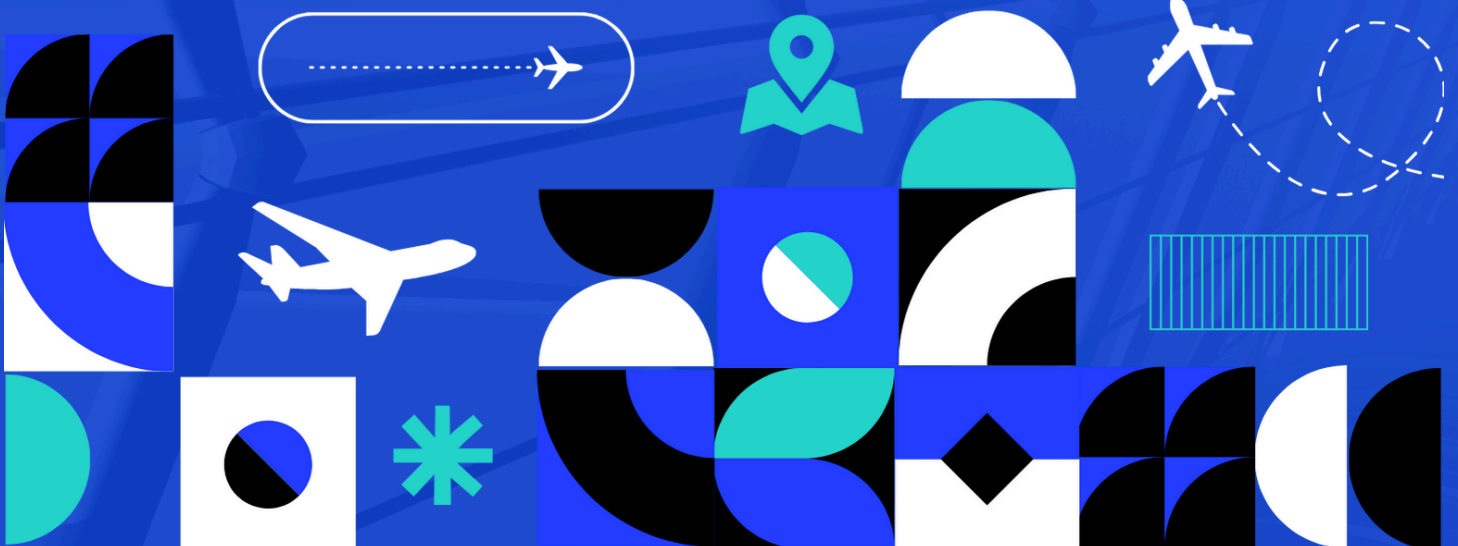




Terms of Service

(formerly Terms & Conditions)
February 2024



1. BACKGROUND

- (a) Locomote is the creator, developer and owner of a cloud-based platform known as 'Locomote Cloud Platform'. The platform allows the Client to book travel including but not limited to air, hotel and car content securely online.
- (b) Client wishes to utilise the Platform in its business in the Territory.
- (c) Locomote has agreed to provide Client and its Authorised Users with access to the Platform, and the Locomote Services, on the terms set out in this Agreement.

2. DEFINITIONS

Capitalised words used in this Agreement are defined in clause 22 of this Agreement.

3. ORDER OF PRIORITY

In the event of any inconsistency between any of the following documents, the inconsistency will be resolved using the following descending order of precedence unless otherwise agreed by the parties in writing:

- (a) the clauses of this Agreement;
- (b) Items 1 to 6 of the Key Information Schedule; and
- (c) the schedules to this Agreement.

4. SUBSCRIPTION TERM

4.1 Initial Contract Term

This Agreement commences on the Start Date and will continue until expiry of the Initial Contract Term and any Renewal term under clause 4.2

- (a) unless otherwise terminated in accordance with clause 21 (**Subscription Term**).

4.2 Renewal Contract Terms

- (a) Upon expiration of the Initial Contract Term of 12 months, this Agreement will automatically renew for the applicable Renewal Contract Term of 12 months, unless either party notifies the other in writing at least 60 days before the applicable renewal date that the Agreement will not be renewed.
- (b) The terms and conditions set out in this Agreement will apply to any Renewal Contract Term.

5. IMPLEMENTATION AND ACCEPTANCE TESTING

5.1 Implementation

- (a) The parties acknowledge and agree that they have agreed a written implementation plan with respect to Implementation of the Platform (**Implementation Plan**).
- (b) Locomote must configure the Platform such that it meets the Requirements by the date(s) specified in the Implementation Plan.
- (c) Each party must carry out its obligations in accordance with the Implementation Plan and Client must provide all assistance and information reasonably required by Locomote in a timely manner in order to assist Locomote to Implement the Platform. Client acknowledges and agrees that any delay in the provision of such assistance or information may delay the Implementation of the Platform and the Go Live Date.

- (d) If a party becomes aware of an actual or potential delay in achievement of its obligations under the Implementation Plan (**Delay**) that party must:
 - (i) immediately notify the other party of that Delay; and
 - (ii) comply with all reasonable requests made by the other party to prevent, rectify, or mitigate the impact of the Delay.
- (e) Each party will bear its own costs regarding the activities contemplated by the Implementation Plan unless otherwise agreed in writing.
- (f) Client must not and must ensure that its Authorised Users and Personnel do not access and use the Platform prior to the Go Live Date, except as agreed by Locomote.

