

## TOURISM CONTENT SYSTEM DATA CONTRIBUTOR AGREEMENT

**TO CONTRIBUTORS TO THE TOURISM CONTENT SYSTEM**, this Tourism Content System Data Contributor Agreement shall constitute the entire agreement between you and Fáilte Ireland governing your contribution to the Tourism Content System.

By clicking the “Accept” button at the end of this Tourism Content System Data Contributor Agreement, you are indicating your consent to be bound by and become a party to this Tourism Content System Data Contributor Agreement. If you do not agree to each and every term of this Tourism Content System Data Contributor Agreement then click the “Decline” button. If you click the “Decline” button, then, if you are a new applicant for contribution to the Tourism Content System, your application will be declined by Fáilte Ireland and you will be notified accordingly, alternatively, if you are an existing contributor to the Tourism Content System, you are stating that you do not grant Fáilte Ireland license to use your data.

### 1. Interpretations

1.1 In this Tourism Content System Data Contributor Agreement the following terms shall have the following meanings:

“Agreement” means this Tourism Content System Data Contributor Agreement, including the Contribution Capture Form, Contribution Methodology, the Notice and Takedown Policy, and any and all other Fáilte Ireland policy documentation expressly included herein by reference;

“Business Day” means a day when banks are open for business in Ireland, excluding public holidays and a Saturday or a Sunday;

“Contribution” means the provision, supply or contribution of Data by the Contributor to Fáilte Ireland for inputting into the Database, by way of submission of one or more Contribution Capture Forms and reference to “Contributing” and “Contributed” shall be construed accordingly;

“Contribution Capture Form” means the form supplied to the Contributor by Fáilte Ireland, to be used by the Contributor in supplying Data to Fáilte Ireland for the purpose of input into the Database by Fáilte Ireland or a service provider of Fáilte Ireland, whether on one or more occasions during the Term;

“Contribution Methodology” means the forms, policies and procedures operated by Fáilte Ireland applicable to the Contribution of Data, hosted at <http://www.failteireland.ie>, or such other website notified by Fáilte Ireland, which may be subject to revision by Fáilte Ireland from time to time during the Term and, accordingly reference to the Contribution Methodology shall mean the then current Contribution Methodology;

“Contributor” or “You” means the person or entity who has agreed to submit and supply Data to Fáilte Ireland for input into and publication on the Database pursuant to and in accordance with this Agreement, further details in respect of whom shall be set out in the Contribution Capture Form, and reference to “Contribution”, “Contributing”, “Yours” and related terms shall be constructed accordingly.

“Data” means the information Contributed by the Contributor to Fáilte Ireland;

“Database” means the database of tourist facilities, accommodation, tours, events, entertainment, and related Irish tourism matters, operated by Fáilte Ireland, who obtain the relevant information from a variety of private, voluntary and commercial entities and make it available to users through various channels, which forms part of TCS and in which Fáilte Ireland has invested material budget, resources and time and in which it holds valuable IPR;

“Default” means any negligent error, omission, breach, or default (including, but not limited to, fundamental breach or breach of a fundamental term) of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement, causing material

loss or damage, and in respect of which such Party is liable to the other, but excluding, for the avoidance of doubt, minor or trivial matters;

“Effective Date” means the date on which this Agreement is executed by the Parties, recorded electronically pursuant to your accepting this Agreement, in the manner set out herein;

“Intellectual Property Rights” or “IPR” means any patents, trademarks, service marks, design rights (whether registerable or otherwise), domain names, applications for any of the foregoing, copyright, (including, without limitation copyright in software) moral rights, database rights (whether copyright in databases or database sui-generis rights), know-how, trade or business names and other similar rights or obligations whether registerable or not, in any country (including, but not limited to, Ireland);

“Ireland” means Ireland excluding Northern Ireland;

