

Dated June 2017

Terms and Conditions for the Supply of Services Winnow Ltd. (Winnow)

THE USER'S ATTENTION IS PARTICULARLY DRAWN
TO THE PROVISIONS OF CLAUSE 13 (LIMITATION OF LIABILITY).

1 Introduction

Winnow provides an online platform which connects Experience Providers with Customers. Winnow makes Experiences available through its Winnow App.

2 Definitions

The following definitions and rules of interpretation apply in these Conditions.

2.1 Definitions:

Bank Fees: the fee from time to time (currently 50 cents) charged by our bank to make local bank transfers.

Booking: a booking for an Experience requested by a User and confirmed by Winnow.

Booking Request: a request from a User to book an Experience.

Booking Request Period: the time period within which an Experience Provider may accept or reject a proposed Booking as set out in the applicable Listing.

Communication: an email, message via the Winnow App or a text message.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.4.

Chargeback: a request for or the return of monies by Winnow to an issuing bank, credit card provider or debit card provider or the reversal of a credit or debit card transaction or Pay Pal transaction used to pay Total Fees by a Customer.

Content: text, graphics, images, music, software (excluding the Winnow App), audio, video, information or other materials.

Contract: the contract between the Winnow and the Customer for the supply of Experiences in accordance with these Conditions.

Credit Card Fees: any fees charged by a bank, issuer or credit card processor to process a credit or debit card transaction.

Customer: the person or firm who purchases Experiences from Winnow.

Experience: any of the experiences, events or services described in the Winnow App from time to time capable of being booked by a Customer including but not in any way limited to guided tours, fishing trips, sports activities, eco and cultural excursions and dining experiences.

Experience Fees: the amounts that are due and payable by a Customer in exchange for an Experience.

Experience Provider: a User whose Listing appears in the Winnow App.

Experience Provider Content: any information or data provided to Winnow by an Experience Provider including but not limited to a Listing.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks 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, rights in computer software, 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.

Listing: an Experience listed as being available for booking via the Winnow App.

Payment Method: a payment method that you have added to your Winnow Account, such as a credit card, debit card, Pay Pal account or Apple Pay.

Payment Terms: notice from Winnow to an Experience Provider advising that Experience Provider of when, how and how much it will be paid for a Booking.

Tax: any sales taxes, value added taxes (VAT), goods and services taxes (GST), visitor taxes, accommodation or lodging taxes that Experience Providers may be required by law to collect and remit to government agencies or other authorities.

Total Fees: both the Experience Fees and the Winnow Fees.

User: any person who completes Winnow's registration process, including but not limited to Experience Providers and Customers.

Winnow: Winnow Ltd. a local company registered in Bermuda with company number 52064.

Winnow App: the Winnow application for mobile, tablet and other smart devices and application programme interfaces.

Winnow Content: all content that Winnow makes available through the Winnow App, any marketing or social media platform and Winnow's website including any Content licensed from a third party but excluding Experience Provider Content.

Winnow Fees: the fee that Winnow charges an Experience Provider for the use of the Services, which is calculated as a percentage of the Experience Fees.

Interpretation:

- (a) Any words following the terms **including, include, in particular, for example** 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.
- (b) A reference to **writing or written** includes faxes, email and Communications.

3 Terms of Service for Experience Providers

- 3.1 By submitting a Listing, you as an Experience Provider agree to comply with and be legally bound by these Conditions.
- 3.2 The Winnow App is a platform through which Experience Providers create Listings for Experiences and Customers learn about and book Experiences directly with Experience Providers. You understand and agree that Winnow is not a party to any agreements entered into between Experience Providers and Customers. Winnow has no control over the conduct of Experience Providers and disclaims all liability in this regard to the fullest extent permitted by law.

- 3.3 If you as an Experience Provider choose to create a Listing on the Winnow App, you understand and agree that your relationship with Winnow is limited to being a User and not an employee, agent, joint venture party or partner of Winnow for any reason. You agree that you are acting exclusively on your own behalf and not on behalf of or for the benefit of Winnow. Winnow does not control and has no right to control your business activities, the manner in which you provide Experiences, your offline activities associated with your Listing, or any other matters relating to any Listing that you provide. As an Experience Provider, you agree not to claim that you are endorsed by, partnering with, or acting on behalf of or for the benefit of Winnow.

