**DIRECT FERRIES API AGREEMENT**

**FRONT SHEET**

|  |  |
| --- | --- |
| **Parties** | **DIRECT FERRIES LIMITED** (trading as Direct Ferries) (Company Number 03865405) whose principal office is at Unit 1 Chester House, 1-3 Brixton Road, Kennington Park, SW9 6DE London, UK (**Direct Ferries**).  …………. whose principal address is ………………………………………… (the **Partner**).  Partner email correspondence address:…………..  Partner telephone correspondence number: ………… |
| **Whereas** | Direct Ferries provides the Partner with an API which provides the Partner with live booking system data regarding to the availability and price of Ferry Tickets.  The Partner wishes to incorporate such API into its website to sell Ferry Tickets to its customers.  The Partner will be responsible for all sales to customers and will be the contracting party with all customers. |
| **Term** | 1 year from the date that email acceptance of this Agreement is sent to the Partner by Direct Ferries (which will confirm the start date) (the “**Start Date**”). |
| **Commercial Terms** | **Ferry Ticket Prices:** Ferry Ticket prices shall be provided to the Partner via the API in real time and are subject to change.  **Commercial terms**  **Commission*:*** Partner is entitled to a commission equal to 5% of the net Ferry Ticket turnover generated by it as a result of the sale of Ferry Tickets on its sites (except the ferry operator Corsica Ferries: 2% commission), being the total Ferry Ticket turnover less any refunds, amendments, cancellations and deductions for fraudulent activity. Taxes are non-commissionable.  **Permitted Mark Up:** Partner shall be permitted to apply a fee mark up to the Ferry Ticket price, but not in any circumstance. Permitted Mark Ups are retainable by the Partner in full.  **Payment Terms:**   * All credit facilities are subject to: (a) Direct Ferries discretion, which may be withdrawn at any time; and (b) the Partner depositing the sum of €5000 into the Direct Ferries’ designated account (the “**Deposit**”); * Direct Ferries may ask the Partner for further information in order to assess the appropriateness of the credit facility before making a decision. * The following terms shall apply:   (a) Under the credit facility model the Partner shall be entitled to book Ferry Tickets via the API without making immediate payments to the Direct Ferries;  (b) Direct Ferries invoices the Partner.  Partner will be invoiced every month for the net turnover amount of tickets sold. The invoice is payable within 15 Business Days of receipt by the Partner of a valid invoice from Direct Ferries,  (c) Amendment and cancellation fees will be charged by Direct Ferries on a per booking basis when processed by Direct Ferries’ Customer Service department (the fee charged by the ferry operator varies per operator). The applicable fees charged by Direct Ferries are listed here: <https://www.directferries.co.uk/contact.htm>. Any amendments and cancellations (refunds) will be invoiced based on the date of the transaction;  (d) Where the Partner does not pay Direct Ferries the sums due in accordance with paragraph b (above) Direct Ferries shall be entitled to deduct such sums due from the Deposit (“**Permitted Deduction**”).  On expiry or termination of this agreement or withdrawal of the credit facility, Direct Ferries will refund to the Partner the Deposit less any Permitted Deduction within 30 Business Days of the date of termination, expiry or withdrawal of the credit facility.   * (e) Direct Ferries may impose a charge on the Partner in relation to excessive requests as follows: If Look to Book Ratio is above 401:1 (1 reservation per 401 or more general messages) this will give rise to a transaction charge of £0.001 (excl. VAT) per extra message in excess of 400 general messages per reservation |
| **Territory** | Global |

**By signing below, both Parties agree to be bound by the terms of this Agreement.**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | **Partner** | **Direct Ferries** |  | | Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: Ido Schiferli \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: Head of Partnerships \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | |  |

**GENERAL TERMS**

# **Definitions**

**API:** application programming interface used and operated by Direct Ferries which will allow the Partner to receive live booking system data which contains up to date information with regards to the availability of Ferry Tickets.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commission:** has the meaning set out in the Front Sheet.

**Controller** (or **data controller**), **Processor** (or **data processor**), **Data Subject**, **international organisation, Personal Data** and **processing**: all have the meanings given to those terms in DP Laws (and related terms such as “**process**”) shall have corresponding meanings.

