

Terms of Use - Excursion SafeCheck

This application and its related services, products, websites and tools (**Application**) is owned and operated by Guardian Systems Pty Ltd (ACN 698 277 986) trading as Excursion SafeCheck (**Excursion SafeCheck**).

These terms of use (**Terms of Use**) set out the terms on which we grant you a licence to access and use the Application. The terms and conditions on our website (**Website Terms and Conditions**), the privacy policy (**Privacy Policy**) also found on our website, and other terms and conditions as otherwise advised to you via electronic communication also form part of our agreement with you.

By clicking “I agree” (or a similar button) that is presented to you in relation to these Terms of Use, or by using or accessing the Application, you indicate your assent to be bound by these Terms of Use, our Website Terms and Conditions, and our Privacy Policy. If you don’t agree to be bound by these Terms of Use, our Website Terms and Conditions, or our Privacy Policy, you must not use the Application. These Terms of Use may be updated by us from time to time, and the updated Terms of Use will apply from the date they are published on the Application. Each time you use our Application you should revisit these Terms of Use.

If you are agreeing to these Terms of Use on behalf of a third party, then you warrant that you have the irrevocable authority and agreement of that third party to be bound by these Terms of Use.

1 VARIATIONS TO TERMS

- 1.1 We reserve the right, in our sole discretion, to vary, change or amend any part of these Terms of Use.
- 1.2 In that event, we will provide notice of the variation by publishing the updated Terms of Use on the Application.
- 1.3 The updated Terms of Use will be taken to have effect on the date of publication.
- 1.4 Your continued use of our Application constitutes your acceptance of the updated Terms of Use and is taken as your agreement to be bound by these updated Terms of Use.
- 1.5 Should you object or disagree to the Terms of Use, your only remedy is to contact us at info@excursionsafecheck.com.au and immediately discontinue your use of our Application.

2 USING THE EXCURSION SAFECHECK APP

- 2.1 The Application is developed and published by Excursion SafeCheck and is available to be downloaded from app stores of various providers including the Apple app store provided by Apple Inc. and the Google Play Store provided by Google Inc. (each an **App Store Provider**).

- 2.2 The Application is made available only to, and may only be used by, persons who can form legally binding contracts under Applicable Laws. If you do not qualify, you must not use the Application.
- 2.3 In order to use the Application, you must have a compatible device which meets the minimum specifications as made known by us (or the relevant App Store Provider) from time to time. You accept responsibility for use of the Application on any such device that the Application is downloaded and installed on.

3 LICENCE

- 3.1 Subject to your compliance with these Terms of Use, we grant you a limited, non-exclusive, non-transferable, revocable licence to use the Application during the Term in accordance with these Terms of Use.
- 3.2 You acknowledge and agree that you will not, as a result of being granted a non-exclusive licence, acquire any rights (including without limitation Intellectual Property Rights) in the Application other than the non-exclusive rights granted in accordance with these Terms of Use.
- 3.3 Your use of the Application will also be subject to any applicable terms and policies applied by the relevant App Store Provider as set out in clause 6 of these Terms of Use.

4 DOWNLOADING THE APPLICATION

- 4.1 In order to access the Application, you will be required to download the Application and register an Account with us.
- 4.2 Downloads of the Application are handled, managed, maintained and governed by the relevant App Store Provider in which you downloaded the Application from.
- 4.3 To register an Account on the Application simply follow the prompts on the Application and the relevant App Store Provider.
- 4.4 You acknowledge and agree that you are solely responsible for ensuring that you have read and understood any applicable third-party (such as Apple Inc. or Google Inc.) terms and conditions when downloading the Application. The licence granted under these Terms of Use is subject to any relevant terms and policies applied by the relevant App Store Provider whose sites are located at either <https://play.google.com> or <https://itunes.apple.com>.
- 4.5 We will not be liable for any loss or damage suffered by you in connection with such third party terms, regardless of whether we bring these to your attention or not. You are solely responsible for obtaining a copy of and reviewing such third party terms.

