

TERMS OF USE

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THIS SITE.

BY USING THE SITE OR CLICKING "AGREE" YOU ARE AGREEING TO BE BOUND BY THESE TERMS OF USE. IF YOU ARE AN INDIVIDUAL, YOU MUST BE AT LEAST 18 YEARS OF AGE. IF YOU ARE AGREEING TO THESE TERMS OF USE ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THESE TERMS OF USE ON THEIR BEHALF.

These terms of use are between Captain Experiences, Inc. (**CE**), and the user agreeing to these terms (**User**). "Users" are both Guides and Guests (as defined below), unless otherwise specified.

1. WEB SITE.

These terms of use provide access to and usage of the CE Web Site and all associated services (**Site**), which Site is an online marketplace enabling outdoor adventure guides (**Guides**) to publish their service and trips (**Listings**), and communicate and transact directly with registered guests of the Site (**Guests**) who may book a Listing with a Guide.

2. USE OF SITE.

- a. **Data.** All data and content uploaded by Guides and Guests to the Site remains the property of Guides and Guests, respectively, (**Data**). Each Guide and Guest grant CE the right to use the Data for purposes of performing under these terms of use, including but not limited to sharing the Data with other Guides and Guests. All Data is collected and used in accordance with the CE privacy policy.
- b. **Guide and Guest Responsibilities.** Each Guide and Guest: (i) must keep its passwords secure and confidential; (ii) is solely responsible for its Data and all activity in its account in the Site; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify CE promptly of any such unauthorized access; and (iv) may use the Site only in accordance with these terms of use, CE policies, and applicable law.
- c. **Review, Contribution and Experience Data License.** Guides and Guests may submit review, contribution and experience data into the Site (**RCE Data**). Each Guide and Guest grant CE a non-exclusive, perpetual, royalty-free, irrevocable, sub-licensable, worldwide right to use, copy, modify, publish, display and distribute all such RCE Data for any purpose both during and after the term of these terms of use.
- d. **Prohibited Activities.** In connection with use of the Site, Guest and Guide will not assist or enable others to:
 - i. breach or circumvent any applicable laws or regulations, agreements with third-parties, third-party rights, any CE policies, or these terms of use;
 - ii. use the Site for any commercial or other purposes that are not expressly permitted by these term of use or in a manner that falsely implies CE endorsement, partnership or otherwise misleads others as to an affiliation with CE;
 - iii. copy, store or otherwise access or use any information, including personally identifiable information about any other guest or guide, contained on the Site in any way that is inconsistent with any CE policy or these terms of use or that otherwise violates the privacy rights of other guests or guides or third parties;
 - iv. use the Site in connection with the distribution of unsolicited commercial messages;

- v. upload any Data that is defamatory, infringing, libelous, abusive, offensive or obscene, or that contains any virus or other computer program that may damage or affect any system;
- vi. offer, as a Guide, any Listing that you do not or have permission to make available;
- vii. unless CE explicitly permits otherwise, as a Guest, book any Listing if you will not actually be participating in the Listing yourself;
- viii. as a Guide, contact another guest or guide for any purpose other than asking a question related to your own Listing;
- ix. use the Site to request, make or accept a booking independent of the Site, to circumvent any Service Fees, or for any other reason;
- x. request, accept or make any payment for Listing Fees or Total Fees outside of the Site. If User does so, User acknowledges and agrees that User: (i) would be in breach of these terms of use; (ii) accept all risks and responsibility for such payment, (iii) owes CE a Guide Fee; and (iv) holds CE harmless from any liability for such payment;
- xi. discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation, or otherwise engage in any violent, harmful, abusive or disruptive behavior;
- xii. dilute, tarnish or otherwise harm the CE brand in any way; or
- xiii. violate or infringe anyone else's rights or otherwise cause harm to anyone.

