

## 2 TERMS AND CONDITIONS

### 2.1 Definitions and Interpretations

#### 2.1.1 Definitions in this Licence Agreement

**Additional Conditions** means the additional conditions to this Licence Agreement as set out in the Agreement Schedule.

**Additional Services** means any additional services provided to the Customer by BOOKEASY which are not strictly part of the Services, that BOOKEASY supplies to the Customer (at the Customer's request and at BOOKEASY's discretion) or that the Customer uses over and above the allowance for each element of the Services or BOOKEASY's published product information.

**beTouch** means BOOKEASY Touch which is a software application for touchscreen devices installed within the Customer's premises.

**Basic Support** means the support services described at clauses 2.6.1 and 2.6.2.

**BOOKEASY's Web Hosting Contractor** means the contractor employed by BOOKEASY to host the Customer's website and Customer Data. BOOKEASY warrants that it will only use contractors with the ability to provide hosting services of the highest standards available in the industry in Australia.

**BookEasy™ Tourism Technology** means the comprehensive Software as a Service "SaaS" system licensed to BOOKEASY for distribution in the tourism industry and designed and developed by Tourism Holdings Pty Ltd ("TH") to enable data management by the tourism trade, including but not limited to the Software, the Trade Marks, TH's IP in the BookEasy™ Tourism Technology and all materials and documents relating to it developed by TH and BOOKEASY and any upgrades, Customisations, Suggestions and enhancements.

**BOOKEASY Retail** means a retail management and online shopping sales facility that enables a business to manage and sell merchandise in house and online. The Retail System can also be synchronized with a scanner, till draw and docket printer.

**BOOKEASY Accommodation Search Widget** means the widget that is put on the Customer's Website that is used to search accommodation and accommodation related products in the BOOKEASY system.

**BOOKEASY Website Template** means the Website provided by BOOKEASY to the Customer subject to Schedule 2 Fees - Charges of the Agreement Schedule.

**Confidential Information** means information about a party, a party's business or activities, that is by its nature proprietary or confidential, and includes (without limitation) all business, financial, technical and other information of a disclosing party marked or designated by such party as "confidential" or "proprietary". Information is not Confidential Information of a party if it can be shown that such information: (i) is now or later becomes known (independently of disclosure by the disclosing party) to the recipient directly or indirectly from a source other than one having an obligation of confidentiality to the party; (ii) becomes publicly known or otherwise ceases to be confidential, except through a breach of this Licence Agreement by the recipient; or (iii) was independently developed by the recipient without use of Confidential Information of the party.

**Customer** means the customer identified in the Agreement Schedule.

**Customer Data** means all Inventory, data, images, information, all Customer Intellectual Property or materials of any kind provided to BOOKEASY or BOOKEASY's Web Hosting Contractor (which may include third party materials) by the Customer for inclusion into a Website.

**Customer Intellectual Property** or **Customer IP** means all Intellectual Property Rights owned by or Licensed to the Customer (other than under a Licence pursuant to this Licence Agreement).

**Customer Websites:** includes the customer's main website URL and associated websites.

**Customisation** occurs where a customer desires an improvement to the BookEasy Tourism Technology and is willing to pay for the relevant software development to achieve this. BOOKEASY may at its discretion agree to Customisations and if so the work must be set out in an agreed quote signed by BOOKEASY and the Customer. Customisations that tie in with the strategic direction of the system or are deemed to provide value to a wide range of customers may be included in future releases and upgrades of Software.

**Domain Name Fees** means domain name fees payable per the Agreement Schedule plus in respect of the registration, transfer, delegation and parking of domain names in accordance with Clause 2.19.

**Fees and Charges** means the Fees and Charges as per Schedule 2 of the Agreement Schedule.

**Force Majeure** means the events set out in clause 2.23.

**Go Live Date** means the date on which the Customer makes its Website available to members of the public.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cwth).