5 PAYMENT

- 5.1 An upfront payment for an Account on the Application will be required before you are able to use the Application. You will be issued with an invoice, and payment must be made using the details contained in that invoice. This payment for one year subscription allows access and use of the Application which will remain active for the year until expiration.
- 5.2 Subscription payments made through the Application are processed by Stripe, Inc. and its affiliates (**Stripe**), an independent third-party payment service provider. We do not process, store, or control your payment card details except as necessary to facilitate transactions through Stripe.
- 5.3 By purchasing a subscription, you acknowledge and agree that payment processing services are provided by Stripe and are subject to Stripe's own terms, conditions, and privacy practices. You are responsible for reviewing and understanding Stripe's terms of service and privacy policy, including any rights, obligations, and protections that may apply to you in connection with payment transactions.
- 5.4 To the fullest extent permitted by law, we are not responsible or liable for any acts, omissions, errors, interruptions, delays, security incidents, payment failures, chargebacks, disputes, data handling practices, or other matters arising from or related to Stripe's services. Any issues relating to payment processing may need to be addressed directly with Stripe in accordance with its applicable terms and policies.
- 5.5 Your use of Stripe's payment services constitutes your acceptance of any applicable Stripe terms and policies, as amended from time to time.

6 FREE TRIAL AND PROMOTIONAL ACCESS

- 6.1 We may, at our sole direction, offer new users a free trial period for certain subscription services or features of the Application (**Free Trial**). The duration of the Free Trial and the services available during the Free Trial will be specified at the time of sign-up.
- 6.2 Once the Free Trial period has ended, the User will be issued with an invoice. In order to continue to use the Application, payment must be made using the details contained in that invoice.
- 6.3 The User is responsible for reviewing the subscription pricing and cancellation terms prior to the end of the Free Trial. The Company reserves the right to modify, withdraw, or limit any Free Trial offer at any time, subject to applicable law.
- 6.4 We may, from time to time, in our sole discretion, offer Users access to the Application or specific features or services on a promotional basis (**Promotional Access**).
- 6.5 Promotional Access may be offered subject to additional terms and conditions notified to the User at the time of the offer. Unless otherwise expressly stated by the Company,

Promotional Access is temporary, non-transferable, revocable, and may be modified, suspended, or withdrawn at any time without notice.

- 6.6 Access granted under this clause does not create any entitlement to ongoing access, continued availability of any feature, or preferential pricing following the conclusion of the Promotional Access period.
- 6.7 Upon expiry or termination of any Promotional Access period, the User may be required to subscribe to a paid plan and pay the applicable fees in order to continue accessing the relevant services.

7 THIRD PARTY PROVIDER LEGALS

7.1 How the Apple Inc. terms apply to your use of the Application.

7.2 You acknowledge and agree that:

- (a) these Terms of Use are between us and you only, and not Apple Inc. We are solely responsible for the Application and the content contained in the Application;
- (b) you are given a non-transferable licence to use the Application on any Apple-branded products that you own or control and subject to Apple Inc. terms and conditions (this includes the Usage Rules set forth in the Apple Media Services Terms of Use);
- (c) we are solely responsible for providing any maintenance and support services with respect to the Application, and Apple Inc. has no obligations whatsoever in this regard;
- (d) we are solely responsible for any product warranties and in the event of any failure of the Application to conform to any applicable warranty, you may notify Apple Inc., and Apple Inc. will refund any purchase price paid for the Application to you, to the maximum extent permitted by applicable law, Apple Inc. will have no other warranty obligation whatsoever with respect to the Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our sole responsibility;
- (e) we, and not Apple Inc. are responsible for addressing any claims that you have relating to the Application including product liability claims, any claim that the Application fails to conform to any applicable legal or regulatory requirement and claims arising under consumer protection, privacy or similar legislation;
- (f) in the event of any third party claim that the Application or your possession or use of the Application infringes any third party's intellectual property rights, we and not Apple Inc. will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim;

- (g) you must comply with any applicable third party terms of agreement when using the Application;
- (h) Apple Inc. and Apple Inc.'s subsidiaries, are third party beneficiaries of these Terms of Use, and upon your acceptance of the Terms of Use, Apple Inc. will have the right (and be deemed to have accepted the right) to enforce these Terms of Use against you as a third party beneficiary thereof.

7.3 You represent and warrant that:

- (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and
- (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

7.4 How the Google Inc. terms apply to your use of the Application.

7.5 You acknowledge and agree that:

- (a) these Terms of Use are between us and you only, and not Google Inc.;
- (b) you are given a non-transferable licence to use the Application on your mobile device subject to Google Inc. terms and conditions (this includes terms of service and policies application to Google Play); and
- (c) you must comply with applicable third party terms of agreement when using the Application.