3. FEES.

- a. **Guide Fees.** CE charges a commission fee to each Guide for each trip taken by a Guest (**Guide Fee**). Guide Fees are a percentage of the executed Listing value (**ELV**), which ELV is equal to the total amount paid by Guest to Guide for the Listing, less any refunds paid by Guide to Guest. Any refund or cancellation policy is specific to each Listing and, if applicable, will be described in the Listing. Guide Fees are exclusive of taxes.
- b. Any applicable Guide Fees will be displayed to a Guide prior to publishing a Listing. CE reserves the right to change the Guide Fees at any time, and will provide adequate notice to Guides of any Guide Fee changes before they become effective. Such Guide Fee changes will not affect any booked Listings made prior to the effective date of the Guide Fee change.
- c. **Guest Fee.** All applicable fees, including the Listing Fee (as defined below), security deposit (if applicable), and any applicable taxes (collectively, "**Total Fees**") must be presented to Guest prior to booking a Listing. Guest must pay the Total Fees for any Listing booked.
- d. **Taxes.** Guide and Guest acknowledge and agree that CE is not obligated to determine whether taxes apply to any Guest Fee or otherwise, and is not responsible to collect, report, or remit any taxes arising from any transaction.
- e. **Anti-Money Laundering Statement.** In order to further reduce the risk that the Site could be used for money laundering purposes, there are no cash transactions allowed through the Site. All money is received and remitted electronically.

4. GUIDE SPECIFIC TERMS

- a. When creating or approving a Listing through the CE Site, Guide must (i) provide complete and accurate information about the Listing (such as listing description, location, and calendar availability), and (ii) disclose any deficiencies, restrictions and requirements that apply (such as any minimum age, proficiency or fitness requirements for a Listing). Guide is responsible for keeping its Listing information (including calendar availability) up-to-date at all times. If CE

creates the Listing on Guide's behalf (as agreed to by Guide), Guide must approve the Listing before it will be live on the Site.

- b. Guide is solely responsible for setting a price (including any taxes if applicable, or other) for a Listing (**Listing Fee**). Once a Guest requests a booking of a Listing, Guide may not request that the Guest pays a higher price.
- c. Any terms and conditions included in a Listing must not conflict with these terms of use or any CE policies.
- d. When Guide accepts a Listing request by a Guest, Guide is entering into a legally binding agreement with the Guest, and is required to provide the Listing to the Guest as described.
- e. Taxes. Guide is solely responsible for determining (i) applicable taxes for Listings, and (ii) applicable tax reporting requirements. Guide is solely responsible for remitting to the relevant authority any taxes included or received by Guide.

5. GUEST SPECIFIC TERMS

- a. Upon receipt of a booking confirmation of a Listing, a legally binding agreement is formed between Guest and Guide, CE will collect the Total Fees at the time of the Listing booking request or upon the Guide's confirmation.
- b. Guest agrees to adhere to all rules set forth in the Listing, these terms of use, and CE policies.
- c. If Guest books a Listing on behalf of additional guests, Guest is required to ensure that every additional guest meets any requirements set in the Listing, and is made aware of and agrees to these terms of use. If Guest is booking for an additional guest who is a minor, Guest represents and warrants that it is legally authorized to act on behalf of the minor. Minors may only participate in a Listing if accompanied by an adult who is responsible for them.

6. WARRANTIES.

Guide and Guest represent and warrant that:

- a. It is solely responsible for all Data that it uploads into the Site and it has all rights, licenses and permissions necessary to do so and to allow CE to use such Data in accordance with these terms of use;
- b. No Data is fraudulent, false, misleading, deceptive, defamatory, libelous, obscene, pornographic, offensive, promotes discrimination, hatred or harm against anyone, is violent or threatening or promoting of violence, or illegal.

7. DISCLAIMERS.

- A. SITE DISCLAIMER. THE SITE IS PROVIDED 'AS IS' WITHOUT WARRANTY. CE DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE CE TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SITE, CE DOES NOT GUARANTEE THAT THE SITE CANNOT BE COMPROMISED. THE SITE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED. SOME STATES MAY NOT ALLOW SUCH DISCLAIMERS, EXCLUSION OR LIMITATION, SO THE ABOVE DISCLAIMER, EXCLUSION OR LIMITATION MAY NOT APPLY TO THE USER.**