4 How the Winnow App works

- 4.1 The Winnow App facilitates the Listing and booking of Experiences. The Experiences offered by Experience Providers are described in Listings on the Winnow App. You may view Listings on the App without registering as a User. Only persons who register with Winnow and create an account may book an Experience or make a Listing.
- 4.2 Winnow makes available a marketplace via the Winnow App for Experience Providers and Customers to meet and for Customers to make bookings directly with Experience Providers. Winnow is not an owner or operator of properties, hotels, restaurants, tourist or leisure facilities or otherwise. Winnow's responsibilities are limited to facilitating the availability of the Winnow App and the Experiences.
- 4.3 Winnow is not responsible for the quality or adequacy of the Experiences provided by an Experience Provider to a Customer. All bookings are made directly between an Experience Provider and a Customer and Winnow has no liability to a Customer or an Experience Provider save as expressly set out in these Conditions.

5 Customer/ User Account registration

- 5.1 As a Customer or Experience Provider, to access features on the Winnow App or to book an Experience, you must first register to create an account ([Winnow Account](#)) and become a User. You may register directly via the Winnow App.
- 5.2 Your Winnow Account will be created for your use of the Winnow App based upon the personal information you provide to us. You may not have more than one active Winnow Account. You agree to provide us with accurate, current and complete information during the registration process and to keep this information up to date. Winnow reserves the right to suspend or terminate your Winnow Account if you create more than one Winnow Account or if any of the information you provide to us is false, misleading or inaccurate.

6 Experience Provider Listings

- 6.1 As an Experience Provider, you may create Listings, which must be approved by us and conform with our requirements. All Listings must include a cancellation policy and specify the Booking Request Period for the Experience or Experiences referred to in the Listing.

- 6.2 As an Experience Provider you should send us a draft Listing, including any logos, likenesses, images, photographs or other material (**Included Material**) you wish to be included in the Listing. We shall review each draft Listing submitted to us and, if required, amend it to conform to Winnow brand guidelines and standards. If the amended draft Listing is in acceptable form to us we shall send you a Communication:
- (2.a) containing the draft Listing as amended by us;
 - (2.b) confirming that the draft Listing has been approved to be a Listing;
 - (2.c) advising you when the Listing will be made available via the Winnow App;
 - (2.d) advising you of the Booking Request Period for each Experience set out in the Listing;
 - (2.e) confirming the cancellation policy for each Experience set out in the Listing; and
 - (2.f) advising you of the Payment Terms.
- 6.3 Listings will be made publicly available via the Winnow App. As an Experience Provider you understand and agree that the placement or ranking of Listings in search results will depend upon a number of factors unique to each User.
- 6.4 We may take photographs of Experience Providers and the Experiences they provide. As Experience Providers you agree that we may take and retain copies of these photographs, which could include details or images of your business, your logo, trademarks and other information personal to you or in which you hold intellectual property or other ownership rights. You also agree that these photographs may appear in and be used by the Winnow App.
- 6.5 As an Experience Provider, you alone are responsible for the accuracy of all Listings. By submitting a Listing to us for approval, you agree that we may include the Included Material in the Listing and you represent and warrant that the Listing (including the Included Material):
- (5.a) is in compliance with all applicable laws;
 - (5.b) is accurate and not misleading in any way;
 - (5.c) does not breach the rights of any third party, including an Intellectual Property Rights of any other person.
- 6.6 Winnow reserves the right at any time to remove or disable a Listing that it considers to be objectionable for any reason.
- 6.7 As an Experience Provider, you may delete a Listing at any time by giving us written notice to this effect in which case we shall remove the Listing from the Winnow App as soon as reasonably practicable.
- 6.8 As an Experience Provider, you may amend a Listing at any time by sending us written notice to this effect. All requests for a Listing to be amended will be treated as a request for a new Listing under Clause 6.1.

7 No endorsement

- 7.1 Winnow does not endorse any Experience Provider, Listing or Experience.
- 7.2 By using the Winnow App to make a Booking, each Customer agrees that any legal remedy or liability that you may have for acts or omissions of Experience Providers, for the inadequacy of any Experiences or otherwise will be limited to a claim against the partic-

ular Experience Provider who provided the Experience or caused you harm or loss. You agree not to take action or impose liability on Winnow with respect to any such claim.