**Hosting Services** means the services to be provided by BOOKEASY per the Agreement Schedule and clause 2.4.

**Initial Term** means the fixed initial term identified in the Agreement Schedule.

**Initial Fee** means the initial upfront fee per the Agreement Schedule.

**Intellectual Property, IP, Intellectual Property Rights or IPR** means all registered and unregistered patents, copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information and all other intellectual property, as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967, and Moral Rights and rights in respect of same.

**Inventory** means bookable or buyable tourism events and products including but not limited to accommodation, tours, hire, events and online shopping and the cost or charge relative to the applicable basis, for items of Inventory.

**Licence** means the Licence granted by BOOKEASY to the Customer to use and access the BookEasy™ Tourism Technology in Clause 2.5.1.

**Licence Fee** means the monthly licence fees payable for all bookings received through all customer websites and Visitor Centre Bookings as per the Agreement Schedule

**Licence Agreement** means this BookEasy Tourism Technology Licence Agreement constituted by the Agreement Schedule and these Terms and Conditions.

**Licensed Premises** means the physical address of the Customer's Premises as noted in the Agreement Schedule.

**Licensing Services** means the services to be provided by BOOKEASY per Clause 2.5.

**Maintenance** means all maintenance tasks (including Scheduled Maintenance and Unscheduled Maintenance) to

be performed in respect of the Services by BOOKEASY under this Licence Agreement.

**Minimum Licence Fee** means the monthly minimum licence fee payable per the Agreement Schedule.

**Mission Control** means the mission control and dedicated control interfaces to be used by the Customer to configure and review the various features of and information in respect of the Service, to log jobs and review the Customer's job history.

**Monthly Repayment Fee** means the monthly fee payable when pricing options 2 or 3 are selected as per Schedule 2 Fees - Charges of the Agreement Schedule

**Moral Rights** means any of the rights described in Article 6 of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the Copyright Act 1968 (Cwth) or any other applicable law), that exist or that may come to exist, anywhere in the world.

**Patch and Patching** means an urgent or "hotfix" software upload to the system that rectifies a bug in the system that BOOKEASY determines urgently requires attention. This would be a bug that BOOKEASY reasonably anticipates may cause damage to BOOKEASY's, the Customer's, BOOKEASY's other customers' and/or BOOKEASY's contractors' systems, if such Patching is not immediately applied. The Patch is tested in the context of where it is found in the system, but due to the complexity of the Software, it is accepted that this may impact another facet of the system which is unknown. The Patch may not necessarily be the best solution for the problem and in this case BOOKEASY will at its discretion, endeavour to find a better solution in the next release of its Software.

**Password** means the password for the BOOKEASY Online Console as assigned to the Customer by BOOKEASY, or subsequently changed by the Customer.

**Project Plan** means the Project Plan as per Schedule 1 of the Agreement Schedule

**Services** means the services to be supplied by BOOKEASY to the Customer under this Licence Agreement, including the Hosting Services, Licensing Services and Support Services.

**Services Fees** means the Initial Fee, Licence Fee, Domain Name Fees; fees in respect of Additional Services; and any other fees or charges which are otherwise payable under this Licence Agreement and in consideration of the provision of the Services, and which are inclusive of any government taxes or charges unless expressly stated otherwise.

**Service Level** means the reliability and performance standard that applies in regard to BOOKEASY's delivery or the Hosting Services to the Customer.

**Service Level Guarantee** means the extent of the guarantee given by BOOKEASY for the Hosting Services having regard to the Service Level, as modified by BOOKEASY from time to time.

**Scheduled Maintenance** means planned maintenance to be performed by BOOKEASY on BOOKEASY's servers/equipment. BOOKEASY will use its commercially reasonable endeavours to provide at least 48 hours notice of the event in the online console.

**Software** means the software component of the BookEasy™ Tourism Technology (including BOOKEASY Retail where requested in the Agreement Schedule), as may be updated and/or corrected from time to time by BOOKEASY.

**Suggestion** means an idea logged by a customer for improvement of the BookEasy Tourism Technology which may, at BOOKEASY's discretion, be added to a BOOKEASY suggestion list. Suggestions that tie in with the strategic direction of the system or are deemed to provide value to a wide range of customers may be included in future releases and upgrades of Software.