- B. GUIDE AND LISTING DISCLAIMER. GUIDES ALONE ARE RESPONSIBLE FOR THE QUALITY, ACCURACY, SUITABILITY, AND LEGALITY OF THEIR LISTINGS, AND CE HAS NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO A LISTING. CE DOES NOT REQUIRE THAT GUIDES ARE INSURED, AND DOES NOT VERIFY THE VALIDITY OF ANY GUIDE'S INSURANCE. CE DOES NOT ENDORSE OR VERIFY ANY GUIDE OR ANY GUIDE'S LISTING. A GUEST'S BOOKING OF A LISTING CREATES A CONTRACT BETWEEN GUEST AND GUIDE, AND CE IS NOT A PARTY TO THAT CONTRACT AND HAS NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THAT CONTRACT. GUEST AGREES THAT LISTINGS MAY CARRY INHERENT RISK, AND BY PARTICIPATING IN SUCH LISTING, GUESTS CHOOSE TO ASSUME THOSE RISKS VOLUNTARILY, INCLUDING BUT NOT LIMITED TO WHETHER A GUIDE IS INSURED OR WHETHER THE GUEST SHOULD TAKE OUT INSURANCE, AND WHETHER A TRAVEL DESTINATION IS SAFE. FOR EXAMPLE, SOME LISTINGS MAY CARRY RISK OF ILLNESS, BODILY INJURY, DISABILITY, OR DEATH, AND GUEST FREELY AND WILLFULLY ASSUMES THOSE RISKS BY CHOOSING TO PARTICIPATE IN THOSE LISTINGS. IF GUEST IS BRINGING A MINOR AS AN ADDITIONAL GUEST, GUEST IS SOLELY RESPONSIBLE FOR THE SUPERVISION OF THAT MINOR THROUGHOUT THE DURATION OF THE LISTING, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, GUEST AGREES TO RELEASE AND HOLD HARMLESS CE FROM ALL LIABILITIES AND CLAIMS THAT ARISE IN ANY WAY FROM ANY INJURY, DEATH, LOSS OR HARM THAT OCCURS TO THAT MINOR OR TO ANY GUEST DURING OR IN ANY WAY RELATED TO THE LISTING.**
- C. THIRD PARTY SERVICES DISCLAIMER. THE SITE MAY CONTAIN LINKS TO THIRD PARTY WEBSITES (THIRD PARTY WEBSITES) WHICH ARE OWNED AND CONTROLLED BY THIRD PARTIES. CE HAS NO RESPONSIBILITY OR LIABILITY FOR SUCH THIRD PARTY WEBSITES OR ANY CONTENT OR SERVICES THEREON.**

8. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). CE's Confidential Information includes, without limitation, the Site, its user interface design and layout, and pricing information.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), and it may not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this terms of use. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with these terms of use and who have signed confidentiality terms of uses with Recipient no less restrictive than the confidentiality terms of this terms of use.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

9. CE PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs, and other technologies provided by CE as part of the Site are the proprietary property of CE and its

licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with CE. User may not remove or modify any proprietary marking or restrictive legends in the Site. CE reserves all rights unless expressly granted in these terms of use.

- b. **Restrictions.** User *may not*: (i) sell, resell, rent, or lease the Site or use it in a service-provider capacity; (ii) use the Site to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Site; (iv) attempt to gain unauthorized access to the Site or its related systems or networks; (v) reverse engineer the Site; (vi) access the Site to build a competitive Site or product, or copy any feature, function, or graphic for competitive purposes; (vii) use, display, mirror or frame the Site, or any individual element within Site; or (viii) use any robots, spider, crawler, scraper or other automated means or processes to access, collect data or other content from or otherwise interact with the Site for any purpose.
- c. **Aggregated Data.** During and after the term of these terms of use, CE may use and owns all anonymized data within the Site for purposes of enhancing the Site, aggregated statistical analysis, technical support, and other business purposes.