5.2 Acceptance

- (a) The parties must perform the Acceptance Tests in the manner and at the time(s) set out in the Implementation Plan (or otherwise as agreed in writing between them) for the purposes of determining whether the Platform meets the Requirements and is in working order.
- (b) Within five Business Days of completion of the Acceptance Tests, Client must notify Locomote in writing that it either:
 - (i) accepts the Platform; or
 - (ii) rejects the Platform on the basis it does not meet the Requirements, in which case Client will notify Locomote of its specific reasons for rejection and give Locomote a reasonable opportunity to rectify any fault or error and undertake further testing to demonstrate that the Platform meets the Requirements.
- (c) If the Platform is rejected by Client on three or more occasions under this clause 5.2, Client may terminate this Agreement by giving Locomote five Business Days' notice in writing.
- (d) If Client accepts the Platform in accordance with clause 5.2(b)(i), the parties will agree in writing the intended Go Live Date for the Platform.
- (e) Client acknowledges and agrees that if it requests Locomote to make any changes to the Platform that fall outside the Requirements, then additional Fees may apply.

5.3 Termination by Locomote

The parties agree that if the Platform does not meet the Requirements by the date which is three months after the Start Date (or such later date as may be agreed by the parties in writing), Locomote may terminate this Agreement without liability by giving Client five Business Days' notice in writing.

6. LOCOMOTE & SUPPLIER OBLIGATIONS

6.1 Provision of Platform and Services

During the Contract Term, Locomote will facilitate Client's access to the Platform and provide the Services:

- (a) in accordance with this Agreement;
- (b) with due care and skill;
- (c) using appropriately skilled, experienced and qualified Personnel; and
- (d) in compliance with all laws applicable to Locomote and relevant to the Platform and the Services.

6.2 Access to Platform

During the Contract Term, Locomote will use reasonable commercial efforts to:

- (a) make the Platform on a 24/7 basis (subject to Planned Outages or unplanned downtime) within the Territory, however, subject to clause 9(c), Locomote will not be liable for any failure to achieve this target;
- (b) minimise the occurrence and duration of any outages, downtime (for Planned Outages) or other causes of inaccessibility to the Platform;
- (c) provide appropriate release notes and information to Client whenever new features, functionality, models or dashboards are added to the Platform; and
- (d) ensure the integrity and security of the Platform.

6.3 Additional Services

- (a) Subject to clause 6.3(c), at any time during the Contract Term, Locomote may offer, or Client may request, the provision of additional services (**Additional Services**). Any agreement regarding Additional Services must be signed in writing by each party and will be subject to the terms of this Agreement. Client acknowledges and agrees that the provision of Additional Services may attract additional Fees payable by Client.
- (b) Once agreed, any Additional Services will become Services for the purposes of this Agreement.
- (c) Nothing in clause 6.3(a) obliges Locomote to provide any Additional Services.

6.4 Exclusions

Unless otherwise agreed in writing by the parties, Locomote is not required to perform any Services in respect of:

- (a) performance issues resulting from changes in Client's operating environment;
- (b) repair of damage arising from any act, error, fault, neglect, misuse, improper operation or omission of Client or any other person (other than Locomote or any of its personnel) whether or not that person is under Client's direction, control or authority;
- (c) repair or damage caused by the operation of the Platform other than in accordance with Locomote's specifications, directions or instructions provided to Client;
- (d) repair or damage to the Platform caused by any circumstances beyond Locomote's reasonable control; or
- (e) furnishing or supplying or maintenance of accessories, attachments, supplies, spare parts, consumables or items associated with the Platform unless otherwise specified as forming part of the Locomote Services.

7. CLIENT OBLIGATIONS

7.1 Use of Platform and Services

In addition to any of Client's other obligations under this Agreement, Client must:

- (a) evaluate and satisfy itself of the adequacy of the Platform and the Locomote Services for Client's particular purposes and needs;
- (b) provide Locomote with such access, facilities, information, cooperation and assistance that Locomote reasonably requires to properly perform its obligations under this Agreement;
- (c) maintain such internet, network or telecommunication links as required to access and use the Platform;
- (d) ensure that its networks and systems comply with any specifications provided by Locomote from time to time (including in any compatibility statement as may be updated by Locomote from time to time), noting that any material changes to the specifications would be made by Locomote in consultation with Client;
- (e) ensure automatic updates and anti-virus software are controlled on computers where the Platform is installed so as not to affect operations of the Platform;

- (f) comply with, and ensure that Client's Personnel comply with, Locomote's reasonable directions and restrictions regarding access to and use of the Platform and the Services;
- (g) ensure that all information provided to Locomote in connection with this Agreement (including Client Data) is and remains true and correct;
- (h) comply with all applicable laws relevant to its use of the Platform including, without limitation, all laws relating to data protection and privacy;
- (i) ensure that it has obtained all relevant licences, permissions, authorisations, permits, consents and approvals in order to obtain, receive, access and use the Platform, or provide Client Data to Locomote; and
- (j) promptly notify Locomote of any issues or concerns regarding the Platform or the Locomote Services.