“Notice and Takedown Policy” means the Fáilte Ireland’s policy applicable to the notification and takedown of Data in circumstances in which Fáilte Ireland becomes aware that the Data is illegal, defamatory, infringes third party rights, or otherwise contravenes the internal policies of Fáilte Ireland, hosted at <http://www.failteireland.ie>, or such other website notified by Fáilte Ireland’s from time to time, which shall be subject to revision by Fáilte Ireland from time to time during the Term and, accordingly, reference to the Notice and Takedown Policy shall mean the then current Notice and Takedown Policy;

“Parties” means the Contributor and Fáilte Ireland and reference to “Party” shall be construed accordingly;

“Syndication” shall mean the Fáilte Ireland licence, on whatever basis and in whatever manner, of the whole or part of the data contained in the Database to third parties, on whatever terms deemed appropriate by Fáilte Ireland and reference to “Syndicated” shall be construed accordingly;

“TCS” or “Tourism Content System” means the Fáilte Ireland operated Database, together with ancillary Fáilte Ireland and third party software, hardware and knowhow, which taken together constitute the TCS;

“Term” means the term of this Agreement, as set out in Clause 8; and

“Website” means any website operated by Fáilte Ireland, or any third party authorised by Fáilte Ireland from time to time during the Term., whether in whole or in part.

1.2 In this Agreement the following interpretations shall apply:

- (a) the masculine shall include the feminine and vice-versa;
- (b) the singular shall include the plural and vice-versa;
- (c) in the event of any conflict inconsistency or ambiguity between the terms and conditions of this Agreement, whether the Contribution Methodology, Contribution Capture Form or Notice and Takedown Policy, the terms and conditions of Clause 1-10 shall prevail, to the extent of such conflict, inconsistency or ambiguity; and
- (d) reference to the Agreement shall mean the version of the Agreement governing a particular Contribution. As set out at Clause 2.9, Fáilte Ireland may revise the Agreement during the Term.

## 2. DATA CONTRIBUTION

2.1 The Contributor notes the importance which Fáilte Ireland places on taking a valid licence to use IPR in the Data. Accordingly, the Contributor warrants and represents to Fáilte Ireland that:

- (a) as at the date of initial Contribution and thereafter during the term of Contribution, the IPR in Data vests in Contributor or a third party licensor to Contributor;

- (b) where IPR vests in Contributor, then, Contributor expressly agrees with the IPR related provisions of this Agreement, as set out in Clause 5;
- (c) where IPR does not vest in Contributor, then, the Contributor expressly warrants and represents that the Data is duly licensed to Contributor in a manner which allows the Contributor to grant a sub-licence of such IPR to Fáilte Ireland to use Data, as set out in Clause 5; and
- (d) it shall exercise all reasonable and necessary skill, care, and diligence in the performance of this Agreement;

AND, it is expressly stated by Fáilte Ireland and noted by Contributor that any Contribution of Data is conditional on the foregoing Contributor warranties and representations.

2.2 Subject to earlier termination of this Agreement in accordance with its terms, Fáilte Ireland hereby grants to the Contributor, during the Term, a limited, personal, non-exclusive, right to Contribute Data in accordance with the provisions of this Agreement. It is expressly noted that either Party may terminate the Agreement pursuant to Clause 8 and, in particular, either Party may terminate the Agreement, upon prior written notice, pursuant to Clause 8.2.

2.3 As set out in the Contribution Methodology, Data Contributions are an interactive process, based:

- (a) in respect of initial Contributions, on and commencing with the initial Contributor submission of a Contribution Capture Form and concluding with Contributor approval of the TCS listing; and
- (b) in respect of revised or updated Contributions following initial Contribution, on and commencing with the Contributor's submission of the Contribution revisions and concluding with Contributor approval of the revisions;

ACCORDINGLY, Fáilte Ireland has provided the Contributor with all reasonable and necessary means and opportunities to ensure the validity, accuracy and other necessary attributes of the Data, which the Contributor hereby acknowledges and agrees to comply with.