**Data Subject Request**: means a request made by a Data Subject to exercise any rights of Data Subjects under DP Laws.

**DPIA**: means a Data Protection Impact Assessment, as defined in DP Laws.

**DP Laws**: means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation relating to the processing, privacy, and use of Personal Data, as applicable to Direct Ferries, the Partner and/ or the services under this Agreement, including:

in the UK: (i) the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing 2002/58/EC (“**ePrivacy Directive**”); and/or (ii) the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), once applicable (“**GDPR**”), and/or any corresponding or equivalent national laws or regulations, once in force and applicable; and

in other EU countries: the ePrivacy Directive and/or the GDPR, once applicable, and all relevant Member State laws or regulations giving effect to these directives or corresponding with this Regulation, once in force and applicable,

and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority.

**Direct Ferries** Trade Mark Guidelines:the written guidelines for use of Direct Ferries’ trade mark, logo and branding from time to time, the current version of which is are available.

**DP Losses**: means all liabilities, including: (a) costs (including legal costs), claims, demands, actions, settlements, charges, procedures, expenses, losses and damages (whether material or non-material); (b) to the extent permitted by applicable law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority or any other relevant regulatory authority; (ii) compensation to a Data Subject ordered by a Supervisory Authority; (iii) the costs of compliance with investigations by a Supervisory Authority or any other relevant regulatory authority.

**Ferry Tickets:** tickets for the various ferry routes sold by Direct Ferries via the API, as may be varied from time to time and which the parties may agree in writing that the Partner can promote and sell in the Territory.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Operator IP:** any material, content, database or document owned by the ferry operator, relating to the Ferry Tickets, and the ferry operator brands, logos, publicity materials.

**Partner Terms**: the Partner’s standard terms and conditions of sale for the Ferry Tickets in the Territory which are set out by the Partner and as varied from time to time, and the ferry operator’s standard terms and conditions of sale, as varied from time to time.

**Protected Data**:means Personal Data received from or on behalf of Direct Ferries, or otherwise obtained in connection with the performance of the Partner’s obligations.

**Start Date:** has the meaning set out in the Front Sheet.

**Sub-Processor**: means another Processor engaged by the Partner for carrying out processing activities in respect of the Protected Data on behalf of Direct Ferries, and authorised by Direct Ferries in accordance with clause 7.6.

**Supervisory Authority**:means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering DP Laws.

**Term:** has the meaning set out in the Front Sheet.

**Ticket Materials:** any material, content, database or document owned by Direct Ferries relating to the Ferry Tickets and Direct Ferries’ brands, logos, publicity materials and any other materials generated in the course of this Agreement.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted and shall include all subordinate legislation made from time to time under that statute or statutory provision. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# **Appointment**

## Direct Ferries appoints the Partner as a non-exclusive Partner to promote and sell the Ferry Tickets in the Territory on its websites.

## The Partner shall sell the Ferry Tickets on the Partner Terms.

## The Partner shall not actively market the Ferry Tickets nor solicit any orders for the Ferry Tickets outside of the Territory.

# **Partner Obligations**

## The Partner undertakes and agrees at all times:

### to act in good faith, promote the best interests of Direct Ferries and comply with all reasonable and lawful instructions of Direct Ferries from time to time (including, if applicable, the Direct Ferries Trade Mark Guidelines);

### incorporate any terms into the Partner Terms regarding the Ferry Tickets as notified to the Partner by Direct Ferries from time to time in writing;

### not to, without Direct Ferries’ prior written consent, make or give any representations, warranties or other promises concerning the Ferry Tickets beyond those contained in the Partner Terms or incur any liabilities on behalf of Direct Ferries;

### to act in accordance with sound commercial principles in its relations with customers and potential customers (including assessing their creditworthiness);

### only use the API for the following purpose: obtaining and providing information through an electronic connection that may permit lodgings to communicate Ferry Ticket rates, availability and related information via the Partner’s interfaces and electronically place bookings;

### not to take or omit to take any action which may affect Direct Ferries’ relationship with the ferry operators;

### not to cause or permit to be done anything which may cause Direct Ferries to be excluded from the process of booking with any ferry operator;

### not to enter into a direct contractual relationship with any ferry operator that Direct Ferries already acts with for the sale of Ferry Tickets during the Term.