7.6 You represent and warrant that:

- (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and
- (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

8 ACCOUNTS

8.1 To access and use the Application, you will need to register with us and set up an Account with your email address and a password.

8.2 You acknowledge and agree that:

- (a) you must not use false or misleading information and must update your details should they have changed from the last time you used the Application;
- (b) you must follow any password policies made available by us from time to time (and as are stated on the Application from time to time);
- (c) you must not share access to your Account with others (except to the extent permitted under these Terms of Use);
- (d) you are responsible for the security of your username and password and we will assume that anyone using your Account is authorised to do so by you and you are

responsible for their actions. Under no circumstances will unauthorised access and use of your Account reduce your liability to us; and

- (e) you must notify us immediately if you become aware of any unauthorised use of your Account or other security breach.

8.3 If we enable you to connect to the Application with a third-party, you hereby grant us permission to access, store, and use your information from that service as permitted by that service and as may be described in our Privacy Policy. You should contact us immediately if you believe your Account has been compromised or misused in any way.

8.4 When you notify us of your Account being accessed without your authority or your Account not being secure, we may restrict your use of the Services in our absolute discretion.

9 APPLICATION

9.1 Maintenance

- (a) We reserve the right to provide general maintenance services to the Application including updating and upgrading the Application during the Term as we consider necessary from time to time. You acknowledge and agree that the Application may occasionally be unavailable during periods of planned or unscheduled critical and urgent maintenance or updates or upgrading.

9.2 Availability

- (a) We will use reasonable endeavours to maintain the availability of the Application but provide no guarantee as to the availability and/or the uptime of the Application. You acknowledge that Application uptime can be dependent on the uptime of third-party integrations and third party systems. We will not be in breach of these Terms of Use if we fail to maintain the Application's uptime, nor will we be liable for any Loss suffered by you or any other person in this regard.

10 SYSTEM INTEGRITY & USER CONDUCT

10.1 You acknowledge and agree that you will:

- (a) only use the Application in accordance with these Terms of Use and any Policy; and
- (b) not use the Application in any way that causes, or may cause, damage to the Application or impairment of the availability or accessibility of the Application.

10.2 Your use of the Application and the Services, including the information submitted on the Application and the Services, must not:

- (a) be false, inaccurate, misleading, fraudulent, deceptive or unlawful;
- (b) be in any manner which could damage, disable, overburden, or impair the Application or interfere with any other party's use and enjoyment of this Application;

- (c) contain inappropriate language or imagery including without limitation the following:
 - (i) sexually explicit content (including content that features minors or sexually exploits minors);
 - (ii) harmful or dangerous content including content that aims to encourage dangerous or illegal activities;
 - (iii) hateful content including hate speech;
 - (iv) violent or graphic content including anything that may shock or disgust viewers;
 - (v) harassment, threats and cyberbullying;
 - (vi) defamatory, offensive or illegal content;
 - (vii) discriminatory, sexist or racist content;
 - (viii) any other content we consider inappropriate at our discretion;
- (d) be in any manner to phish or deceptively obtain information of other users of the Application;
- (e) impersonate or otherwise misrepresent your identity or affiliation with any other person or entity;
- (f) be for purposes of junk, obscene, indecent, offensive or threatening electronic mail or electronic mail in contravention of the *Spam Act 2003* (Cth) or to attract, lure or illegally obtain information from other users of the Application;
- (g) infringe any third-party's rights or violate any Applicable Laws;
- (h) contain any viruses or similar which could affect the integrity, operation or security of the Application;
- (i) create liability for us or cause us to lose (in whole or in part) the services or custom of our internet service provider, other clients, users or other suppliers;
- (j) damage our credibility or integrity or that of the Application, or dilute, tarnish, or otherwise harm our brand in any way; or
- (k) interfere with or disrupt the Application or servers or networks connected to the Application, or disobey any requirements, procedures, policies, or regulations of networks connected to the Application.