2.4 The Contributor undertakes to use all reasonable endeavours to procure that:

- (a) Contributions are at all times accurate and up to date;
- (b) any material inaccuracies or errors in Data discovered (whether by Fáilte Ireland, the Contributor, or any third party) subsequent to Contribution shall be corrected as soon as possible and that the Data is kept up to date at all times;
- (c) Data is not unlawful, defamatory, libellous, discriminatory, or otherwise illegal and/or objectionable;
- (d) Data does not infringe or otherwise prejudice the proprietary rights, IPR, privacy or publicity rights of any third party; and
- (e) Contributed Data does not breach the Data Protection Acts 1988 and 2003.

2.5 The Contributor shall be solely responsible and liable for all opinions, estimates (e.g. in distance or time of travel), statements, recommendations, forecasts or comments made in the Data.

2.6 The Contributor acknowledges that it is aware that Contributing the Data into the Database may from time to time be subject to certain statutory or other external regulations, conditions and restrictions, which the Contributor undertakes to comply with.

2.7 As the essence of the Database is to provide a 'live-feed' environment to the public, Fáilte Ireland cannot accept a general obligation to monitor use of, and contents of, the Database, howsoever and whatsoever, which the Contributor hereby notes and agrees with. However, Fáilte Ireland does agree

to use reasonable endeavours to address any breach of this Agreement, any breach of law or breach of third party rights, where it is notified of such breach. Any such action shall be made in accordance with the Notice and Takedown Policy as further set out in Clause 3, of which the Contributor is aware and hereby expressly consents to comply with.

- 2.8 Fáilte Ireland reserves the right, from time to time, to withdraw or vary the Database, whatsoever and howsoever, in whole or in part, in accordance with its business and organisation requirements.
- 2.9 Fáilte Ireland reserves to right to revise the Agreement terms and conditions during the Term, whether to cater for developments in TCS (for example, the inclusion of user generated content) or Fáilte Ireland policy decisions. In such event, all contributions involving or requiring conclusion of the Agreement shall be made pursuant to the then current version of the Agreement. The foregoing shall apply without prejudice to the position governing previous contributors and previous versions of the Agreement. Each time the Contributor Contributes Data, whether new or updated Data, it is and confirms its agreement to be governed by the terms and conditions of this Agreement.
- 2.10 In accordance with this Agreement Fáilte Ireland may Syndicate Data to third parties. It is acknowledged by Contributor that third party websites may allow for user generated content and, in particular, user or contributor commentary in relation to listings, including potentially those of Contributor (“UGC”). It is acknowledged and agreed by Contributor that:
- (a) Fáilte Ireland will or will not decline to Syndicate Data based on the existence or non-existence of UGC on third party websites;
  - (b) Fáilte Ireland does not control and/or operate third party websites and does not monitor third party websites. Accordingly, Fáilte Ireland has no knowledge of UGC on third party websites;
  - (c) Fáilte Ireland shall have no responsibility to and/or liability to Contributor deriving from any third party website UGC; and
  - (d) where Contributor elects, then, it may, at its discretion, terminate this Agreement pursuant to Clause 8, provided that, the provisions of Clause 8.6 shall apply in respect of then current Syndicated Data of Contributor.