8 Bookings and financial terms for Customers

- 8.1 Experience Providers, not Winnow, are solely responsible for honouring any confirmed Bookings and providing the Experiences reserved or ordered via the Winnow App.
- 8.2 If you as a Customer chose to make a Booking with an Experience Provider via the Winnow App, you understand and agree that the relevant Experience Provider, and not Winnow, is responsible for providing the Experiences to you set out in the Booking and that Winnow is not a party to the underlying agreement to provide these Experiences. You, as a Customer, agree and understand that you will be required to enter into an agreement with the Experience Provider and you agree to accept any terms, conditions, rules and restrictions associated with the relevant Experience imposed by the Experience Provider.
- 8.3 The Total Fees will be displayed to a Customer before Winnow sends a Booking Request to an Experience Provider. Upon receipt of a Booking Request, Winnow may initiate a pre-authorisation and/or charge a nominal amount to your Payment Method. If a requested Booking is not accepted by an Experience Provider, any amounts collected by Winnow will be refunded to the Customer and any pre-authorisation of the Customer's Payment Method will be released.
- 8.4 As a Customer, you agree to pay the Total Fees for any Booking requested and confirmed in connection with your Winnow Account. Once your Booking is complete, you will receive a Communication summarizing your confirmed Booking and confirming the amount you have paid for the Booking by your Payment Method.

9 Bookings and financial terms for Experience Providers

- 9.1 If you are an Experience Provider and a Booking is requested for your Experience via the Winnow App, you will be required to either preapprove, confirm or reject the Booking Request within the Booking Request Period, otherwise the Booking Request will automatically expire.
- 9.2 When a Booking is requested via the Winnow App, we will share with you as an Experience Provider (i) the first and last name of the Customer who has requested the Booking, and (ii) an indication of whether or not the Customer has provided other information to Winnow, such as a verified email address and telephone number. If you are unable to confirm or decide to reject a Booking request within the Booking Request Period, any amounts collected by Winnow for the requested Booking will be refunded to the applicable Customer.
- 9.3 When you as an Experience Provider confirm a Booking requested by a Customer, Winnow will send you a Communication confirming the Booking, depending on the selections you make via the Winnow App.
- 9.4 Winnow will collect the Total Fees from Customers at the time of the Booking request or

upon the Experience Provider's confirmation and will initiate payment of the Experience Fees (less Credit Card Fees, Bank Fees and Taxes) to you as an Experience Provider at the time and as further described in the Payments Terms.

- 9.5 You as an Experience Provider agree that Winnow may, in accordance with the cancellation policy selected by you and reflected in the relevant Listing, (i) permit the Customer to cancel the Booking and (ii) refund to the Customer that portion of the Experience Fees specified in the applicable cancellation policy.
- 9.6 You as an Experience Provider agree that:
- (6.a) you will not solicit business from or accept bookings for Experiences (meaning Experiences you provide and in respect of which at that time a Listing appears on the Winnow App) from a Customer introduced to you by Winnow outside of or independently from the Winnow App; and
 - (6.b) you will direct any Customer introduced to you via the Winnow App and who seeks or attempts to book an Experience with you directly to book the Experience via the Winnow App.
- 9.7 If a Customer makes a claim against Winnow (a **Customer Claim**) in respect of any Experience you have provided or a Chargeback is made against Winnow in respect of any Experience you have provided, you as the Experience Provider who provided the Experience shall on demand indemnify Winnow against and shall pay to Winnow a sum equal to all and any liabilities, expenses, damages and losses suffered or incurred by Winnow in respect of any Customer Claims or any Chargebacks made against Winnow. Winnow shall be entitled to set-off against any other amounts due to you as Experience Provider under these Conditions amounts paid by Winnow or which Winnow consider may be or become payable by Winnow in respect of any Customer Claims or Chargebacks made or expected to be made against Winnow.