### the Partner acknowledges and agrees that it will work exclusively with Direct Ferries and no other price comparison website for the sale of Ferry Tickets;

### comply with all terms and conditions and specifications regarding the use of the API as provided to it from time to time by Direct Ferries;

### ensure that its systems are compatible with the API;

### ensure that its use of the API complies with applicable laws;

### comply with applicable laws (including for the avoidance of doubt, consumer laws); and

### not at any time, including after expiry or termination of this Agreement, buy the Ferry Tickets for resale.

## The Partner is solely responsible for any and all costs and expenses that may be incurred in building the connection, maintaining and/or using the API.

# **Marketing Ferry Tickets**

## The Partner agrees that any promotion or marketing of the Partner Site or the ferry operator that the Partner may undertake or conduct, shall comply with the following provisions:

### if Direct Ferries becomes aware of behaviour by the Partner that breaches Direct Ferries’ or a ferry operator’s Intellectual Property Rights, then Direct Ferries will notify the Partner and the Partner will immediately remedy its breach;

### the Partner shall not bid for, purchase or use the name of Direct Ferries (or any Direct Ferries Terms) to display sponsored advertising to internet users using any search engine;

### the Partner shall not bid for, purchase or use the name of any ferry operator to display sponsored advertising to internet users using any search engine. As an example, “Brittany Ferries” and “Tranmediterranea”, should not be used by the Partner;

### the Partner shall not bid on, purchase, obtain, use or include in any text of any advertisement and/or in any ad copy, titles or descriptions or for use in text links, banner ads, pop-up ads or any other type of ad that could be associated with a keyword campaign, any term or phrase match keywords which include or are confusingly similar (including variations (including language variations), misspellings and singular/plural forms) to the term(s) including but not limited to: ferry, ferries, ferri, bateux, bateau, boats, crossings, fahren, fahre, traghetti, traghetto traverse, traversees, traversée fähre, traverses, fähren (please find the complete list as Appendix);

### the Partner shall comply immediately with any reasonable request from Direct Ferries to cease using any term in any paid search or SEO;

### the Partner may not use any term which is the same as or confusingly similar to Direct Ferries (or the Direct Ferries Terms) or any ferry operator;

### the Partner is not permitted to conduct Search Engine-based retargeted advertisement using Direct Ferries Terms or ferry operator names;

### the Partner shall not advertise Ferry Tickets or Direct Ferries or a ferry operator through travel search sites or price comparison sites;

### the Partner will notify Direct Ferries where it becomes aware of any third party purchasing Direct Ferries or Direct Ferries Terms on any internet search engine; and

### the Partner shall not present any content appearing on the Partner Site, or use techniques, to artificially influence search engine rankings or give the Partner Site a higher ranking or display than it would otherwise have, or be displayed or ranked higher than it otherwise should be, if such actions or omissions (as appropriate) and/or techniques (including, but not limited to, using automatically generated content, participating in link schemes, cloaking, sneaky redirects, hidden text or links, doorway pages, scraped content and abusing rich text snippets) had not been used.

## The Partner covenants, undertakes and warrants to promptly adhere to, observe and comply with any and all regulations restricting the use of spamming (and all reasonable requests made by Direct Ferries) in this respect in order to avoid any breach by Direct Ferries or the Partner of such regulations.

## Nothing in this Agreement shall prevent, limit, preclude or restrict the Partner from:

### using any of Direct Ferries Terms in the url, meta tags, title tag, meta data, source code of the Partner Site or for other means essential for the technical integration, use, facilitation or navigation of the Partner Site or other technical reasons, provided that such use is not intended to intentionally unfairly influence organic search results; and

### using, linking, including, making available, integrating or connecting Direct Ferries Terms to, through or in connection with any social media platform, provided that any such use shall not be for paid marketing activities on such platforms.