### 3. EDITORIAL POLICIES OF FÁILTE IRELAND

- 3.1 The Parties agree as follows:
- (a) it is the policy of Fáilte Ireland not to upload Data to the Database, and to remove Data, which, it determines, in its sole discretion, to be in breach of Clause 2.4 or is otherwise fraudulent, threatening, obscene, objectionable or otherwise inconsistent with the policies of Fáilte Ireland as set out in its Contribution Methodology. Notwithstanding the foregoing, Fáilte Ireland does not, and the Contributor acknowledges that Fáilte Ireland does not, nor can it reasonably be expected to, actively monitor Contributions against such criteria; and
  - (b) Fáilte Ireland reserves the right to edit the Data for the purpose of ensuring consistency of format and style with other data in the Database and for the purpose of complying with any internal Fáilte Ireland policies and editorial principles.
- 3.2 In the event that any Data is removed from the Database in accordance the Notice and Takedown Policy, then, the Contributor shall be notified of such removal and shall be given an opportunity to object to such removal or otherwise make any submission to Fáilte Ireland, all as further set out in the Notice and Takedown Policy. Fáilte Ireland agrees to consider any such submissions in a fair, impartial and reasonable manner, but the decision of Fáilte Ireland shall in each case, be final and binding.
- 3.3 Any removal of Data in accordance with the Notice and Takedown Policy shall be on a “without prejudice” basis and shall not constitute any admission of responsibility and/or liability on the part of Fáilte Ireland and/or any other party.

#### 4. CHARGES

4.1 As of the date of execution of this Agreement, no charge is payable for the Contributor's Contribution of Data to the Database. However, Fáilte Ireland reserves its rights in this regard. In the event that Fáilte Ireland subsequently decide to implement charges, during the Term, then, it shall notify the Contributors in advance. Where the Contributor does not wish to pay charges for the continued presence of its Data on the Database, then, it shall have the right to terminate this Agreement in accordance with the procedures set out at Clause 8, whereupon Fáilte Ireland shall remove the relevant Data from the Database.

#### 5. INTELLECTUAL PROPERTY RIGHTS

5.1 The Contributor acknowledges and agrees that:

- (a) by Contributing Data, it automatically and expressly grants Fáilte Ireland a royalty-free, perpetual, worldwide, irrevocable, non-exclusive, sub-licensable, licence to use, reproduce, modify, publish, edit, translate, distribute, perform and display, access, store, copy, make available to third parties, amend, process, update, delete, and otherwise generally deal in the Data in whole or in part, as it sees fit, subject only to the restriction that it act in good faith and in the interests of promoting tourism in Ireland, in any form, media or technology, whether now or hereafter developed. In addition to the foregoing, the Contributor hereby expressly authorises and licences Fáilte Ireland to sub-licence such rights, whether through one or more multiple tiers of sub-licences, by way of Syndication, solely for Fáilte Ireland's own benefit and account;
- (b) Fáilte Ireland has spent, and continues to spend, considerable time and resources on the selection and arrangement of the Database as an original intellectual creation. Accordingly, Fáilte Ireland owns valuable IPR (including copyright in database and the database sui generis right) in the selection and arrangement of the contents of the Database and in the electronic materials necessary for its operation, without prejudice to the rights (if any) of the various Data contributors in the contents of the Database; and
- (c) in addition to Fáilte Ireland's IPR, referred to in the foregoing sub-Clause (b) Fáilte Ireland has spent considerable time and resources to collect, collate, compile, reformat and verify the accuracy of the contents of the Database. Accordingly, Fáilte Ireland owns, controls or licenses the copyright in the contents of the Database and the Contributor shall not question or dispute the ownership by Fáilte Ireland of any such rights.

#### 6. CONFIDENTIAL INFORMATION

6.1 The Contributor agrees to keep confidential any information disclosed by Fáilte Ireland under this Agreement and agrees, during the Term and for a period of not less than sixty (60) months thereafter, not to use, other than for the purpose of performing this Agreement, or to disclose, whether directly or indirectly, to any third party, such information, other than as required to carry out the purposes of this Agreement.

6.2 The provisions of Clause 6.1 shall not apply to confidential information which is in or becomes part of the public domain (otherwise than by breach of this Agreement) or was in the lawful possession of the Contributor prior to disclosure under this Agreement and was not unlawfully obtained, either directly or indirectly.