**Supplementary Support Services** means support outside of the Support Services, for example support for interaction with another software or hardware system, which will constitute Additional Services.

**Support Services** means the support services to be provided by BOOKEASY or at BOOKEASY's discretion per Clause 2.6 typically relating directly to the functionality of the BookEasy Tourism Technology.

**Total Bookings Processed** means the total amount of Customer bookings processed through the BOOKEASY system or on behalf of the Customer.

**Tourism Holdings Pty Ltd or TH** means the company that owns all the Intellectual Property Rights of the Software, the benefit of this Agreement and licences the Software to BOOKEASY to on licence.

**Trade Marks** includes BookEasy™, and such other trade marks, service marks, designs, trade and business names, logos and slogans as TH or BOOKEASY may from time to time include in the BookEasy™ Tourism Technology, whether registered or unregistered.

**Unscheduled Maintenance** means maintenance which may require system downtime, and about which BOOKEASY is unable to notify the Customer in advance because of the need for immediate action.

**Website** means any website established or hosted by BOOKEASY on behalf of the Customer under this Licence Agreement and using the BookEasy™ Tourism Technology.

## 2.1.2 Interpretation

- A reference to this Licence Agreement includes a reference to the Agreement Schedule and the Terms and Conditions and where amended means this Licence Agreement as amended.
- Unless the context otherwise requires, a word which denotes: (i) the singular includes the plural and vice versa; (ii) any gender includes the other gender; and (iii) a person includes an individual, a body corporate and a government.

## 2.2 Term

2.2.1 This Agreement shall continue for the Term specified in Clause 1.5 of the Agreement Schedule unless terminated earlier pursuant to Clause 2.17.

## 2.3 Services

2.3.1 The Services comprise the provision of :

- the Hosting Services;
- the Licensing Services; and
- the Support Services

as more particularly described below and subject to the Customer paying the Services Fees.

2.3.2 BOOKEASY will use its reasonable endeavours to ensure the necessary resources are available to the Customer for the provision of the Services.

## 2.4 Hosting Services

2.4.1 Hosting Services are establishing and/or hosting the Customer's Website incorporating the BookEasy Tourism Technology in accordance with this Licence Agreement.

## 2.5 Licensing Services

2.5.1 BOOKEASY grants to the Customer a non-exclusive licence to use the BookEasy™ Tourism Technology at the Licensed Premises:

- to copy and distribute copies of the Software to the Customer's computers located at the Licensed Premises for the use of the Customer's employees during the course of their duties.
- to use the Trade Marks with correct attribution, solely as a means of describing the BookEasy™ Tourism Technology to the Customer's members and the public;
- to use during the course of its business, the materials and methods comprising the BookEasy™ Tourism Technology; to continuously update the Website with the Customer Data using the Software;

(together the "Licence").

2.5.2 The Licence will survive for the Term of this Licence Agreement or until this Licence Agreement is terminated.

## 2.6 Support Services

2.6.1 Task Management: BOOKEASY will provide a task management system to deal with support requests. The task management system will be tailored by BOOKEASY in co-operation with the Customer, to best suit the Customer's operation and support requirements. Support may be logged by phone, email or through the BookEasy™ console.

2.6.2 Basic Support: BOOKEASY will provide Basic Support to the Customer in respect of the BookEasy™ Tourism Technology, without additional charge; comprising at least standard telephone and e-mail support response within a maximum of 2 working days (with an average response of 2 hours) and emergency telephone support (Website down and or cannot process bookings) response within 4 hours. Tasks entered into the task management system through the BookEasy™ console will be monitored from 6.30am to 5.00pm Brisbane local time 7 days a week including public holidays. Phone support is monitored 8.30am to 5.00pm Brisbane local time Monday to Friday excluding public holidays.

Bug fixes: BOOKEASY will use its best efforts, without additional charge, to correct any defect or error in the Software that is brought to its attention by the Customer.

Upgrades: During the term of this Licence Agreement, the Customer is entitled to receive, without additional charge, any upgrades to the Software developed by BOOKEASY, and made available to other similarly situated licensees of the BOOKEASY Tourism Technology.