10. TERM AND TERMINATION.

- a. These terms of use continue until terminated by either party for convenience at any time. CE may, at any time, without prior notice, temporarily or permanently remove or disable access to a Guide or Guest account in the Site or to any Data, in the event that CE finds the Guide or Guest account in the Site or Data to be in breach of these terms of use, in breach of CE policies, in violation of law, or CE believes, in its sole discretion, that such action is necessary.
- b. If CE takes any of the measures described above (i) Guide must refund Guests in full for any and all confirmed Listings that have been cancelled, irrespective of preexisting cancellation policies, and (ii) Guide will not be entitled to any compensation for pending or confirmed Listings that were cancelled.
- c. When these terms of use have been terminated, User is not entitled to a restoration of its account in the Site. If User's account in the Site has been suspended or these terms of use have been terminated by CE, User may not register for a new account in the Site or access and use the Site through another party's account in the Site.
- d. **Guide Termination.** If Guide cancels its account in the Site, any confirmed Listings will be automatically cancelled, Guide's Guests will receive a full refund from Guide.
- e. **Guest Termination.** If Guest cancels its account in the Site, any confirmed Listings will be automatically cancelled and any refund will depend upon the terms of the Listing's cancellation policy.

11. LIABILITY LIMIT AND INDEMNITY.

- a. **Exclusion of Indirect Damages.** CE is not liable for any indirect, special, incidental, or consequential damages, or for any damages for personal or bodily injury or emotional distress arising out of or in connection with arising out of or related to a Listing or these terms of use (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply. User may have additional consumer rights under local law. User may also have other rights which vary from jurisdiction to jurisdiction.

- b. **Total Limit on Liability.** CE's total liability arising out of or related to these terms of use (whether in contract, tort, or otherwise) does not exceed either (i) for Guests: the amounts Guest has paid or owes for Listings in the twelve (12) month period prior to the event giving rise to the liability, or (ii) for Guides: the amounts paid by CE to Guide in the twelve (12) month period prior to the event giving rise to the liability, or one hundred U.S. dollars (US\$100), if no such payments have been made.

12. User Indemnity.

If a party (either a User or a third party) makes claim against CE that arises out of or results from (i) the User Data (ii) User's breach of these terms of use, CE policies, or applicable law; (iii) improper use of the Site; or (iv) a Listing or participation therein, User will defend CE against that claim at User's expense and indemnify CE and its officers, directors, employees and agents and hold all of them harmless from all costs, liabilities, losses, expenses, damages, and attorneys' fees arising out of or resulting from such claim.

13. GOVERNING LAW AND FORUM.

- a. **These terms of use are governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of these terms of use. Except as set forth below in 13(b), any suit or legal proceeding must be exclusively brought in the federal or state courts for Travis County, Texas, and User submits to this personal jurisdiction and venue. Nothing in these terms of use prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.**
- b. **Arbitration for Claims Less than \$10,000.** Notwithstanding the foregoing, for any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief must resolve the dispute in a more cost effective manner through binding non-appearance-based arbitration. In this case, the party initiating arbitration must initiate such arbitration through an established alternative dispute resolution (ADR) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration will be conducted by telephone, online and be solely based on written submissions, the specific manner will be chosen by the party initiating the arbitration; (ii) the arbitration will not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator is final and may be entered in any court of competent jurisdiction.

14. OTHER TERMS.

- a. **Entire Terms of use and Changes.** These terms of use constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreement, whether oral or written, related to this subject matter. User is not relying on any representation concerning this subject matter, oral or written, not included in these terms of use. No representation, promise, or inducement not included in these terms of use is binding. No modification or waiver of any term of these terms of use is effective unless both parties sign it, however these terms of use may be modified through an online process provided by CE.
- b. **Enforceability.** If any term of these terms of use is invalid or unenforceable, the other terms remain in effect.
- c. **Money Damages Insufficient.** Any breach by a party of these terms of use or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party.

The other party may seek a court order to stop any breach or avoid any future breach of this terms of use.

d. **Feedback.** If User provides feedback or suggestions about the Site, then CE (and those it allows to use its technology) may use such information without obligation to User.

e. **Survival of Terms.** Any terms, that by their nature survive termination of these terms of use for a party to assert its rights and receive the protections of these terms of use, will survive (including, without limitation, the confidentiality and indemnity terms).

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