuardian infringes any patent, copyright, or trademark or misappropriates any trade secret.
   2. By Affiliate. Affiliate agrees to indemnify, defend and hold TicketGuardian harmless from and against any Losses incurred by or imposed upon TicketGuardian in connection with any Claim arising from or in connection with (i) a breach by Affiliate of any of its representations, warranties, or covenants hereunder; or (ii) its gross negligence or willful misconduct.
   3. Process. A party requesting indemnification (the “Indemnified Party”) will (i) provide the party providing indemnification (the “Indemnifying Party”) with prompt notice of any such Claim (provided, however, that failure to do so shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent of any material prejudice to the Indemnifying Party as a direct result of such failure); (ii) permit the Indemnifying Party to assume and control the defense of such action upon the Indemnifying Party’s written notice to the Indemnified Party of its intention to indemnify; and (iii) upon the Indemnifying Party’s written request, provide to the Indemnifying Party all available information and assistance reasonably necessary for the Indemnifying Party to defend such Claim. The Indemnified Party shall have the right, at its sole cost and expense, to participate in the defense and settlement of any such Claim with counsel of its choice. Notwithstanding the foregoing, TicketGuardian shall have no obligation to indemnify Affiliate to the extent that any Claim arises from (a) Affiliate’s use of the TicketGuardian Module in contravention of these Terms or the Documentation; (b) the combination or use of the TicketGuardian Module with any other services, technology, content or material that were not provided by TicketGuardian; (c) modification of the TicketGuardian Module; or (d) Affiliate’s use or distribution of the TicketGuardian Module after Affiliate reasonably could have implemented a non-infringing alternative pursuant to Section 8(D)(ii) or (iii).
   4. Right to Ameliorate Damages. In the event that a court of competent jurisdiction determines or in the event that TicketGuardian, in its sole discretion, reasonably determines, that the TicketGuardian Module, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party intellectual property right, TicketGuardian shall, as Affiliate’s sole and exclusive remedy (but without limitation of TicketGuardian’s obligations under Section 8(A)), and at TicketGuardian’s sole discretion, either: (i) obtain a license, at reasonable cost, for Affiliate to continue using the TicketGuardian Module, or portion thereof; (ii) modify the TicketGuardian Module while retaining substantively equivalent functionality; (iii) replace the affected portion of the TicketGuardian Module with functionally equivalent software or services; or (iv) terminate the Agreement in whole or in part (in which event, Affiliate shall immediately terminate use and distribution of the TicketGuardian Module and the provisions of Section 5 will apply).
9. CONFIDENTIALITY. Each party (a “Receiving Party”) understands that the other party (the “Disclosing Party”) may disclose information of a confidential nature including, without limitation, the TicketGuardian Module, product information, data, pricing, financial information, end user information, software, specifications, research and development and proprietary algorithms or other materials that is (a) clearly and conspicuously marked as “confidential” or with a similar designation or (b) is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation “confidential” or any similar designation is used (“Confidential Information”). The terms and conditions of this Agreement also constitute the Confidential Information of each party. The Receiving Party agrees, for itself and its agents and employees, that it will not publish, disclose or otherwise divulge or use for its own purposes any Confidential Information of the Disclosing Party furnished to it by such Disclosing Party without the prior written approval of the Disclosing Party in each instance. Receiving Party will use at least the same level of care to maintain the Confidential Information of the Disclosing Party as it uses to maintain the confidentiality of its own non-public information and in no event less than a reasonable degree of care. The foregoing obligations shall not extend to any information to the extent that the Receiving Party can demonstrate that such information (i) was at the time of disclosure or, to the extent that such information thereafter becomes through no fault of the Receiving Party, a part of the public domain by publication or otherwise; (ii) was already properly and lawfully in the Receiving Party’s possession at the time it was received by the Receiving Party free from any obligation of confidentiality, (iii) was or is lawfully received by the Receiving Party from a third party who was under no obligation of confidentiality to the Disclosing Party with respect thereto, or (iv) is independently developed by the Receiving Party or its independent contractors who did not have access to the Disclosing Party’s Confidential Information. In the event that the Receiving Party is required to disclose Confidential Information in accordance with judicial or governmental order or requirement, the Receiving Party shall promptly notify the Disclosing Party in order to allow such party to contest the order or requirement or seek confidential treatment for such information. Upon termination or expiration of this Agreement, upon the request of a Disclosing Party, the Receiving Party agrees to return to the Disclosing Party all of Disclosing Party’s Confidential Information or to certify to the Disclosing Party in writing that all such material has been destroyed.
10. GOVERNING LAW; ARBITRATION. This Agreement is to be governed by and interpreted in accordance with the laws of the state of California, without giving effect to its principles of conflict of laws. Any action or proceeding arising out of or relating to this Agreement shall be resolved exclusively by arbitration in the Los Angeles County, California in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association and, in the event either party seeks injunctive or provisional relief, the Optional Rules for Emergency Measures of Protection. The arbitration will be heard and determined by a single arbitrator experienced in the software industry. The arbitrator’s decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The prevailing party will be entitled to recover its attorneys’ fees and arbitration costs from the other party. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration panel, except as may lawfully be required in judicial proceedings relating to the arbitration or by disclosure rules and regulations of securities regulatory authorities or other governmental agencies.
11. ASSIGNMENT. Affiliate may not assign this Agreement without TicketGuardian’s prior consent. Notwithstanding the foregoing, Affiliate may assign this Agreement to any third party that acquires all or substantially all of Affiliate’s assets as it relates to this Agreement.
12. SEVERABILITY. Each provision of this Agreement shall be viewed as separate and distinct, and in the event that any provision shall be deemed by a court of competent jurisdiction to be illegal, invalid or unenforceable, the court finding such illegality, invalidity or unenforceability shall modify or reform this Agreement to give as much effect as possible to such provision. Any provision which cannot be so modified or reformed shall be deleted and the remaining provisions of this Agreement shall continue in full force and effect.
13. NOTICES. All notices provided hereunder shall be in writing, delivered personally, sent by facsimile, or sent by overnight courier, registered or certified mail to the numbers or addresses set forth in the Cover Page, or such other address as may be specified in writing by notice given in accordance with this Section. All such notices shall be deemed to have been given: (i) upon receipt when delivered personally, (ii) on the date delivered when delivered by facsimile, or (ii) upon verification of receipt via overnight courier, registered or certified mail.
14. WAIVER. Performance of any obligations required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described herein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
15. Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or services as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failure and power failures. Nothing in the foregoing shall be deemed to relieve Affiliate of its obligation to pay any and all fees owed to TicketGuardian under this Agreement.
16. NO JOINT VENTURE. Nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship between TicketGuardian and Affiliate.
17. ENTIRE AGREEMENT. This Agreement is intended by the parties as the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. This Agreement may only be modified or amended pursuant to a written agreement or instrument signed by each party.

HEADINGS; COUNTERPARTS. Headings are for convenience only and are not deemed to be part of this Agreement