7.2 Access to and use of the Platform by Authorised Users

- (a) Client will participate, and ensure its Authorised Users have the opportunity to participate, in any training sessions generally offered and made available by Locomote in relation to the Platform. Unless otherwise agreed in advance, Locomote will offer such training sessions free of charge however Client will bear all costs and expenses incurred by it in attending or arranging for its Authorised Users to attend such training.
- (b) Where Locomote issues Client with login credentials to access the Platform the Client must use its best endeavours to protect such credentials against misuse and notify Locomote of the need to suspend or change such credentials promptly after becoming aware of that need.
- (c) Client agrees that:
 - (i) any act or omission by an Authorised User is deemed to be an act or omission by Client; and
 - (ii) Client must ensure that an Authorised User does not do or omit to do anything that would cause Client to breach this Agreement.

7.3 Restrictions

Client must not, and must ensure that its Authorised Users do not:

- (a) use or operate the Platform in a manner not supported by the Platform (as notified by Locomote to Client);
- (b) create derivative works based on the Platform, build a competitive product or service or copy any features, functions or graphics of the Platform;
- (c) create, market, distribute add-ons or enhancements to the Platform, or incorporate the Platform (or any part of it) into another product without the prior written consent of Locomote;
- (d) share, resell, or otherwise provide in exchange for any compensation, the Platform or Services to any person who is not an Authorised User;
- (e) use the Platform:
 - (i) in any territory other than the Territory;
 - (ii) to store or transmit:
 - A. malicious code, Trojan horses, malware, spam, viruses, or other destructive technology; or
 - B. libellous, unlawful or tortious material, or to store or transmit material in violation of third party privacy rights; or
- (f) remove any proprietary notices or labels on the Platform.

8. THIRD PARTY SERVICES

- (a) Locomote may provide Client with products, services or recommend software in the course of providing the Locomote Services, that are licensed by or outsourced to a third party provider (**Third Party Service**).
- (b) Locomote may require that Client, at its sole cost, obtain any required licence from a Third Party Service directly. In such instances, Locomote is not a party to that relationship and nor does it have any liability to Client in respect of the Third Party Service. Client acknowledges and agrees that it is responsible for reading and understanding any Third Party Service licence terms.
- (c) Locomote will provide Client with notice if the cost of obtaining any licences, software or services from any Third Party Provider is not included in the Fees.

9. SERVICE LEVELS

- (a) Locomote must use its reasonable endeavours to provide the Locomote Services in a manner which meets or exceeds the Service Levels.
- (b) If Locomote fails to meet any Service Levels, it must:
 - (i) notify Client in writing of the relevant failure;
 - (ii) provide timely updates to Client in relation to the progress being made in rectifying the failure;
 - (iii) promptly take all necessary action to minimise the impact of the failure; and
 - (iv) correct the failure as soon as practicable and take all necessary steps to prevent the recurrence of the failure.
- (c) Notwithstanding anything else in this Agreement, if, in any three-month period the Platform suffers two or more extended outages (being an outage that cannot be substantially resolved by Locomote in five Business Days but excluding any Planned Outage), then Client may terminate this Agreement by notice in writing and Locomote will refund, on a pro-rata basis, any Fees paid in advance by Client.

10. FEES

10.1 Fees

In consideration for Locomote making the Platform available and providing the Services, Client agrees to pay Locomote the Fees.

10.2 Adjustments to Fees

- (a) At least 90 days prior to the commencement of any Renewal Contract Term, Locomote may notify Client of the updated Fees that will apply to that Renewal Contract Term . (**Fee Notice**).
- (a) Unless Client notifies Locomote within 10 Business Days of a receipt of a Fee Notice that it does not accept the Fee Notice, Client will be deemed to have accepted the Fee Notice and, subject to clause 4.2(a), the Fees will be adjusted accordingly from the commencement of the new Renewal Contract Term in accordance with the Fee Notice.
- (b) If Client notifies Locomote that it does not accept the Fee Notice, then this Agreement will terminate with effect from the expiration of the Initial Contract Term or the then current Renewal Contract Term (whichever applies).
- (c) If Client wishes to change its Subscription Package within an applicable Contract Term, then the applicable Fees will reflect the then current pricing for the Subscription Package that Client is moving to as advised to Client by Locomote (with effect from the date on which Client moves to the new Subscription Package).

10.3 Invoicing and Payment

- (a) Locomote must submit invoices to Client at the frequency set out in Schedule 2.
- (b) All invoices will:
 - (i) be in the form of a tax invoice within the meaning of the GST Law; and
 - (ii) identify the applicable Subscription Package and relevant Services to which the invoice relates.
- (c) Payment will be via Credit Card or Trading Account.
- (d) If by Trading account, Client must pay each invoice (without withholding, deduction or set off of any kind), within the agreed days being of the date of the invoice, as stated in the agreement. If Client disputes any invoice, it must pay the undisputed amount and the dispute will be managed under clause 23.

10.4 Interest

If Client fails to pay an amount under this Agreement by its due date, Locomote may:

- (a) charge Client interest on that amount at the Default Rate (calculated daily) from the date after the due date up to and including the date on which payment is made; and/or
- (b) suspend all or part of the Services in accordance with clause 21.2.

10.5 Termination

Notwithstanding anything else in this Agreement, if any validly issued invoice remains unpaid after 60 days, then:

- (a) Locomote may suspend or terminate the applicable Services, and/or access to the Platform, at its discretion;
- (b) the balance of all outstanding amounts in relation to all Services (whether invoiced or not) will be immediately due and payable; and
- (c) Locomote is relieved of its obligations in respect of all Services suspended or terminated under this clause 10.5.