## The Partner shall advertise and promote the Ferry Tickets in the Territory, provided that the production and use by the Partner of any advertising and promotion materials not provided by Direct Ferries shall be subject to the prior written consent of Direct Ferries.

## Direct Ferries reserves the right to advertise and promote the Ferry Tickets in the Territory.

# **Sale of Ferry Tickets and Payment Terms** Sale of Ferry Tickets

## The Partner is not permitted to sell the Ferry Tickets:

### until the Partner has tested the integration and use of the API in a sandbox environment to test the integration of its systems with the API; and

### until Direct Ferries provides the Partner with written notice that all testing has been completed to Direct Ferries satisfaction, upon which Direct Ferries will provide the Partner with credentials to access the live API.

## Direct Ferries reserves the right, at its sole discretion, to change, enhance or otherwise modify the API specifications at any time. Direct Ferries will provide notice to the Partner upon implementation of any such changes, enhancements or other modifications. Within a reasonable amount of time, the Partner must obtain and use the most recent version of the API specifications, including support for new features, in order to continue to use the API.

## Prior to any sale of Ferry Tickets, the Partner shall:

### in the course of dealing with customers, bring to their notice the Partner Terms. The Partner shall, before making the Ferry Ticket booking, procure and evidence the customers’ acceptance of the Partner Terms and the Partner’s Privacy Policy (including any relevant marketing consents); and

### provide the customer with the details of the Ferry Tickets (which shall be provided to the Partner via the API), the total price of the Ferry Tickets (including any tax), details of any Permitted Mark Up, payment details and any other information as may be required by law.

## Upon the sale of Ferry Tickets the Partner shall immediately transmit to Direct Ferries (via the API):

### a booking request specifying the number of passengers and the passenger contact details;

### any further information that Direct Ferries reasonably requires in order to provide all necessary information to ferry operators; and

### confirmation of acceptance by the passenger of the Partner Terms and Partner’s Privacy Policy; and

## Where a booking is made, the Partner shall provide invoices and booking confirmation for the sale of Ferry Tickets to customers immediately (and in any case within 12 hours).

## The Partner shall immediately provide Direct Ferries with information of:

### any amendments to a booking; and

### any cancellation to a booking.

## The Partner is to be the main point of contact, and contracting party with the customer for the purchase of the Ferry Tickets. Payment terms

## All sums payable under this Agreement shall be paid in accordance with the Front Sheet.

## All sums payable are exclusive of any VAT or other applicable sales tax. For the duration of this Agreement, the Partner agrees that it is registered for VAT and will not raise VAT invoices for the Commission. The Partner will notify Direct Ferries immediately if the Partner ceases to be registered for VAT, transfers its business as a going concern or becomes registered for VAT under another VAT registration number.

# **Direct Ferries obligations**

## Direct Ferries shall supply to the Partner such information, materials, API and assistance as it may reasonably require for the purposes of selling the Ferry Tickets.

## Direct Ferries shall use reasonable endeavours to ensure the API is operational.

# **Data Protection**

## The parties agree that, for Protected Data, Direct Ferries and Partner are both Controllers.

## Each party shall comply with DP Laws and its relevant obligations under this Agreement. The Partner shall procure that any Processor that has access to Protected Data shall comply with the Partner’s obligations under this Agreement.

## Where the Partner processes Protected Data on behalf of Direct Ferries, the Partner shall:

### (and shall procure that any person acting under its authority who has access to Protected Data) process the Protected Data only on and in accordance with Direct Ferries’ documented instructions as set out in this clause 7 and schedule 1, (“**Processing Instructions**”); and

### immediately inform Direct Ferries of any legal requirement under applicable law that would require the Partner to process the Protected Data otherwise than only on the Processing Instructions, or if any Direct Ferries’ instruction infringes DP Laws.

## The Partner shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Protected Data by the Partner:

### such that the processing will meet the requirements of DP Laws and ensure the protection of the rights of Data Subjects; and

### so as to ensure a level of security in respect of Protected Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data transmitted, stored or otherwise processed.

