



## Data Provision Agreement

Customer Name	Orlando/Orange County Convention & Visitors Bureau, Inc. d/b/a Visit Orlando	TravelClick, Inc.	
Address	6277 Sea Harbor Drive, Suite 400	Address	55 West 46th Street
City, State and ZIP	Orlando, FL 32821	City, State and ZIP	New York, New York 10036
State of Organization	Florida	State of Incorporation	Delaware
Effective Date	8/28/2020		
License Fees	\$ 25,000 (annual), with increases for renewal period(s) in accordance with Section 2 below		

### Terms and Conditions

This Data Provision Agreement ("Agreement") is by and between TravelClick, Inc. and its affiliates ("TravelClick") and Customer. Customer and TravelClick are each a "Party" under this Agreement and, collectively, the "Parties." As used in this Agreement, "Data" means data from TravelClick as agreed upon by the parties in a separate writing.

The Parties agree as follows:

1. **Grant of License by TravelClick.** TravelClick hereby grants to Customer the non-exclusive, revocable right and license to use the Data solely for internal purposes. Without limiting the foregoing, Customer may not (i) resell, sell, distribute, disclose or otherwise transfer Data to any third party, including but not limited to Customer's members; (ii) incorporate the Data directly into any product or service offered to third parties; or (iii) use the Data in a service bureau or similar service. However, Customer may summarize at a high level any analysis performed by Customer that is derived from the Data and share such high-level analysis summary with its members and its board as long as such summary does not contain in any way the Data or any portions of the Data.
2. **Customer Obligations and Fees.**
  - 2.1 Customer agrees:
    - a. to use the Data solely in accordance with the terms and conditions of this Agreement and TravelClick's competitive set and other data use policies provided by TravelClick to Customer;
    - b. to use the Data in compliance with all applicable laws and regulations, including but not limited to antitrust and competition laws and regulations, and securities laws and regulations.
  - 2.2 Customer agrees to pay all License Fees as set forth above, in advance of each anniversary of the Effective Date during the Term, within 30 days of receipt of invoice from TravelClick. TravelClick may increase the License Fees during the Term beginning on the first anniversary of the Effective Date; provided, that, any such increase (i) does not occur more than once during any twelve-month period and (ii) does not increase the License Fees by greater than 5 percent.
3. **Confidentiality.** Each Party agrees that all information disclosed by either Party, whether or not disclosed orally, in writing or electronically and whether or not marked "Confidential", will be considered and referred to collectively in this Agreement as "Confidential Information" subject to the protections of this Agreement. Confidential Information includes the Data. Confidential Information does not include information that (i) either Party can demonstrate to have had rightfully in its possession prior to disclosure to the receiving Party; (ii) is independently developed by either Party without the use of any Confidential Information; or (iii) either Party rightfully obtains from a third party who has the right to transfer or disclose it. The Parties may not disclose, publish, or otherwise disseminate Confidential Information to anyone other than those of its employees with a need to know or to trusted subcontractors or advisors with a need to know and who have a duty or obligation to maintain the confidentiality of Confidential Information and, except for the Data which Customer may use in accordance with Section 2 of this Agreement, a Party may not use Confidential Information except as necessary to perform its obligations under this Agreement. Each Party must take precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. The Parties accept the Confidential Information for the sole purposes described in this Agreement. Except with respect to the Data as licensed under Section 1 above, each Party may not use Confidential Information without the prior written approval of an authorized representative of the disclosing Party in each instance. Upon termination of this Agreement, the receiving Party must either return the Confidential Information to the other or, as with the Data, certify in writing that such information and/or Data has been destroyed; provided that one copy of Confidential Information (including the Data) may be retained (but not used) solely for compliance purposes in accordance with its archive policy and procedure, and pursuant to applicable law, rule and regulation. Notwithstanding the foregoing, upon receipt of a legal demand for the production of Confidential Information subject to this Agreement, the Party receiving that demand will give prompt notice to the other Party and provide the other Party with an opportunity to object before producing the Confidential Information. The obligations of confidentiality under this Agreement survive termination or expiration of this Agreement. This Agreement is Confidential Information and all information related to this Agreement is Confidential Information, including but not limited to the provision of Data and the business arrangement between the Parties hereunder. Notwithstanding the foregoing, Customer may provide a copy of this Agreement to the Orange County Government, Florida.



## Data Provision Agreement

Customer agrees that TravelClick will not be cited in any way as a source of information including to Customer's clients. Similarly, TravelClick will not name or identify Customer as a client of TravelClick.

4. **Term.** Subject to the termination and renewal provisions below, this Agreement begins on the Effective Date and continues for one year (the "**Term**"). This Agreement may be terminated by either Party as a result of a material breach by the other party (subject to 20 days' right to cure following written notice to the breaching party). In addition, TravelClick may terminate this Agreement with 30 days' written notice to Customer at any time and, upon any such termination, TravelClick shall provide Customer with a pro-rata refund as applicable.

## 5. Representations and Warranties.

- a. TravelClick hereby represents and warrants that it has and will have all rights, titles, licenses, permissions and approvals necessary to perform its obligations under the Agreement and to grant Customer the rights granted in the Agreement
- b. TravelClick hereby represents and warrants that the Data does not infringe any patent, copyright, trademark or other intellectual property or constitute the misappropriation of a trade secret of any third party.
- c. Each Party represents and warrants that in the performance of the Agreement, such Party's shareholders, directors, officers, and employees, and such Party's agents and representatives, will comply strictly with all applicable anti-bribery and anti-corruption laws.