10.3 Whilst using the Application and the Services, you must not:

- (a) attempt to gain unauthorised access to the Application or computer systems or networks connected to the Application through any means;
- (b) commit forgery (or attempted forgery), harass any individual, or harm minors in any way;
- (c) collect, store, input, upload, post, disclose or transmit personal information or data about others, including, without limitation email addresses (except to the extent intended by the Application);
- (d) breach or violate any of our policies;
- (e) falsify or delete any attributions, legends, or other proprietary designations of origin or source of any content of the Application;
- (f) copy, store or otherwise access or use any information contained on the Application for purposes not expressly permitted by these Terms of Use;
- (g) use the Application for any purposes that are not permitted by these Terms of Use or in any way that is inconsistent with the purpose of the Application, or in a manner that falsely implies our endorsement, partnership or otherwise misleads others as to your affiliation with us;
- (h) tamper with, hinder the operation of or make unauthorised modifications to the Application or any part thereof;
- (i) damage or modify the Application or any part thereof; or
- (j) circumvent, disable or otherwise attempt to interfere with any security related features.

10.4 You agree that you will not:

- (a) remove or alter any copyright or other proprietary notices on the Application;
- (b) sell, lease, licence, sub-licence, assign or transfer the Application to any third party;
- (c) copy, reproduce, reverse engineer, decompile, disassemble translate, alter, modify, create derivative works or otherwise attempt to derive the source code of the Application, publicly display (other than on the Application) any of our intellectual property except with our prior written permission or the appropriate third party authorised to grant such permission.

10.5 You acknowledge and agree that the Application is provided solely as a tool to assist in reducing reliance on manual attendance verification processes. The Application does not replace your duty of care or supervision obligations. You remain solely reliable for the supervision, welfare, safety, and whereabouts of students, including compliance with all

applicable laws, regulations, policies, emergency procedures, and risk management requirements.

- 10.6 Any QR codes generated by the Application are intended for one time use and must not function as a permanent student ID.

11 ACCESS AND TERMINATION

- 11.1 These Terms of Use will continue to apply until terminated or superseded by us. You can terminate your agreement with us (or close your Account) by following the prompts on the Application and the App Store Provider. Termination will be effective immediately.
- 11.2 Following termination or expiry of your Account, you will have 30 days to download any Client Data, including excursion records and audit records. After this 30-day period, such Client Data may be permanently deleted and will not be recoverable.
- 11.3 We may terminate our agreement with you (or close your Account) or cease providing all or any part of the Application immediately without notice to you for any reason, including without limitation due to inactivity, non-payment after 14 days, misuse and data security concerns.
- 11.4 If you delete your Account, or your Account is otherwise removed we will not be responsible for recovering your Account or any Client Data on the Account.
- 11.5 If you terminate your Account at anytime, as payment is received upfront, no refunds will be made available. Refunds will only be considered on a case by case basis and if there is a prolonged technical failure.
- 11.6 We will not automatically charge you for the renewal of your subscription without providing prior notice. Where a subscription expires and payment is not received within 14 days after the expiry date, We may suspend access to the Application and any associated services until payment of the applicable subscription fees has been received.

12 EFFECTS OF TERMINATION

- 12.1 On termination of these Terms of Use:
- (a) your licence and right to use the Application is revoked and your access will be terminated;
 - (b) you must cease using the Application.
- 12.2 Any clause of these Terms of Use which by their nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 The Application and Materials.

- (a) You acknowledge that we (and our licensors) shall at all times retain all title, rights and interest in and to the Materials and the Application including:
 - (i) the Intellectual Property Rights subsisting in each;
 - (ii) any customisations of, and modifications to, the Materials and the Application;
 - (iii) all information or data, source codes and other information technology relating to or connected with the Materials and the Application;
 - (iv) marketing information relating to or connected with the Materials and the Application;
 - (v) our trademarks or registered trademarks; and
 - (vi) technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Materials and the Application,however, excludes the Client Data.
- (b) No right, title and interest in any of the Application and Materials is transferred or granted to you except so far as expressly stated in these Terms of Use. You must not use the Application in any way that is inconsistent with our ownership.
- (c) For the avoidance of doubt, you have no right to access the software code (including object code, intermediate code and source code) of the Application, either during or after the Term. We may in our sole and absolute discretion refuse or remove any content or features from the Application.