#### 7. LIABILITY MANAGEMENT

7.1 The aggregate liability of the Parties for all Defaults, whether in contract, tort, or otherwise, arising under or in relation to this Agreement, shall be subject to the following limitations and exclusions:

- (a) in respect of each Party, for death, personal injury, fraud (including fraudulent misrepresentation) or criminal actions, liability shall not be subject to limitation or exclusion;
- (b) subject to sub-Clause (a), in respect of the Contributor, for breach of obligations in respect of Clauses 2.1, 2.4, 5, and 6, liability shall not be subject to limitation or exclusion. In this

regard, Contributor shall indemnify and hold harmless Fáilte Ireland, upon demand, in respect of any claim, liability, proceedings, fines, damages and/or costs of any nature, whatsoever and howsoever arising, which may be made or accrue against Fáilte Ireland; and

(c) subject to sub-Clause (a) and (b), in respect of both Parties, for direct loss or damage, whatsoever and howsoever arising, liability shall be subject to limitation, up to an amount, in aggregate of ten thousand euro (€10,000), and, in addition, shall be subject to exclusion.

7.2 Except as expressly set forth in this Agreement, all warranties, whether oral or written, express or implied, including, but not limited to, any warranties of fitness for purpose, description or quality, are hereby excluded, to the maximum extent permissible under applicable law.

7.3 In no event, will either Party be liable to the other Party for any consequential or indirect loss or damage (including, for the avoidance of doubt, anticipated financial benefits, of such nature), howsoever arising under, or in connection with, or in relation to, this Agreement. Reference in this Clause 7 to exclusion of liability shall refer to this Clause 7.3.

7.4 The Parties recognise the existence of one or more separate Fáilte Ireland contracts referring to specific subject matter to which the Parties may be party, including, but not limited to, participation in Fáilte Ireland accreditation schemes (the "Specific Contracts"). The Parties recognise and agree as follows:

(a) liability of Parties arising pursuant to this Agreement and one or more Specific Contracts shall be separate matters, dealt with by each such agreement separately; and

(b) notwithstanding the foregoing, in no event shall either Party be liable to the other pursuant to this Agreement and any one or more Specific Contracts in respect of a single cause of action.

## 8. TERM AND TERMINATION

8.1 This Agreement shall take effect on the Effective Date and shall continue in full force and effect unless and until terminated by either Party pursuant to Clause 8.2-8.4 (the "Term").

8.2 The Agreement may be terminated by either Party, upon not less than thirty (30) days prior written notice to the other Party.

8.3 The licence granted to Fáilte Ireland at Clause 5 may be terminated or suspended by Fáilte Ireland, upon not less than five (5) days prior written notice to the Contributor.

8.4 The Agreement may be terminated on prior written notice by one Party, if the other Party has committed a breach of its obligations under this Agreement which is:

(a) incapable of remedy, immediately on receipt of written notice to the other Party; or

(b) is capable of remedy and the other Party fails to remedy such breach to the reasonable satisfaction of the first Party within thirty (30) days of receipt of a written notice specifying details of the breach.

8.5 In the event of expiry or termination of this Agreement pursuant to this Clause 8, the Contributor's Data shall be removed from the Database within thirty (30) days, but the Contributor acknowledges and agrees that expiry or termination of this Agreement shall be without prejudice to Data which has been Syndicated prior to the date of expiry or termination, which Syndication shall continue in full force and effect subject to the terms and conditions of the applicable agreement between Fáilte Ireland and the relevant third party.

8.6 The provisions of Clause 1, 2, 5, 6, 7, 8, 9 and 10 shall survive expiry of the Term or earlier termination of this Agreement, together with any other provisions intended by their nature to so survive.