10.6 GST

- (a) In this clause 10, any terms used that are defined in the GST Law have the same meanings given to them in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in connection with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- (d) If this Agreement requires a party to pay for, reimburse or contribute to any expense, Loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

11. CHANGES

Despite anything else in this Agreement, Locomote may, at any time:

- (a) update, modify or remove its Subscription Packages by notice in writing;
- (b) discontinue any functionality of the Platform or the entirety of the Platform or GDS by providing Client with at least 90 days advance notice; and/or

- (c) without notice, make changes to the Platform and/or the provision of the Services, or the activities which form part of the Platform or Locomote Services, that:
 - (iii) it deems necessary to comply with any applicable law or safety requirements; or which do not materially adversely affect the Platform or the Services.

12. PLANNED OUTAGES

- (a) Locomote or Supplier, or its authorised nominee may schedule Planned Outages, which may interrupt availability of the Platform or the Services.
- (b) If a Planned Outage will result in the Platform being unavailable, Locomote will provide Client with reasonable advance notice (or, if this is not possible, then as soon as practicable following Locomote becoming aware of the Planned Outage).
- (c) For all other Planned Outages, Locomote will provide notice to Client as soon as practicable following Locomote becoming aware of the Planned Outage.
- (d) Despite clauses 12(b) and 12(c), if Locomote (or its authorised nominee) determines that the Planned Outage needs to be scheduled more urgently, Locomote may implement this and Client agrees to make no claim for Loss of any kind as a result.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 Platform

- (a) Locomote and/or its third party licensors (as the case may be) owns and retains all Intellectual Property Rights in the Platform (including in relation to its design, format, concept, content, information and data), including any customisations or Updates.
- (b) Locomote grants Client a non-exclusive, non-transferable, non-sublicensable licence to use (and for each of the Authorised Users to use) the Platform and the Locomote Services for the Subscription Term for the purposes of obtaining the intended benefit of the Platform and the Locomote Services.
- (d) Client acknowledges that it does not and will not have any rights in the Platform other than the rights granted under this Agreement.

13.2 Background IP

- (a) Each party retains ownership of its Intellectual Property Rights existing prior to the Start Date or developed independently of this Agreement (**Background IP**), and any developments, modifications or updates to Background IP and nothing in this Agreement assigns such Background IP to the other party.
- (b) For clarity:
 - (i) Client owns all Intellectual property Rights in the Client Data;
 - (ii) Locomote owns all Intellectual Property Rights in any data that it collects regarding Client's use of the Platform, including as may be aggregated with the data of other users of the Platform.
- (c) Client grants Locomote an irrevocable, worldwide, royalty free licence to use, copy and modify Client's Background IP and any data or material provided by Client to Locomote (including the Client Data) to the extent required to enable Locomote to fulfil its obligations under this Agreement.

13.3 Developed IP

- (a) Immediately upon creation, all rights, title and interest to Developed IP will be owned by Locomote.
- (b) Locomote grants Client a royalty-free, non-exclusive, worldwide licence to use the Developed IP for the Subscription Term, but only to the extent required for Client to obtain the intended benefit of the Platform and the Locomote Services under this Agreement.

13.4 Third Party IP

- (a) All Third Party IP will be owned by the relevant third party licensor.
- (b) Client's rights to use Third Party IP will be subject to the terms of any licence between Client and the relevant third party licensor. Client must at all times comply with any such licence terms as a condition of receiving access to the Platform and the Locomote Services under this Agreement.

13.5 Feedback

- (a) Any comments, ideas or reports provided by Client or an Authorised User to Locomote regarding the Platform (**Feedback**) will be considered Locomote's Intellectual Property Rights and Client irrevocably transfers and assigns to Locomote all rights embodied in or arising in connection with such Feedback.
- (b) Client acknowledges and agrees that Locomote, in its sole discretion, may freely use all Feedback without attribution or compensation to Client or any Authorised User.

13.6 IP claims

- (a) Subject to clause 13.6(b), Locomote warrants that:
 - (i) it is entitled to grant to Client the licences under this clause 13; and
 - (ii) access to and use of the Platform by Client (and its Authorised Users) in accordance with the terms of this Agreement does not infringe the rights of any third party (including Intellectual Property Rights).
- (b) The warranty in clause 13.6(a) will not apply to the extent that:
 - (i) Client or any Authorised User uses the Platform in breach of this Agreement, the Terms of Use or any directions or instructions given by Locomote; or
 - (ii) Client or any Authorised User modifies or alters the Platform without Locomote's consent.
- (c) Client must:
 - (i) promptly notify Locomote of any claim of which it becomes aware that the provision or use of the Platform infringes the rights of any third party (**IP Claim**);
 - (ii) allow Locomote to run the defence of any IP Claim; and
 - (iii) reasonably cooperate with Locomote in relation to any IP Claim.
- (d) In the event that any IP Claim is made against Locomote, then as the sole and exclusive remedy to Client in respect of such claim, Locomote will (at its discretion) either:
 - (i) procure for Client on reasonable commercial terms, the right to continue to access and use the Platform;
 - (ii) replace or modify any aspect of the Platform so that the infringement or alleged infringement ceases; or
 - (iii) if it is found that the options provided in this clause 13.6(d) are not able to be implemented, terminate this Agreement, in which case, clause 21.3 will apply.