13.2 Client Data

- (a) You shall at all times retain ownership of the Client Data including the Intellectual Property Rights subsisting in it.
- (b) You are solely responsible for the uploading and publishing of any Client Data. We may, in our absolute discretion, refuse to accept the upload of Client Data to the Application. You agree that we shall not be liable to you for any Loss or damage you may suffer as a result of this.
- (c) You hereby grant to us an irrevocable and non-exclusive license to use, store, and translate the Client Data to the extent reasonably required for the performance of our obligations (including to provide the Services) and the exercise of our rights

under these Terms of Use, together with the right to sub-license these rights to our service providers to the extent reasonably required for the performance of our obligations and the exercise of our rights under these Terms of Use. This includes without limitation such service providers that provide marketing, hosting, connectivity and telecommunications services to us.

- (d) You also grant us an irrevocable, non-exclusive licence to use the Client Data as non-personally identifiable data in aggregated and deidentified formats where the data provides no identifying, referencing or implication of an association with you, for any purpose, including without limitation for display on the Application, improving the Application, bench marking, research, security, system performance, analytics, and service development associated with your use of the Application. You acknowledge that where we use Client Data in aggregated and deidentified formats to create data insights or other material, the ownership of such data insights and other material will automatically vest in us.
- (e) We warrant that:
 - (i) we will only use the Client Data in accordance with these Terms of Use and our Privacy Policy in place from time to time; and
 - (ii) we will not sell, rent or lease the Client Data to any third-party.
- (f) You warrant that:
 - (i) you own or have the necessary licenses, authorisations and consents to transmit such Client Data through the Application, and to grant such licences to us as set out under this clause; and
 - (ii) that any Client Data provided, and the use of and licenses to such Client Data granted to us will not infringe any third-party rights (including intellectual property or confidentiality obligations) nor give rise to a liability to make royalty or other payments to a third-party; and
- (g) the Client Data will not:
 - (i) breach the provisions of any law, statute or regulation;
 - (ii) give rise to any cause of action against us,
 - (iii) in each case in any jurisdiction and under any applicable law.

14 COPYRIGHT AND TRADE MARK NOTICES

- 14.1 All material on this Application, including (but not limited to) templates, information, text, documents, graphics, information architecture and coding (**Our Content**), is subject to copyright. While you may browse or print our Content for non-commercial, personal or

internal business use, you must obtain our prior written permission if you would like to use, copy or reproduce it. Modification of our Content for any other purpose is a violation of our copyright and other proprietary rights and is strictly prohibited.

- 14.2 You acknowledge that you do not acquire any ownership rights by using the Application or our Content.
- 14.3 The trade marks, logos, and service marks displayed on our Application to denote our brand are either registered or unregistered trade marks of us (**our Marks**). Our Marks, whether registered or unregistered, may not be used in connection with any product or service that does not belong to us, in any manner that is likely to cause confusion with customers, or in any manner that disparages us.
- 14.4 Nothing contained on this Application should be construed as granting, by implication, estoppel or otherwise, any license or right to use any our Marks without our express written permission.
- 14.5 You agree that damages may be an inadequate remedy to a breach of these Terms of Use and acknowledge that we will be entitled to seek injunctive relief if such steps are necessary to prevent violations of its intellectual property rights.
- 14.6 This clause survives termination of these Terms of Use.

15 RESTRICTION OF ACCESS TO CLIENT DATA

- 15.1 Subject to the other terms of this clause, in the event that:
 - (a) these Terms of Use and/or your access to the Application is suspended, restricted or terminated; or
 - (b) you close your account or your subscription or terminate these Terms of Use,

your access to the Client Data will be immediately revoked and your Account will become inactive. For the avoidance of doubt you will have no access to the Client Data (including access to download any Client Data that is available to download) while your Account is inactive.
- 15.2 Prior to termination of these Terms of Use or your Account otherwise becoming inactive, you are solely responsible for downloading any Client Data that is available for download from the Application. Only the Client Data that is made available in the format as specified on the Application may be downloaded. We do not guarantee, represent or warrant that all of the Client Data will be able to be downloaded as not all Client Data is made available for download. We will not be providing a download of the Client Data once your Account becomes inactive.

16 DISCLAIMER

16.1 We provide the Services on an “as is” basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. You rely on the Services at your own risk and are solely responsible and liable for how you use the Services.