## Without prejudice to clause 7.4.2, the Partner shall, in respect of all Protected Data processed by it under this Agreement comply with the requirements regarding security of processing set out in DP Laws and in this Agreement.

## The Partner shall not engage with a Processor to perform specific processing activities in respect of the Protected Data on behalf of the Partner without Direct Ferries’ prior written consent and, if Direct Ferries gives its consent, the Partner shall appoint the Sub-Processor under a binding written contract (“**Processor Contract**”) which imposes the same data protection obligations as are contained in this Agreement on the Sub-Processor, in particular under clause 7.4 and the conditions in this clause 7.6 for engaging another Processor.

## The Partner shall ensure that Partner Personnel processing Protected Data have signed agreements requiring them to keep Protected Data confidential, and take all reasonable steps to ensure the reliability of the Partner Personnel processing Protected Data and that the Partner Personnel processing Protected Data receive adequate training on compliance with this clause 7 and the DP Laws applicable to the processing.

## The Partner shall implement and maintain, at its cost and expense, appropriate technical and organisational measures to assist Direct Ferries in the fulfilment of Direct Ferries’ obligations to respond to Data Subject Requests relating to Protected Data, including to ensure that all Data Subject Requests it receives are recorded and then referred to Direct Ferries within three (3) Business Days of receipt of the request.

## The Partner shall provide reasonable assistance, information and cooperation to Direct Ferries to ensure compliance with Direct Ferries’ obligations under DP Laws with respect to: (i) security of processing; (ii) notification by Direct Ferries of breaches to the Supervisory Authority or Data Subjects; and (iii) DPIAs and prior consultation with a Supervisory Authority regarding high risk processing.

## The Partner shall not transfer any Protected Data to any country outside the European Economic Area (“**EEA**”) or to any international organisation (an “**International Recipient**”) without Direct Ferries’ prior written consent and, if Direct Ferries consents to the transfer of Protected Data to an International Recipient, the Partner shall ensure that such transfer (and any onward transfer): (i) is pursuant to a written contract including provisions relating to security and confidentiality of the Protected Data; (ii) is effected by way of a legally enforceable mechanism for transfers of Personal Data as may be permitted under DP Laws from time to time (the form and content of which shall be subject to Direct Ferries’ written approval); (iii) complies with clause 7.3.1; and (iv) otherwise complies with DP Laws.

## The Partner shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of Direct Ferries containing such information as required under DP Laws and any other information Direct Ferries reasonably requires (“**Processing Records**”), and shall make available to Direct Ferries on request in a timely manner such information (including the Processing Records) as is reasonably required by Direct Ferries to demonstrate compliance by the Partner with its obligations under DP Laws and this Agreement, which Direct Ferries may disclose to Direct Ferries Group or to the Supervisory Authority or any other relevant Regulatory Authority.

## In respect of any Personal Data breach (actual or suspected) related to this Agreement, the Partner shall notify Direct Ferries of the breach without undue delay (but in no event later than 12 hours after becoming aware of the Personal Data breach) and provide Direct Ferries without undue delay (wherever possible, within 24 hours of becoming aware of the breach) with such details relating to the breach as Direct Ferries reasonably requires.

## The Partner shall without delay, at Direct Ferries’ written request, either securely delete or return all the Protected Data to Direct Ferries in hardcopy or electronic form after the end of the provision of the relevant services related to processing or, if earlier, as soon as processing by the Partner of any Protected Data is no longer required for the Partner’s performance of its obligations under this Agreement, and securely delete existing copies (unless storage of any data is required by Applicable Law, and if so the Partner shall notify Direct Ferries of this).

# **Intellectual property**

## The Partner acknowledges that Direct Ferries’ Intellectual Property Rights in the Ticket Materials are and remain Direct Ferries’ property, including the API. Any goodwill arising in the name of Direct Ferries will inure solely for the benefit of Direct Ferries. Any rights not expressly granted are reserved by Direct Ferries.

## Without prejudice to clause 8.1, Direct Ferries hereby grants the Partner a non-exclusive, non-transferable, royalty free licence to use (and incorporate) the API, Ticket Materials and Operator IP on its websites, for the purpose of and to the extent necessary to promote and sell the Ferry Tickets in the Territory for the duration of this Agreement. The Partner acknowledges that any use of the Operator IP may also be subject to additional terms and conditions of the relevant ferry operator.