Patching: BOOKEASY will, from time to time, access the Customer's server to apply Patching. BOOKEASY will use reasonable efforts to provide prior notice of Patching and will not be liable to the Customer for any interruption of service or loss of data or functionality in such circumstances, provided that BOOKEASY has acted with reasonable care.

2.6.3 Supplementary Support: BOOKEASY may, at its discretion and at the request of the Customer, provide supplementary support to the Customer, which will constitute Additional Services.

2.6.4 Supplementary Training: BOOKEASY may, at its discretion and at the request of the Customer, provide supplementary training to the Customer's employees which will constitute Additional Services; training may be (at BOOKEASY's discretion) provided via Online web conferencing, telephone induction and one to one training ("Supplementary Training").

2.6.5 Customisations and Suggestions: Customers may use the task management system to log Customisations or Suggestions. Customisations will, unlike Upgrades, be provided on an individual customer basis and will be chargeable as Additional Services. There will be no additional charge for Suggestions if implemented, however, all Intellectual Property associated with the suggestion and or the customisation is assigned to the owner of the Intellectual Property in the Bookeasy Software at the time of logging the suggestion.

2.6.6 BOOKEASY Website Templates: Customers may use a BOOKEASY Website Template. BOOKEASY has the right to add its branding to the BOOKEASY Website Template in way of a logo or wording. If the Customer does not want the branding on the BOOKEASY Website Template the Customer must pay a debranding fee.

2.6.7 Bookeasy does not support the use of iframes on any client website and cannot provide service level guarantees for solutions implemented via iframes. If Bookeasy is required to assist on any site that has implemented iframes, Bookeasy will charge for all time incurred at normal commercial rates.

## 2.7 Service Availability

2.7.1 The Customer expressly acknowledges and agrees that the Customer Data will be located on a data centre provided by BOOKEASY's Web Hosting Contractor.

2.7.2 The Customer agrees that BOOKEASY's Web Hosting Contractor may determine in its absolute discretion the data centre location. BOOKEASY will use its reasonable endeavours to ensure that its Web Hosting Contractor minimises downtime, however the Customer acknowledges that it will have no claim against BOOKEASY in respect of reasonable downtime in supply of the Services caused by migration between data centres.

2.7.3 BOOKEASY will use its reasonable endeavours to ensure that its Web Hosting Contractor notifies the Customer of any migration of the Customer Data to a different location. On receipt of such notice and following migration the Customer must undertake to check the operation of its service and notify BOOKEASY of any problems. BOOKEASY will have no liability to the Customer for any failure or problems resulting from a migration, where the Customer has failed to keep its contact details up to date and has as a result not received the notice.

2.7.4 The Customer agrees to BOOKEASY's Web Hosting Contractor's use of SPAM and virus filters which may require it to use third party services to monitor and filter email traffic between its equipment and the internet. The Customer agrees that BOOKEASY will not be liable for any loss resulting from the use of such SPAM or virus



filters.

2.7.5 The Customer will comply with BOOKEASY's reasonable operational procedures, acceptable use and privacy requirements as set out in this Licence Agreement and as may be notified to the Customer from time to time.

2.7.6 BOOKEASY excludes liability for outages that result from:

- a failure or malfunction in relation to equipment, any computer software or power supply at the premises of the Customer;
- failure or malfunction of an internet connection forming part of the Service (whether at the Customer's, BOOKEASY's or BOOKEASY's Web Hosting Contractor's site);
- an act or an omission by the Customer (or a person under the direction or control of the Customer);
- reasonable downtime required for installation of urgent hot-fix Patches;
- the occurrence of a Force Majeure event;
- performance of Maintenance;
- a requirement, direction, or any other order, issued by a government, statutory or other relevant authority with jurisdiction over the Services;
- unauthorised or illegal access by any party to any part of the system providing the Services, including hacking, cracking, virus dissemination and denial of service attacks; or
- a failure or malfunction in relation to the Customer's equipment or computer software located at the premises of BOOKEASY or its contractor, unless caused by BOOKEASY or its contractor.