16.2 Without limiting the above clause, you acknowledge and agree that:

- (a) we do not guarantee continuous, uninterrupted or secure access to the Application or that any information provided by us is up to date and accurate;
- (b) we do not warrant that the use of the Application will result in you achieving any specific result;
- (c) we make no guarantees that there will be no loss or corruption of Client Data at any time, or that data backups (if any) will be readable, or that any Client Data is able to be backed up or recovered. Unfortunately, data loss happens and we will not be liable for any Loss you suffer in the event that Client Data is lost, for example if a database is corrupt and Client Data is corrupt;
- (d) whilst best endeavours will be made to ensure the accuracy of the data on the Application, we cannot guarantee the accuracy, currency, suitability, reliability and availability of the Application and any content gained within;
- (e) the Application involves input provided by you, and from integrated third-party services. You are solely responsible for the reliability, accuracy and completeness of such input provided. It is your sole obligation to ensure that you input the correct data. We take no responsibility if the outcome of the Application is inaccurate, incomplete or non-reliable because it is based on inaccurate, incomplete or non-reliable input provided by you or third parties;
- (f) the information provided on and in the Application is general information and is not in the nature of financial, legal or any form of advice. You should obtain advice before making any decision based on the Application;
- (g) we reserve the right to withdraw, or amend, update or change the functionality or content of the Application at any time, without notice;
- (h) we may remove or delete the Client Data after the termination of these Terms of Use. It is solely your responsibility to download any Client Data that is able to be downloaded before the expiry or termination of these Terms of Use;
- (i) complex software is never wholly free from defects, errors and bugs, and we give no warranty or representation that the Application will be wholly free from defects, errors and bugs; and
- (j) we will maintain appropriate technical and organisational measures to protect the security of the Client Data. However, we do not guarantee that unauthorised third parties will never be able to defeat those measures to access the Client Data for improper purposes. You acknowledge that there are risks inherent in internet connectivity that could result in the loss of privacy, confidential information and Client Data. Accordingly, any Client Data that is transmitted by you is transmitted solely at your risk. You are solely liable for your Client Data.

- 16.3 This disclaimer does not exclude rights that may not be excluded by Law, including but not limited to, those rights under the Australian Consumer Law.

17 LIMITATION OF LIABILITY

- 17.1 Subject to the other terms of this clause, we exclude all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in these Terms of Use to the maximum extent permitted by law.
- 17.2 Without limitation to the clause above, to the extent permitted by law, we exclude all liability to you and/or anyone else for Losses arising in any way in connection with the Application or its use and/or the Services and/or these Terms of Use, including but not limited to Losses suffered as a result of:
- (a) any downtime or errors of the Application, or our systems or servers;
 - (b) any downtime or errors of any third party integrated platforms;
 - (c) non-performance of the Application;
 - (d) any reliance on the Application (or any information provided from the Application);
 - (e) any incorrect data entry or information made by you on the Application;
 - (f) any incorrect data or content, errors, mistakes or inaccuracies on the Application;
 - (g) any loss or corruption of Client Data at any time;
 - (h) any defects, errors and bugs in the Application;
 - (i) any unauthorised access to or use of the Application;
 - (j) any interruption or cessation of transmission to or from the Application;
 - (k) use of the Application which is contrary to law, these Terms of Use or any other agreement between us and you;
 - (l) unauthorised third-party access to the Application or the Services;
 - (m) any viruses, trojan horses or other harmful code or communications which may be transmitted to or through the Application by any third-party; and/or
 - (n) loss of privacy and confidential information.
- 17.3 Subject to the other terms of this clause, our maximum aggregate liability to you for any Loss or damage or injury arising out of or in connection with these Terms of Use, including any breach by us of these Terms of Use however arising, under any indemnity, in tort

(including negligence), under any statute, custom, law or on any other basis, is limited to the greater of \$1 and an amount equal to one-twelfth (1/12) of the annual subscription fees actually paid by you to us under these Terms of Use during the 12-month period immediately preceding the event or circumstances giving rise to the claim.