14. LIABILITY

14.1 Warranties

- (a) To the maximum extent permitted by law, and except as otherwise expressly set out in this Agreement, all express or implied guarantees, warranties or representations relating to the Platform and the Locomote Services are excluded.
- (b) If any guarantee, warranty or representation is implied into this Agreement and cannot be excluded at law but can be limited, Locomote's liability for breach of such guarantee, warranty or representation is limited to (at Locomote's option):

- (i) supplying the Platform and/or the Locomote Services again; or
 - (ii) the payment of the cost of supplying the Platform and/or the Locomote Services again.
- (c) Locomote does not warrant that the Platform and/or the Locomote Services:
 - (i) will be error free, free from viruses, operate without delay or interruption; or
 - (ii) will meet Client's business needs.
- (d) To the maximum extent permitted by law, the Platform and the Locomote Services are provided on an "as is" basis.

14.2 Indirect Loss

Neither party is liable to the other for any Indirect Loss.

14.3 Limitation of liability

Subject to clauses 14.2 and 14.4, Locomote's maximum aggregate liability to Client (whether in contract, tort (including negligence) under statute, under an indemnity or otherwise) for any Loss suffered or incurred by Client in connection with this Agreement is limited to an amount equal to the Fees paid by Client to Locomote in the six month period prior to the Loss arising.

14.4 Exceptions

Nothing in this Agreement limits or excludes liability of a party:

- (a) that cannot be limited or excluded by law;
- (b) for acts or omissions of fraud or wilful misconduct;
- (c) for personal injury or death, or damage to or loss of real property, caused or contributed to by that party or its Personnel;
- (d) in the case of Locomote, for any Loss which is covered by an indemnity given under clause 15.1; or
- (e) in the case of Client, for any Loss which is covered by an indemnity given under clause 15.2.

14.5 Data loss

Notwithstanding any other provision of this Agreement, Locomote is not liable to Client for any loss of data (including any Client Data)

15. INDEMNITIES

15.1 Locomote indemnities

Locomote indemnifies Client from and against any Loss suffered or incurred by Client arising directly out of:

- (a) any fraudulent act or omission or wilful misconduct of Locomote or any of its Personnel in connection with this Agreement; and
- (b) any allegation or claim brought against Client by a third party that use of the Platform or the Locomote Services in accordance with the terms of this Agreement infringes the third party's Intellectual Property Rights

15.2 Client indemnities

Client indemnifies Locomote from and against any Loss suffered or incurred by Locomote arising directly out of:

- (a) any fraudulent act or omission or wilful misconduct of Client or any of its Authorised Users in connection with this Agreement;
- (b) any breach of this Agreement or any applicable law (including the Privacy Act) by Client; and
- (c) any damage to or interference with the Platform caused by Client or any of its Authorised Users.

15.3 Mitigation

Nothing in this clause 15 will be taken in any way as reducing or affecting a party's common law obligation to mitigate its Losses.

15.4 Proportionate reduction

A party's obligation to indemnify the other party under this clause 15 will be reduced proportionally to the extent that any act or omission of the other party caused or contributed to the Loss.

16. CONFIDENTIALITY

16.1 Confidentiality obligations

Each party must only use or copy the other party's Confidential Information for the purposes of this Agreement and must take all steps reasonably necessary to:

- (a) maintain the confidentiality of the other party's Confidential Information;
- (b) protect the Confidential Information of the other party from unauthorised access, use, copying or disclosure; and
- (c) ensure that any person who has access to Confidential Information of the other party does not use, copy or disclose that Confidential Information other than in accordance with this Agreement.

16.2 Permitted disclosures

A party must not disclose the other party's Confidential Information to any person except:

- (a) to its Personnel on a 'need to know' basis, provided those persons first agree to observe the confidentiality of the information;
- (b) if required by law, any regulatory authority or any stock exchange (in which case it must notify the other party prior to the disclosure); or
- (c) in the case of Client, as required under clause 16.3.

16.3 Remedies for breach

Each party acknowledges that:

- (a) the value of the other party's Confidential Information is such that an award of damages or an account of profits may not be adequate compensation for breach of this clause 16; and
- (b) without compromising its right to seek damages or receive any other form of relief in the event of a breach of this clause 16, a party may seek and obtain an ex-parte interlocutory injunction or final injunction to prohibit or restrain the other party or its Personnel from any breach or threatened breach of this clause 16.

16.4 Return and destruction

- (a) Subject to clause 16.5(c), a party must, if requested to do so by the other party, on termination or expiration of this Agreement, at its own expense:
 - (i) return to the other party the Confidential Information of the other party which is in the first party's power, possession or control (or, if directed to do so by the other party, destroy the Confidential Information of the other party); and
 - (ii) provide written confirmation to the other party that it has complied with its obligations under this clause 16.5(a) regarding the return or the destruction of Confidential Information.
- (b) The return or destruction of Confidential Information by a party does not release that party from its obligations of confidence under this clause 16.5.

- (c) Notwithstanding clause 16.5(a), a party may retain a copy of the other party's Confidential Information which the party is required to retain by law, or which the party is required to retain for its own reasonable internal credit, risk, insurance, taxation or record keeping purposes, provided that the party must comply with the provisions of this clause 16 (other than clause 16.5(a)) in respect of such information retained.