10 General bookings and financial terms

- 10.1 If, as a Customer, you wish to cancel a Booking made via the Winnow App prior to the time the Experiences are to be provided, the cancellation policy of the Experience Provider contained in the applicable Listing will apply to such cancellation. Our ability to refund the fees and other amounts charged to you will depend upon the terms of the applicable cancellation policy. Details regarding refunds and cancellation policies are set out in the Listing for the Experience. When you cancel a Booking, you, as a Customer, must pay any Credit Card Fees applicable to your Booking and its cancellation. These Credit Card Fees will be deducted from any amount refunded to you.
- 10.2 If an Experience Provider cancels a Booking made via the Winnow App:
- (2a) Winnow will refund the Total Fees for such Booking to the applicable Customer;
 - (2b) the Customer will receive a Communication from Winnow containing alternative Listings and other related information;
 - (2c) the Experience Provider will pay and indemnify and reimburse Winnow for any Credit Card Fees and Bank Fees it has incurred in respect of the Booking and any Credit Card Fees and Bank Fees Winnow will incur in respect of the payment of a refund to the Customer.
- 10.3 If the Customer requests a Booking from one of the alternative Listings and the Expe-

rience Provider associated with such alternative Listing confirms the Customer's requested Booking, then the Customer agrees to pay Winnow the Total Fees relating to the confirmed Booking for the Experiences in the alternative Listing, in accordance with these Conditions.

- 10.4 In certain circumstances, Winnow may decide in its sole discretion that it is necessary or desirable to cancel a Booking made via the Winnow App. If Winnow cancels a Booking the Customer affected will receive a full refund of the Total Fees (including any Credit Card Fees and Bank Fees) paid for the cancelled booking and you as a Customer agree that Winnow shall have no further or additional liability in respect of the cancelled Booking.
- 10.5 No Customer shall be entitled to a refund of the Total Fees paid to Winnow after the Customer has received, enjoyed or been provided with the Experience by the Experience Provider. Each Customer acknowledges and accepts that the Experience Provider is solely responsible for providing the Experience to the Customer and that any claim, complaint or cause of action a Customer may have in respect of an Experience may only be made or brought against the Experience Provider.

11 Intellectual property rights

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Experiences and the Winnow App are owned by Winnow.
- 11.2 You (as a User or unregistered user) acknowledge and agree that the Winnow App, including all associated Intellectual Property Rights are the exclusive property of Winnow. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Winnow App.

12 Limitation Of Liability: Users' Attention Is Particularly Drawn To This Clause.

- 12.1 Nothing in these Conditions shall limit or exclude Winnow's liability for fraud or fraudulent misrepresentation.
- 12.2 Subject to clause 12.1, Winnow shall not be liable to any User, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - (2.a) loss of profits;
 - (2.b) loss of sales or business;
 - (2.c) loss of agreements or contracts;
 - (2.d) loss of anticipated savings;
 - (2.e) loss of use or corruption of software, data or information;
 - (2.f) loss of damage to goodwill;
 - (2.g) any indirect or consequential loss; and
 - (2.h) personal injury or death.
- 12.3 Subject to clause 12.1, Winnow's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the Total Fees paid to Winnow.

13 Links

- 13.1 The Winnow App may contain links to third-party websites or resources. You as a User, Customer or Experience Provider acknowledge and agree that Winnow is not responsible or liable for:
- (1.a) the availability or accuracy of such websites or resources; or
 - (1.b) the content, products, or services on or available from such websites or resources.
- Links to such websites or resources do not imply any endorsement by Winnow of such websites or resources or the content, products, or services available from such websites or resources.
- 13.2 You acknowledge sole responsibility for and assume all risk arising from your use of any such websites

14 Termination

- 14.1 These Conditions shall be effective for a 30-day term from 1 June 2017, at the end of which they will automatically and continuously renew for subsequent 30-day terms until they are terminated in the manner set out below.
- 14.2 You as an Experience Provider may terminate these Conditions at any time by sending us an email. If you cancel you Winnow Account as an Experience Provider, any Bookings will be automatically cancelled and your Customers will receive a full refund. If you cancel your Winnow Account as a Customer, any Bookings will automatically be cancelled and any refund will depend upon the applicable cancellation policy.
- 14.3 Winnow may terminate these Conditions at any time by giving you 30 days' notice via email to your registered email address.
- 14.4 Winnow may immediately, without notice, terminate these Conditions if:
- (4.a) you have materially breached these Conditions;
 - (4.b) you have provided incomplete information during the Winnow Account registration or Listing process;
 - (4.c) you have breached applicable laws; or
 - (4.d) Winnow believes that such action is necessary to protect the safety or property of other Users, Winnow or third parties for fraud prevention, risk assessment, security or investigation purposes.
- 14.5 In addition, Winnow may deactivate Listings, cancel any Bookings or Booking Requests, limit your access to your Winnow Account and the App, temporarily suspend your Winnow Account or your access to the Winnow App.