## The Partner shall not:

### copy, reproduce, modify, make derivative works of, reverse engineer, decompile, disassemble or attempt to derive the source code of the Ticket Materials or Operator IP, except to the extent permitted by law;

### rent, lease, sell, sublicense, assign or otherwise transfer the Ticket Materials or Operator IP to any third party;

### seek to register any Intellectual Property Rights on behalf of Direct Ferries without Direct Ferries’ express consent;

### use any trademarks, trade names or get-up which resemble Direct Ferries’ or ferry operator’s trademarks, trade names or get-up and which would therefore be likely to confuse or mislead the public; and/or

### do or omit to do, or authorise any third party to do or to omit to do, anything which could invalidate or be inconsistent with the Intellectual Property Rights in the Ticket Materials and/or Operator IP.

## The Partner shall keep confidential the unique client key assigned to it that allows the Partner to access the API and shall ensure its employees keep such client key confidential.

## The Partner shall make a statement in any advertising material and promotional literature produced by or for it in connection with the Ferry Tickets as to the ownership of any Intellectual Property Rights used or referred to therein.

## The Partner shall notify Direct Ferries of, to the extent that it is made or becomes aware of:

### any actual, threatened or suspected infringement in the Territory of any Intellectual Property Rights in the Ticket Materials and/or Operator IP; and/or

### any claim by any third party in the Territory that the use of the Ticket Materials or Operator IP or the sale of the Ferry Tickets into or in the Territory infringes any third party rights.

## The Partner shall, at the request of Direct Ferries, take all such steps during the term of this Agreement as Direct Ferries may reasonably require to assist Direct Ferries in maintaining the Intellectual Property Rights in the API, Ticket Materials or Operator IP as valid and effective, or to take or defend any court or other dispute proceedings concerning intellectual property matters.

## If the Partner becomes aware that any use of the API breaches the terms of this Agreement it shall immediately suspend using the API and inform Direct Ferries.

# **Ferry Ticket claims**

## The Partner shall, as contracting party, deal with customer’s complaints or claims concerning the Ferry Tickets. Direct Ferries shall immediately forward any correspondence in relation to the same to the Partner. The Partner shall exclusively conduct any proceedings and shall take whatever action necessary to defend or resist the matter.

# **Liability**

## Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury caused by its negligence, or the negligence of its employees, Partners or subcontractors (as applicable), fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful to exclude or restrict liability.

## The Partner shall indemnify and keep indemnified Direct Ferries against:

### any liabilities incurred by Direct Ferries as a result of the Partner’s breach of clause 3, 5, 8 and 13.1; and

### in respect of all DP Losses suffered or incurred by, awarded against Direct Ferries, arising from or in connection with the Partner acting outside or contrary to Direct Ferries’ lawful instructions or any breach by the Partner of its data protection obligations under clause 7.

## Subject to clause 10.1 and without prejudice to the Partner’s indemnification obligations in this Agreement, neither party shall under any circumstances be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, or anticipated savings or any loss that is an indirect or secondary consequence of any act or omission of the party in question.

## The total liability of Direct Ferries to the Partner in respect of all other loss or damage arising under or in connection with this Agreement whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of £10,000 or the amount of Commission paid by Direct Ferries for the year in which the loss arose.

# **Duration and termination**

## This Agreement shall take effect on the Start Date and shall, unless earlier terminated, continue for the Term. After the Term, the Agreement shall automatically renew on a yearly basis unless and until terminated in accordance with law or this Agreement. The notice period is ninety (90) days.