2.7.7 Notwithstanding this BOOKEASY will give reasonable practical assistance to the Customer to assist the restoration of the affected Service which will constitute Additional Services. For the avoidance of doubt where an outage is the result of a failure by BOOKEASY then reactivation of the affected Service will not be Additional Services.

2.7.8 BOOKEASY will endeavour to supply the Hosting Services with a guaranteed service availability i.e. a Service Level Guarantee of 99.9%. However a breach of this Service Level Guarantee is not a breach of this Licence Agreement.

2.7.9 If Service Levels fall below this level of availability, the Customer will be entitled to a rebate as its sole and exclusive remedy under this Licence Agreement for that failure.

2.7.10 The rebate will be a percentage of the monthly Minimum Licence Fee as follows:

Server Availability	Rebate
99.4 to 98.5%	5%
98.4 to 97.5%	10%
97.4 to 96.5%	15%
Less than 96.5%	20%

subject to a maximum amount being the amount of Services Fees paid or to be paid by the Customer in the affected month.

2.7.11 Server Availability is a measurement of the total time, expressed as a percentage, that the Hosting Services are operational (i.e. there is no outage) where measured over any calendar month during the Term.

2.7.12 The Service Level Guarantee will not apply to the supply of the Hosting Services where:

- the interruption is due to a planned outage or an emergency including Maintenance, Patching and

Upgrades;

- an outage listed at clause 2.7.6;
- the failure is as a result of an act or an omission by the Customer or a person under the Customer's direction or control, including a breach of this Licence Agreement;
- the Customer is in breach of this Licence Agreement; and
- the Customer fails to notify BOOKEASY of the events giving rise to a claim for rebate within 60 days of the event occurring.

## 2.8 The Customer's Obligations

The Customer hereby undertakes the following obligations:

2.8.1 not to copy, reproduce, translate, reverse engineer, adapt, vary or modify the Software without the prior written consent of BOOKEASY;

2.8.2 not make more than one backup copy of the BookEasy™ Tourism Technology. Any such copy will in all respects be subject to the terms and conditions of this Licence Agreement;

2.8.3 to reproduce on any copy (whether in machine readable or in human readable form) of the BookEasy™ Tourism Technology TH's and/or BOOKEASY's copyright and trade mark notices;

2.8.4 to notify BOOKEASY immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the BookEasy™ Tourism Technology, the Customer Data or any other BOOKEASY and/or TH IP by any third party;

2.8.5 without prejudice to the foregoing to take all such other steps as will from time to time be necessary to protect the Confidential Information and TH's and/or BOOKEASY's IPR.

2.8.6 to supervise and control the use of the BookEasy™ Tourism Technology and to ensure that the Customer's employees, agents and contractors are aware of the terms of this Licence Agreement and take all reasonable steps to ensure compliance by the Customer's employees, agents and contractors;

2.8.7 not remove or alter any copyright or other proprietary notice on the BookEasy™ Tourism Technology;

2.8.8 not to assign, transfer, charge or otherwise deal in or encumber TH's and/or BOOKEASY's IPR or provide or otherwise make available the Software or any other part of TH's and/or BOOKEASY's IP to any third party in any form without the written consent of BOOKEASY;

2.8.9 to provide the initial information and Customer Data for insertion on and establishment of the Website to BOOKEASY accurately and on a timely and co-operative basis; and

2.8.10 to take sole responsibility for the maintenance of the Website after the Go Live Date; and

2.8.11 to cover operator and staff training venue costs and accommodation and travel for BOOKEASY trainers for all Support Services as per the Agreement Schedule.

2.8.12 acknowledges to pay the licence fee based on using Bookeasy for all of its Customer Websites and Visitor Centre/s and will not use another third party booking system either through its Customer Website/s or its Visitor Centre/s for the Term of this Agreement.

BOOKEASY Accommodation Search Widget; The Customer agrees to display the BOOKEASY

Accommodation Search Widget on no less than ninety per cent (90%) of the web pages on the website.