16.5 Publicity

Neither party may make any public statements or issue any press release concerning or relating to this Agreement or its relationship with the other party unless it has first obtained the written consent of the other party however nothing in this clause 16.6 prevents Locomote from publishing (on Locomote's website or otherwise) that Client is a client of Locomote who uses the Agent OS Platform and/or the Locomote Services.

17. PRIVACY

17.1 Privacy obligations

Each party must comply with all applicable laws (including the Privacy Act) in dealing with any Personal Information. Without limiting the previous sentence, Locomote will at all times, collect, use, hold, destroy and disclose Personal Information in accordance with its Privacy Policy.

18. MODERN SLAVERY

- (a) Locomote acknowledges the *Modern Slavery Act 2018* (Cth) (together, **Modern Slavery Laws**).
- (c) Locomote will ensure any supply chain provider complies with all relevant laws relating to combating modern slavery and agrees to notify Client as soon as reasonably practicable after becoming aware of any breach of this clause by Locomote.

19. ANTI-BRIBERY / CORRUPTION

- (a) Locomote must comply with all applicable Anti-Corruption Laws and must ensure that it and its Personnel do not:
 - (i) offer, give, pay, promise to pay, request, accept, receive or authorise the payment of any bribes, kickbacks, influence payments or other unlawful or improper inducements to or from any person (in whatever form) in connection with this Agreement; or
 - (ii) enter into any business agreement with any employee, Council member or agent of Client, other than an agreement they make as a representative of Client.
 - (iii) and Locomote must promptly notify Client if Locomote becomes aware of a breach, or suspected breach, of any of its obligations under this clause 19.
- (b) For the purposes of this clause 19, Anti-Corruption Laws means the *Australian Criminal Code Act 1995* (Cth) and any other law which has as its objective the prevention of corruption.

20. DATA SECURITY

- (a) Locomote will take reasonable steps to:
 - (iii) ensure the security and integrity of the Platform; and
 - (iv) implement technical and organisational measures (in accordance with generally accepted industry practice) to protect against the misuse, loss or unauthorised disclosure of Client Data.
- (b) Provided Locomote complies with its obligations under clause 20(a) and the Loss does not arise out of the dishonesty or fraud of Locomote or any of its Personnel, Locomote will not be liable for any Loss suffered by Client which arises out of or in connection with:

- (i) any computer viruses or malware being transferred by or obtained as a result of the use of the Platform; or
 - (ii) any data or security breach by a third party.
- (c) Client acknowledges that it is solely responsible for the accuracy and integrity of its own data (including Client Data).
- (d) If Locomote becomes aware of or suspects:
 - (i) any unauthorised access to or use of, or misuse, damage or destruction to, any part of the Client Data; or
 - (ii) any other issue that could potentially compromise the integrity or reliability of the Client Data,
 - (a) **(Data Incident)**, then Locomote will promptly notify Client of the Data Incident, including all known details of the Data Incident, and a list of actions taken by Locomote to mitigate the impact of the Data Incident.
- (e) As soon as possible after making a notification under clause 20(d), Locomote will conduct an investigation into the Data Incident and notify Client of its findings in respect of the cause of the Data Incident and propose remedial action to mitigate the impact of the Data Incident.
- (f) Client will comply with all reasonable directions of Locomote relating to the Data Incident within the timeframes specified by Locomote.

21. TERMINATION

21.1 Termination for cause

Either party may terminate this Agreement by giving the other party at least 30 Business Days' written notice if the other party:

- (a) commits a material breach of this Agreement and:
 - (v) the breach is not capable of remedy; or
 - (vi) the breach is capable of remedy, but the other party fails to remedy the breach within 10 Business Days of receiving notice from the non-breaching party requiring it to do so;
- (b) ceases to carry on business or threatens to cease trading in a normal manner;
- (c) suffers an Insolvency Event; or
- (d) assigns or novates its obligations under this Agreement (or purports to do so) otherwise than in accordance with this Agreement.

21.1 Suspension

- (a) Locomote may, in its absolute discretion and without liability, suspend access to the Platform and/or the whole or any part of the Locomote Services for such period as it thinks fit if:
 - (i) it considers suspension necessary for safety reasons or to prevent or abate an emergency situation or hazard;
 - (ii) it is required to do so by law;
 - (iii) Client has failed to pay an amount due to Locomote by the due date;
 - (iv) an Unforeseen Event occurs; or
 - (v) a technical issue or fault occurs (including any error or malfunction in any telecommunications carriage service) which impacts the operation of the Platform.

- (b) Client will not be entitled to any refund of Fees in the event of suspension by Locomote.

21.2 Obligations on termination or expiry

Upon expiry or termination of this Agreement for any reason:

- (a) Client's right to access and use the Platform and the Locomote Services will cease;
- (b) each party is released from its obligations to further perform this Agreement;
- (c) each party retains its accrued rights and remedies;
- (d) Client must return to Locomote all items of Locomote's property in its possession or control (and if such property is not returned in a timely manner, will permit Locomote to recover that property from Client); and
- (e) without limiting any other rights of Locomote, Client must pay the Fees for the Platform and the Locomote Services provided up to the date of termination (and Client will not be entitled to any refund of Fees paid prior to the date of termination or expiry).