9. **CORRUPT GIFTS, INVESTIGATIONS AND EVIDENCE**

- 9.1 The Contributor shall not offer or give or agree to give any person employed or engaged by Fáilte Ireland any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with Fáilte Ireland or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement.
- 9.2 The Contributor shall provide reasonable assistance to Fáilte Ireland in facilitating any audit, investigation, criminal investigation or enquiry by any duly authorised regulatory body or law enforcement agency to which Fáilte Ireland is subject (the "Investigation"). The Contributor shall be repaid any reasonable expenses incurred in giving any such assistance. The foregoing shall apply without prejudice to any discovery or other form of investigation required at law, which shall be a matter dealt with pursuant to and in accordance with applicable law.

10. **GENERAL**

- 10.1 Compliance with applicable law in the conduct of its business is a matter within the sole and entire responsibility of the Contributor. It is recognised and agreed that Your contribution of Data does not and does not represent and shall not be interpreted by You, or represented by You to third parties, as representing any Fáilte Ireland approval, or other form of confirmation, as to whether or not you comply with applicable law.
- 10.2 The Contributor shall not, without the prior written consent of Fáilte Ireland, assign or transfer this Agreement or any of its rights under this Agreement to any other person, firm or company.
- 10.3 Failure or neglect by either Party to enforce at any time any of the provisions of this Agreement shall not be construed as being, nor shall be deemed to be, a waiver of the Party's rights hereunder, nor in any way affect the validity of the whole or any part of this Agreement, nor prejudice the Party's rights to take subsequent action.
- 10.4 This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and replaces any arrangements, representations (excluding fraudulent representations), understandings, promises or agreements made or existing between the Parties prior to the Effective Date, and constitutes the entire agreement and understanding between the Parties in relation to the subject matter hereof. The Parties each acknowledge that they have not relied in entering into this Agreement on any agreement, understanding or arrangement which is not expressly set forth in this Agreement. In addition, no standard terms and conditions of contract issued or operated by either Party shall apply to this Agreement, including the subject matter of the contract between the Parties reflected herein.
- 10.5 Except as otherwise expressly provided in the Agreement, no communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of Fáilte Ireland or the Contributor. For the purposes of this Clause 10.5 the address of each Party shall be as set out on the Contribution Capture Form. Any notice or other communication which either Party is required or authorised by the Agreement to serve on the other shall be sufficiently served if sent to the authorised representative of the other at the address specified herein: (i) by hand; or (ii) by registered post; or (iii) by facsimile transmission, confirmed by registered post or recorded delivery; or (iv) by electronic mail. Notices sent by registered post shall be deemed to be served three (3) Business Days following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4:00 p.m. on a Business Day, receipt acknowledged, but otherwise on the next Business Day, provided that confirmation by registered post is sent the same day. Notices sent by electronic mail, where such is an established means of communication between the Parties, shall be deemed to be served on the day of transmission if transmitted before 4:00 p.m. on a Business Day, receipt acknowledged, but otherwise on the next Business Day. In all other cases, notices and other communications shall be deemed to have been served on the day they are actually received. For the purposes of the Electronic Commerce Act 2000, the Parties consent to the use of electronic communications and electronic signatures, for all purposes under this Agreement.
- 10.6 In the event that any or any part of the terms, conditions or provisions contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, then, the relevant term, condition or provision shall to that extent be severed from the remaining

terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

- 10.7 This Agreement shall be governed and construed in all respects in accordance with the laws of Ireland and the Parties hereby submit to the exclusive jurisdiction of the Courts of Ireland under or in relation to this Agreement.

**PLEASE CLICK ON THE "ACCEPT" BUTTON TO INDICATE YOUR AGREEMENT TO APPOINTMENT, OR CONTINUANCE, AS CONTRIBUTOR TO THE TOURISM CONTENT SYSTEM, AS APPROPRIATE, IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. CLICKING ON THE "DECLINE" BUTTON WILL TERMINATE YOUR APPLICATION FOR APPOINTMENT AS A NEW CONTRIBUTOR, OR FOR EXISTING CONTRIBUTORS MEANS THAT YOU ARE NOT PERMITTING FÁILTE IRELAND TO USE YOUR DATA.**