- 17.4 Nothing in these Terms of Use is intended to have the effect of excluding, restricting or modifying the Application of all or any of the provisions of the ACL, or the exercise of a right conferred by such a provision, or any liability of ours in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services, to the extent that the ACL applies to the Services.
- 17.5 If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, our total liability to you for that failure is limited to, at our option the resupply of the Services or the payment of the cost of resupply.
- 17.6 The limitation and exclusion of liability in this clause applies whether the liability claim is based on breach of contract, under a warranty or an indemnity, tort (including negligence), under statute, in equity or otherwise.
- 17.7 Without limitation to the other terms of this clause, we exclude any liability to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms of Use.
- 17.8 Notwithstanding anything else in this clause, our liability will be reduced to the extent the loss or damage is caused by or contributed to by you.
- 17.9 If you recover any amount under an insurance policy in respect of a claim under or in relation to or arising out of these Terms of Use and that amount is less than the loss or damage incurred by you, the amount of the shortfall will be the amount of your loss for the purposes of these Terms of Use.

18 INDEMNITY

- 18.1 Except to the extent caused by the breach of these Terms of Use by us, you indemnify and release us, and our officers, directors, shareholders, employees, consultants, agents, and related bodies corporate from and against any Losses (including any direct, indirect, special or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by us arising out of or in connection with:
 - (a) your use of the Services;
 - (b) the supply, suspension, restriction or cancellation of your access to the Application;
 - (c) your breach or negligent performance or non-performance of these Terms of Use;

- (d) from your violation of any applicable law;
- (e) any claim made against us and/or you by a third-party arising out of or in connection with these Terms of Use, to the extent that such claim arises from the act or omission of you or out of the breach, negligent performance or failure or delay in performance of these Terms of Use by you;
- (f) any claim made against us for actual or alleged infringement of a third-party's rights arising out of or in connection with the Client Data; and/or
- (g) the enforcement of these Terms of Use by us.

18.2 You must make payments under this clause:

- (a) in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and
- (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

18.3 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity under this clause.

18.4 The indemnities in this clause:

- (a) are continuing obligations of yours, independent from your other obligations under these Terms of Use and survive termination or expiry of these Terms of Use; and
- (b) are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of yours.

19 SECURITY

19.1 We take all reasonable steps, however we do not guarantee the security of the Application, our records, or your information. We disclaim all liability for any computer virus or technological problems that are beyond our control.

20 NO DISPARAGEMENT

20.1 At all times, you must not make any public or private statement which is false, misleading, or defamatory, whether oral or in writing, which in our reasonable opinion is adverse to the interest, reputation or commercial standing of or is in any respect a disparaging remark or representation about us and/or any of our services nor any statement that is false and does or has the tendency to damage our reputation of by any method including but not limited to any social media platform or review website anywhere in the world.

20.2 Should you breach this clause, you hereby indemnify us in accordance with clause 18 above.

21 LINKED WEBSITES, AFFILIATES OR SPONSORS

- 21.1 Any links to other websites on our Application, which are not operated by us are not controlled by us and we accept no responsibility for them or for any loss or damage that may arise from your use of them. Your use of any linked sites will be subject to the terms of use and service contained within each such site.
- 21.2 As affiliates of certain services, we may also receive compensation for recommending, endorsing or promoting services as featured on our Application or in the course of delivering our services. Any affiliation or sponsorship is for remuneration purposes only and is not an expression of our own recommendation, endorsement or promotion of those services which are not our own.
- 21.3 We make no representation or warranty as to the recommendations, endorsements or promotions we make of certain services, unless expressly stated otherwise. You acknowledge and agree that any remuneration or other non-monetary benefit we receive from our affiliated, endorsed or sponsored services is for the purposes of that affiliation, endorsement and sponsorship only. We expressly disclaim any liability arising from your use or reliance of any recommended, endorsed or promoted services by us which are not our own and caution you to make your own independent inquiry prior to any such use or purchase.

22 SEVERABILITY

- 22.1 If any provision of these Terms of Use is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect.

23 NO ASSIGNMENT

- 23.1 You cannot transfer or assign your rights in accordance with these Terms of Use, including any membership or registration with us, without our prior written consent.
- 23.2 We may assign or transfer our rights and obligations under these Terms of Use at any time, upon prior written notice to you of at least 4 calendar weeks.