22. RECORDS

- (a) Locomote may, upon the provision of reasonable notice, undertake an audit at any time in order to assess:
 - (i) the number of Authorised Users accessing the Platform;
 - (ii) other particulars regarding Client's use of the Platform to determine the most appropriate Subscription Package for Client; and
 - (iii) Client's (and Authorised Users') compliance with this Agreement.
- (b) Client agrees to provide Locomote with all necessary information, records and assistance in order to carry out the audit described in clause 22(a).

23. DISPUTE RESOLUTION

23.1 Initial meeting

If a dispute arises under or in connection with this Agreement (**Dispute**) which is not able to be resolved by the parties' Contact Persons within 10 Business Days of such Dispute arising, the nominated senior executive officer of each party will promptly meet and discuss the Dispute in good faith with a view to resolving such Dispute.

23.2 Mediation

- (a) If any Dispute is unable to be resolved in accordance with clause 23.1 within 10 Business Days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Resolution Institute before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the Mediation and Conciliation Rules of the Resolution Institute (**Rules**) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Rules are taken to be incorporated into this Agreement.

23.3. Performance during Dispute

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this clause 23.

23.4 Interlocutory relief

Nothing in this clause is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such a Dispute.

23.5 Costs

Unless otherwise agreed between the parties, each party will bear its own costs of dispute resolution pursuant to this clause 23.

24. UNFORESEEN EVENTS

- (a) If an Unforeseen Event occurs, the party affected (**Affected Party**) must notify the other party and provide full particulars of the circumstances giving rise to the Unforeseen Event.
- (b) For so long as the Unforeseen Event subsists, the Affected Party is not liable to the other party for any failure or delay in performing its obligations under this Agreement (other than a payment obligation) to the extent it is affected by the Unforeseen Event, for the duration of the Unforeseen Event.
- (c) The Affected Party must:
 - (i) use its reasonable endeavours to remove, overcome or mitigate the effects of that Unforeseen Event; and
 - (ii) keep the other party regularly informed as to the steps or actions being taken to achieve this.
- (d) If an Unforeseen Event continues for more than 60 days, Locomote may terminate this Agreement immediately by giving written notice to Client.

25. GENERAL

25.1 Variations

Any variation to this Agreement will be effective only if it is agreed in writing and signed by an authorised representative of both parties.

25.2. Relationship of parties

Nothing in this Agreement is to be construed as establishing a contract of employment between the parties or creating a partnership, joint venture or other relationship between them. Neither party has the right, power or authority to bind the other party in any manner.

25.3 Use of subcontractors

Locomote may contract with third parties for the performance of its obligations under this Agreement, provided that it will remain liable for the performance of its obligations under this Agreement.

25.4 Notices and other communications

- (a) Except as provided otherwise in this Agreement, any notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:
 - (vii) in writing, in English and signed by a person duly authorised by the sender; and
 - (viii) hand delivered or sent by prepaid post or email to the recipient's address as specified in Item 1 or 2 of the Key Information Schedule, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 25.4(a) takes effect when taken to be received (or at later time specified in the Notice), and is taken to be received:
 - (ix) if hand delivered, on delivery;
 - (x) if sent by pre-paid post, on the fifth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place overseas; and
 - (xi) if sent by email, one hour after it is sent by the sender unless the sender receives a report of an error or delay in delivery, but if the delivery, receipt or transmission is not on a Business Day in the place to which the Notice is sent, the Notice is taken to be received on the commencement of the next Business Day in that place.

25.5 Entire agreement

This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter.

25.6 Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

25.7 Severance

If a provision of this Agreement or part thereof is illegal, void or unenforceable, then that provision (or relevant part) may be severed without affecting the legality or enforceability of any other provision of this Agreement.

25.8 Assignment

Client must not assign, novate or otherwise transfer its rights and/or obligations under this Agreement without Locomote's prior written consent.

- (f) Locomote may assign, transfer or novate its rights and/or obligations under this Agreement by prior written notice to Client (and Client will do all things reasonably required to give effect to such notice).

25.9 Counterparts and electronic execution

- (a) This Agreement may be executed in any number of counterparts, each of which will be an original but such counterparts together will constitute one and the same instrument.
- (b) The parties acknowledge that this Agreement may be exchanged and executed entirely or partially by electronic means, and that an electronic representation of a signature (including a scanned copy of a signature first made on paper) will be conclusive evidence of a party's execution of this Agreement and intention to be bound by its terms.

25.10 Authority

Each person who signs this Agreement on behalf of a party under a power of attorney or as an authorised representative of a party declares and warrants that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

25.11 Legal advice

Each party acknowledges that it has been given the opportunity to obtain independent legal advice prior to entering into this Agreement as to the terms and effect of this Agreement.

25.12 Governing law

This Agreement is governed by the laws in force in Victoria, Australia, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them.

25.13 Further assurances

Each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required for the purposes of and to give full effect to this Agreement, its provisions and any transactions contemplated by it.

25.14 Costs

Each party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement and any further document required.

26. DEFINITIONS AND INTERPRETATION

26.1 Definitions

In this Agreement, capitalised terms have the meaning as set out below unless the context requires otherwise:

Acceptance Tests means the acceptance tests as set out in the Implementation Plan.

Additional Services has the meaning given in clause 6.3(a).

Agreement means this agreement, including any schedules and annexures, and includes the Key Information Schedule.