## 6. Indemnity.

a. **Indemnification by TravelClick.** TravelClick will indemnify, defend and hold harmless Customer from and against actual, direct costs, charges, losses and expenses that are payable to third parties to the extent that TravelClick breached (i) Section 5a or Section 3 of this Agreement or (ii) any patent, copyright or trademark of any third party. TravelClick has no liability for infringement claims under this Section if the alleged infringement is based on or arises from (x) combination or use of the Data with any information, materials, technology, methods, or processes not provided by TravelClick, if the Data alone do not so infringe, (y) the use of the Data not in accordance with this Agreement, or (z) a modification of the Data by Customer or its representatives or agents. Customer will allow TravelClick the sole control of the defense and settlement of any claim (provided, that TravelClick will not settle or compromise any such claim that imposes costs or obligations on Customer without the prior written consent of Customer, which consent will not be unreasonably withheld), provide prompt notice to TravelClick of the claim, and reasonably cooperate in the defense of any claim at its expense. If use of the Data by Customer does, or in TravelClick's opinion may, become subject to an injunction, TravelClick may, in its discretion, obtain the right to continue to provide it, or discontinue providing all or part of the Data.

b. **Indemnification by Customer.** Customer will, at its sole cost and expense, indemnify, defend and hold harmless TravelClick, its Affiliates and their respective officers, directors, employees, agents, attorneys, and contractors (collectively, the "TravelClick Parties") from and against any and all liabilities, obligations, damages, penalties, claims, actions, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) that are payable to third parties which may be imposed upon, incurred or be asserted against TravelClick Parties by reason of any allegation that Customer breaches Sections 1, 2, or 3. TravelClick will allow Customer the sole control of the defense and settlement of any claim, provide prompt notice to Customer of the claim, and reasonably cooperate in the defense of any claim at its expense.

7. **Limitation of Liability.** NEITHER PARTY IS LIABLE FOR ANY LOST DATA, INACCURATE DATA, UNTIMELY DATA INDIRECT DAMAGES, LOST REVENUES, LOST PROFITS, INCIDENTAL DAMAGES, PUNITIVE DAMAGES OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. EXCEPT AS SET FORTH BELOW, A PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNTS PAID BY CUSTOMER IN THE 12 MONTHS PRECEDING THE DATE A PARTY FIRST RECEIVED NOTICE OF THE CLAIM GIVING RISE TO THAT LIABILITY. CUSTOMERS MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO CUSTOMERS PAYMENT OR INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT IS LIMITED TO THE GREATER OF \$1,000,000 OR 3X THE AMOUNTS PAID BY CUSTOMER IN THE 12 MONTHS PRECEDING THE DATE A PARTY FIRST RECEIVED NOTICE OF THE CLAIM GIVING RISE TO THAT LIABILITY. THE DATA ARE PROVIDED "AS IS," AS AVAILABLE AND WITH ALL FAULTS. TRAVELCLICK SPECIFICALLY DISCLAIMS ANY WARRANTIES RELATED TO THE DATA INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 8. Additional Terms and Conditions.

a. This Agreement does not constitute and will not be construed as constituting a partnership or joint venture between TravelClick and Customer.

b. The validity and performance of this Agreement is governed by New York, USA law (without reference to choice of law principles), and applicable federal law. For Customers based in the USA, the state and/or federal courts located in the County of New



### Data Provision Agreement

York, State of New York, USA are the exclusive venue for any disputes arising out of or related to this Agreement. However, nothing in this Agreement prevents either Party from seeking equitable, injunctive or declaratory relief to enforce any of its intellectual property rights or rights in its Confidential Information in any court of appropriate jurisdiction wherever located.

c. Customer may not assign or delegate this Agreement without the prior written consent of TravelClick. TravelClick may assign this Agreement to one or more of its affiliates or upon a change of control. This Agreement binds both Party's respective permitted successors and assigns. Any attempt to assign or delegate this Agreement in violation of this section is null and void.

d. Neither Party is liable for any failure to perform caused by factors beyond its reasonable control, including acts of God, acts of war, terrorism or civil unrest, fire, flood, earthquakes, tornados or other catastrophes or governmental orders, strikes or labor difficulties.

e. Sections 2, 3, 5, 6, 7 and 8 survive any termination or expiration of this Agreement.

f. A Party's failure at any time to enforce any of the provisions of this Agreement, will not be construed to be a waiver of such provision or rights, nor to affect the validity of this Agreement. The exercise by a Party of any rights provided by this Agreement does not preclude or prejudice the exercise thereafter of the same or other rights under this Agreement.

f. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be, to that extent, deemed omitted and the remaining provisions will continue in full force and effect.

**IN WITNESS WHEREOF**, the Parties have caused their authorized representatives to execute this Agreement to be made effective as of the Effective Date.

**TRAVELCLICK**

**TravelClick, Inc.**

By: Laurie Bennett  
CA5527DAD473121C12962E2AD19BF303 contractworks.  
Name: Laurie Bennett

Title: General Counsel

Date: 09/03/2020

**CUSTOMER**

**Orlando/Orange County Convention & Visitors Bureau,  
Inc. d/b/a Visit Orlando**

By: Keith Swider  
647C829F5682EDCABDA37F953334DDBA contractworks.  
Name: Keith Swider

Title: VO of Finance

Date: 09/03/2020