## Without affecting any other right or remedy available to it, Direct Ferries may terminate this Agreement with immediate effect by giving written notice to the Partner if:

### the Partner commits a material or persistent breach of any term under this Agreement and, if the breach is capable of remedy, fails to remedy it within thirty (30) Business Days of receipt of notice from Direct Ferries specifying the breach; or

### the Partner suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; takes, or threatens to take, steps for a receiver, administrator, administrative receiver or manager to be appointed over the whole or a material part of its business or assets, or if any such persons are appointed over the Partner; an order is made, a resolution passed or other steps are taken for the winding-up (except for the purposes of a bona fide solvent reorganisation) or dissolution of the Partner; or the Partner otherwise proposes or enters into any composition or arrangement with its creditors or any class of them; or

### any event occurs, or proceeding is taken, with respect to the Partner in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.2 (inclusive); or

### the Partner suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of the Partner’s business; or

### there is a change of control of the Partner; or

### there is an actual or threatened termination, cessation or withdrawal of the Partner’s membership of ABTA or any trade body or other means by which payments made by customers are financially protected by the Partner; or

### Direct Ferries ceases to distribute generally the Ferry Tickets.

# **Consequences of termination**

## The termination of this Agreement shall be without prejudice to the rights and remedies of the Parties which may have accrued before the date of termination.

## On termination of this Agreement the Partner shall immediately cease:

### to promote, market, advertise or sell the Ferry Tickets;

### to describe itself as an Partner of Direct Ferries;

### all use of trade marks, trade names and brand names of Direct Ferries or ferry operators;

### use of the API.

## Notwithstanding the foregoing the Partner shall fulfil all orders for sold Ferry Tickets and customer complaints/queries for such scale.

## The Partner shall at its own expense within thirty (30) days of termination return to Direct Ferries any advertising, promotional or sales material relating to the Ferry Tickets or otherwise dispose of the same as Direct Ferries may instruct.

## On termination of this Agreement, the provisions of clauses 5.7, 7, 8, 10, 12, 13 shall continue in force in relation to all sales of the Ferry Tickets where the sale has been concluded before the date of termination.

## On termination of this Agreement, the following clauses shall continue in force: 1,9, 10, 12 and 13 together with those other clauses, the survival or coming into force of which is necessary for the interpretation or enforcement of this Agreement or which are expressly or by implication intended to survive expiry or termination, shall continue to have effect.

# **General**

## Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may have or may in future come to its knowledge, together with the existence and contents of this Agreement, and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters. No party shall use any other party’s confidential information for any purpose other than to perform its obligations under this Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party’s confidential information comply with this clause.

## Any notice given under this Agreement shall be in writing (including by email) and served to the relevant party at its registered office or such other address as that party may have specified to the other party. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## Nothing in this Agreement shall create or be deemed to create a partnership or joint venture relationship between the parties and neither party shall have authority to bind the other in any way unless expressly provided otherwise in this Agreement.

## The Partner shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with its rights and obligations under this Agreement without Direct Ferries’ prior written consent. Direct Ferries may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with its rights under this Agreement.

## This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in this Agreement.

## Direct Ferries reserves the right to make changes to this Agreement from time to time. Any material alterations will be notified to the Partner via email. The Partner’s continued provision of the services shall signify its agreement to such changes. A waiver of any right or remedy is only effective if given in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy.

## If any provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. Any modification to or deletion of a provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

## Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from acts of God, war or terrorist activity, riot, civil commotion, fire, flood or storm or any other event beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for one month, the party not affected may terminate this Agreement by giving thirty (30) Business Days’ written notice to the affected party.

## No one other than a party to this Agreement shall have any right to enforce any of its terms.

## This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

1. schedule 1
   1. DATA PROCESSING DETAILS
      * 1. subject-matter of processing:

Arranging passenger transportation on ferries.

* + - 1. duration of the processing:

Duration of the Contract Term

* + - 1. nature and purpose of the processing:

Involves the storing and processing of Personal Data in a way necessary to complete the ferry booking with a ferry operator at the instruction of Direct Ferries.

* + - 1. type of Personal Data:

Personal Data may include various passenger details such as title, first name, surname, email address, phone number, passport details (including passport number, issue date, expiry date, nationality, date of birth and place of birth), make of vehicle, model of vehicle, and vehicle registration.

* + - 1. categories of Data Subjects:

Individual customers, who may use our services to book Ferry Tickets globally.

* + - 1. ADDITIONAL instructions

None.