Authorised User means those Personnel of Client who are authorised by Client to use the Platform.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Client Data means all material, information and data which:

- (a) Client inputs to the Platform;
- (b) is generated as a result of Client's use (or an Authorised User's use) of the Platform; or
- (c) Client otherwise makes available to Locomote in connection with the Platform or the Locomote Services.

Confidential Information means, in relation to a party, all information or knowledge which:

- (a) is by its nature confidential (including the terms of this Agreement);
- (a) is designated by the disclosing party as confidential; or
- (b) the recipient ought reasonably to know is confidential,

but does not include:

- (c) information or knowledge that is in the public domain otherwise than as a result of a breach of this Agreement or any other obligation of confidence;
- (d) information or knowledge that is independently developed by the recipient or rightfully obtained from a third party; or
- (e) information or knowledge that is already known by the recipient, independently of its involvement in this Agreement or its interaction with the other party and free of any obligation of confidence.

Contact Person means the person nominated by each party as its contact person, as set out in items 1 and 2 of the Key Information Schedule.

Default Rate means the rate fixed from time to time under *the Penalty Interest Rate Act 1983* (Vic).

Developed IP means any Intellectual Property Rights created, written or brought into existence by or on behalf of Locomote in connection with or for the purposes of providing the Platform and/or the Locomote Services, but excluding Client Data and either party's Background IP.

Fees means the fees payable by Client to Locomote for the Platform and the Locomote Services, as set out in Item 1 of Schedule 2.

GDS meaning the Global Distribution System (either Travelport, Amadeus or Sabre)

GST has the meaning given in the GST Law.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IATA licence meaning the ability to access and book products or services that are compliant with international regulations, standards, and best practices.

Implementation means the delivery, installation, customisation and deployment of the Platform in accordance with the Requirements and **Implement** has a corresponding meaning.

Implementation Plan means the plan referred to in clause 5.1(a), as may be updated by the parties by agreement in writing from time to time.

Indirect Loss means any Loss not arising naturally (i.e., according to the usual course of things) as a result of a breach of this Agreement, whether or not such Loss may reasonably have been in the contemplation of the parties at the time they made this Agreement as the probable result of the relevant breach. Without limiting the previous sentence, Indirect Loss includes loss of profits, loss of revenue, loss of goodwill, loss of business, loss of data, loss of opportunity, loss of anticipated savings, pure economic loss, loss of value of equipment, expectation loss and wasted overheads.

Initial Contract Term means the period specified as such in Item 5 of the Key Information Schedule.

Insolvency Event means a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the occurrence of any event that has a substantially similar effect to any of these events.

Intellectual Property Rights means all intellectual property rights throughout the world, whether registered or unregistered, including rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and any right to apply for registration of such rights.

Key Information Schedule means the key information schedule set out on the front page cover of this Agreement.

Locomote Services means the services that Locomote agrees to provide to, or perform for Client, under this Agreement, being access to and use of the Platform, and which may include, for additional fees or charges), the services described in Item 2 of Schedule 1.

Loss means all liabilities, losses, damage, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by any person whether arising in contract or tort (including negligence), under any statute or under any other cause of action.

Personal Information has the meaning given in the Privacy Act.

Personnel means the officers, employees, agents and contractors (including subcontractors) of a party.

Planned Outage means a scheduled interruption to the availability of the Platform.

Platform means the Locomote's cloud based platform as described in paragraph A of clause 1 of this Agreement.

Privacy Act means the *Privacy Act 1988* (Cth).

Renewal Contract Term means a period of 12 months commencing on the day following the end of the previous Contract Term.

Requirements means the functional, technical and other requirements for the Platform as set out in the Implementation Plan.

Start Date means the date specified in item 3 of the Key Information Schedule.

Service Levels means the service levels applicable to the Locomote Services, as set out in Schedule 3.

Contract Term means the Initial Contract Term or a Renewal Contract Term, as the context requires.

Subscription Term has the meaning given in clause 4.1.

Territory means the territory specified in Item 6 of the Key Information Schedule.

Third Party IP means all Intellectual Property Rights made available in connection with this Agreement that are owned by a third party.

Third Party Service has the meaning given in clause 8(a).

Unforeseen Event means any event beyond the reasonable control of a party and includes:

- (a) any outage, interference or disturbance to the Platform (other than a Planned Outage);

- (b) fire, flood, earthquake or acts of God; or
- (c) strikes, industrial disputes, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, pandemic, epidemics, quarantines, government restrictions, public health or safety emergency, embargoes and other similar governmental action (provided it is not directed only at that party).

Total Transaction Value means the total value of bookings (air and land) including taxes.

Update means any new version, new release, amendment or update to the Platform.

26.2 Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this Agreement;
- (c) where any word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (e) a reference to:
 - (i) a clause, paragraph, schedule or appendix is a reference to a clause, paragraph, schedule or appendix of this Agreement;
 - (ii) a person includes a natural person, Clientship, body corporate, association, trust, governmental or local authority or agency or other entity;
 - (iii) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) a party to a document includes that party's legal personal representatives, successors and permitted assigns;
 - (v) "dollars" or "\$" is a reference to Australian currency; and
 - (vi) this or any other document includes the document as novated, varied or replaced;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party drafted or put forward the clause or would otherwise benefit from it; and
- (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.