24 BINDING ON SUCCESSORS

- 24.1 These Terms of Use shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

25 DISPUTE RESOLUTION

- 25.1 If a dispute arises between the parties in relation to these Terms of Use, the dispute must be dealt with in accordance with this clause.
- 25.2 Any party claiming that a dispute exists must notify the other party to the dispute (**Second Party**) in writing of the nature of the dispute.
- 25.3 In the case of claims against us, all notices are to be provided to info@excursionsafecheck.com.au.
- 25.4 If the dispute is not resolved by agreement within 10 business days of the Second Party receiving the notice referred to above, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further 10 business days or failing agreement within that period, as appointed by the executive director for the time being of the Australian Commercial Disputes Centre Limited.
- 25.5 Once a mediator is appointed, the parties agree that:
- (a) The costs of the mediator shall be borne equally between the disputing parties.
 - (b) The chosen mediator shall determine the procedures for mediation.
 - (c) The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.
- 25.6 If the parties have not mediated a resolution of the dispute within 10 business days of the selection of a mediator, neither party shall be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it considers fit in relation to the dispute.
- 25.7 Nothing in this clause prevents a party from commencing proceedings seeking urgent interlocutory relief from a court of competent jurisdiction to hear the matter, if, in that party's reasonable opinion, it is necessary to protect their rights.
- 25.8 Despite the existence of a dispute the parties must continue to comply with their obligations under the contract.
- 25.9 This clause survives termination of these Terms of Use.

26 APPLICABLE LAW

- 26.1 These Terms shall be construed in accordance with and governed by the laws of New South Wales, Australia. You consent to the exclusive jurisdiction of the courts in New South Wales to determine any matter or dispute which arises between us.

27 YOUR FEEDBACK

- 27.1 We welcome enquiries or feedback on our Application. Unless specifically stated by you, we shall treat any information you provide us with, as non-proprietary and non-confidential. Please see our Privacy Policy for further details.
- 27.2 If you provide us with any feedback, ideas, modifications, suggestions, improvements or other content you agree that we may, at any time, without restrictions exploit, copy, republish, edit, or otherwise use such content on any medium worldwide (including on the internet). We will not be required to pay you any compensation for such content (regardless of our use). We have no obligation to review any content or otherwise remove any content that may be unlawful, offensive, threatening, defamatory or obscene.
- 27.3 If you have questions or comments regarding this Application or our services, please email us at info@excursionsafecheck.com.au.

28 DEFINITIONS & INTERPRETATION

28.1 Definitions –

In these terms of Use, unless inconsistent with the context or subject matter:

- (a) **Account** means an account enabling you to access and use the Application.
- (b) **ACL** means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).
- (c) **Address for Service** means such address as set out in your Account (for you), and for us such address set out on the Application, or such other address for service advised by a party to the other in writing from time to time.
- (d) **Applicable Laws** means any applicable laws (including orders, by-laws and regulations) in the jurisdiction in which you, and any user you are interacting with are located or which in any way govern or affect the use of the Services, including the laws of the State.
- (e) **Client Data** means all data, files, works and materials uploaded to or stored on the Application by you, transmitted by the Application at the instigation of you, published by you for display on the Application; or supplied by you to us for uploading to, transmission by or storage on the Application.

- (f) **Intellectual Property Rights** means all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.
- (g) These rights include without limitation:
 - (i) all rights in all applications to register those rights;
 - (ii) all renewals and extensions of those rights; and
 - (iii) all rights in the nature of those rights, such as moral rights.
- (h) **Loss** means any loss, liability, cost (including legal costs on a solicitor and own client basis), charge, expense, tax or damage of any nature whatsoever, including lost profits, loss of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).
- (i) **Materials** means any material, text, or other documents provided by us to you or made available by us on the Application (this includes manuals or instructions).
- (j) **our, us** and **we** means Excursion SafeCheck.
- (k) **Personnel** means the directors, officers, employees, contractors, suppliers, advisers or agents of a party.
- (l) **Policy** means any of our policies in place from time to time.
- (m) **Privacy Legislation** means the *Privacy Act 1988* (Cth), including Australian Privacy Principles, and the guidance and codes of practice issued by the Office of the Australian Information Commissioner from time to time.
- (n) **Privacy Policy** the terms of the Excursion SafeCheck Privacy Policy published on our website and as amended from time to time.
- (o) **Services** means any services we provide to you, including the Application.
- (p) **State** means New South Wales, Australia.
- (q) **Term** means the term of your access to the Application.
- (r) **User** means any person who uses the Application.
- (s) **you** and **your** means a User.

28.2 Interpretation –

In these Terms of Use, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (d) headings are for reference purposes only;
- (e) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail;
- (g) an obligation of two or more parties binds them jointly and each of them severally.

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