15 Disclaimer

- 15.1 The Winnow App, the Experiences and the collective Winnow referral program are provided "as is" without warranty of any kind, express or implied.
- 15.2 Winnow expressly disclaims any warranties of merchantability, satisfactory quality, fitness for particular purpose in respect of any Listing, any Experiences and/or any Experience Provider.

16 Accessing and downloading the Winnow App via iTunes

- 16.1 The following applies to Users accessing or downloading of the Winnow App through or from the Apple App Store (an [App Store Winnow App](#)):
- (1.a) You acknowledge and agree that (i) these Conditions are concluded between you and Winnow only, and not Apple, and (ii) Winnow, not Apple, is solely responsible for the App Store Winnow App and its content;
 - (1.b) Your use of the App Store Winnow App must comply with the Apple App Store Terms of Services;
 - (1.c) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Winnow App;
 - (1.d) If there is any failure of the App Store Winnow App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Winnow App to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Winnow App;
 - (1.e) As between Winnow and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Winnow;
 - (1.f) You and Winnow acknowledge that, as between Winnow and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Winnow App or your possession and use of the App Store Winnow App, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Winnow App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation;
 - (1.g) You and Winnow acknowledge that, in the event of any third-party claim that the App Store Winnow App or your possession and use of that App Store Winnow App infringes that third party's Intellectual Property Rights, as between Winnow and Apple, Winnow, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Conditions;
 - (1.h) You and Winnow acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Conditions as related to your license of the App Store Winnow App, and that, upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Conditions as related to your license of the App Store Winnow App against you as a third-party beneficiary of them.
 - (1.i) Without limiting any other terms of these Conditions, you must comply with all applicable third-party terms of agreement when using the App Store Winnow App.

17 General

- 17.1 **Personal Data.** The information Customers supply to Winnow may include personal information. The Winnow App may obtain data from Customers relating to their location, contacts, emails and telephone numbers and may use this data to suggest Experiences to Customer. As a Customer, you agree that we may use your personal information for the purposes of providing Experiences to you whilst you maintain an Account with Winnow. You also agree that we may obtain data from you regarding your location, contacts, emails and telephone numbers. We shall not use any Customer's personal information

for any other purposes and shall delete all personal information relating to an Account within a reasonable time after the Account is closed. We shall not share personal data with any third parties. You as a Customer may contact us at any time to request details of the personal information we may hold concerning you or your Account and may request us to close your Account and to correct or delete your personal information. Our “privacy officer” for the purposes of the Personal Information Protection Act 2016 is William West.

17.2 Set-off. Winnow may apply any amount due to an Experience Provider under these Conditions in satisfaction of any sum then due and payable (but unpaid) by the Experience Provider to Winnow. If these amounts are in different currencies, Winnow may convert either amount at a market rate of exchange for the purpose of the set-off.

17.3 Force majeure. Neither party shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under the Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control.

17.4 Confidentiality.

(4.a) Each party undertakes that it shall not at any time during the term of and for one year after the termination of these Conditions disclose to any person any confidential information concerning the business, affairs, customers or clients of the other party, except as permitted by clause 17.2(b).

(4.b) Each party may disclose the other party’s confidential information:

(4.b.i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party’s obligations under the Contract. 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 17.2; and

(4.b.ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(4.c) Neither party shall use the other party’s confidential information for any purpose other than to perform its obligations under the Contract.

17.5 Marketing.

As a Customer you agree that whilst your Account is active Winnow may from time to time send you Communications regarding Experiences and any other notifications relating to Winnow and its services.

17.6 Entire agreement.

(6.a) These Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.

(6.b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement based on any statement in the Contract.

(6.c) Nothing in this clause shall limit or exclude any liability for fraud.

17.7 Variation.

Winnow may vary or amend these Conditions at any time by giving you notice of the changes via the Winnow App. You as a User will be free to accept or reject these changes. If you reject the changes you will no longer be able to access the Winnow App.

17.8 Waiver.

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.9 Severance.

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

17.10 Governing law.

The Contract, these Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Bermuda.

17.11 Jurisdiction.

Each party irrevocably agrees that the courts of Bermuda shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.