2.8.13 agrees to pay Bookeasy Commission for the remainder of the Agreement Term based on the average monthly Licence fees for the previous 2 years of the Customer's Trading or \$595 per month whichever is the greater should they remove Bookeasy from either the Customer's Website/s or Visitor Centre/s for the Term of the Agreement.

## 2.9 Fees and Payments

2.9.1 The Customer must pay the Services Fees to BOOKEASY in accordance with this Clause 2.9.

2.9.2 If:

2.9.2.1 the Minimum Monthly Fee is greater than the Licence Fee, the Minimum Monthly Fee is payable;

2.9.2.2 the Minimum Monthly Fee is less than the Licence Fee, the Licence Fee is payable.

2.9.3 BOOKEASY will provide the Customer with a GST inclusive, consolidated invoice indicating which Services Fees are due and including any Additional Services. All invoices must be paid within 14 days of receipt.

2.9.4 The Customer must pay for all other government taxes, duties and levies (if any) imposed on either the Customer or BOOKEASY in respect of the Services or any other service or goods supplied.

2.9.5 If the Customer selects a monthly credit card payment method:

- no credit terms are given to credit card accounts. By providing credit card details the Customer authorises BOOKEASY to debit all Services Fees to the Customer's nominated credit card at the time the invoice is issued during the term of this Licence Agreement;
- the Customer consents to BOOKEASY obtaining a credit reporting agency report containing personal information about the Customer (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by BOOKEASY of an application for credit (whether commercial or personal) or for the purposes of the collection of payments which are overdue.

2.9.6 Additional Services will be charged to the Customer at BOOKEASY's standard hourly rate per the Agreement Schedule and will be invoiced in arrears.

2.9.7 Subject to clause 2.21.3, BOOKEASY may vary the Service Fees upon no less than 3 months written notice to the Customer by notice in writing ("Notice of Change"):

- If the Customer is paying monthly, the Notice of Change can be issued after 3 months from commencement of the Services, and;
- the changes will apply at the end of the notice period in the Notice of Change; and
- If the Customer does not accept the change the Customer may terminate this Licence Agreement by written notice within 14 days after having received the Notice of Change. If the Customer gives notice of termination under this clause, the termination will take effect at the end of the notice period in the Notice of Change. Notwithstanding that the Customer may send BOOKEASY a notice of termination under this clause, the Customer will be taken to have accepted the change if the Services

are used after the end of the notice period stipulated in the Notice of Change.

2.9.8 If the Customer defaults in making payments under this Licence Agreement when due, then in addition to BOOKEASY's other rights, BOOKEASY may in absolute discretion:

- charge the Customer interest on the outstanding amounts at the rate being 2% above the published indicator lending rate for the National Australia Bank (presently called "Business Base Rate") applied at the rates applicable from time to time from the date on which the payments fell due until the date of payment; and/or
- suspend the provision of Services to the Customer until such time as the default is rectified and BOOKEASY's standard re-activation charge is paid. Service Fees will continue to accrue during the period of suspension.

2.9.9 If a reasonable, good faith dispute arises in respect of an invoice for Services Fees, the Customer must:

- notify BOOKEASY in writing of the nature of the dispute and the amount in dispute;
- pay the undisputed amount within the timeframe required by this Licence Agreement;
- co-operate with BOOKEASY on a good faith basis to resolve the dispute at the lowest level possible within 21 days after the notification to BOOKEASY, in failure of which clause 2.25 will apply.

2.9.10 Disputes must be notified within 14 days after receipt of the relevant BOOKEASY invoice in default of which the Customer will be deemed to have accepted the invoice as correct.

2.9.11 The Monthly Licence Fee is payable for all transactions that are processed through the Bookeasy System including successful bookings as well as cancellation and amendments.

2.9.12 Customers are required to complete their monthly returns in the Bookeasy System no later than close of business of the 4<sup>th</sup> of the following month. If returns are not completed in time the customer will be charged the minimum monthly fee plus the undercharge will be charged in the following month. The customer will also be charged an administration fee of \$165 per month until the returns are brought up to date. In addition, at the discretion of BOOKEASY, BOOKEASY reserves the right to run the returns on behalf of the Customer.

2.9.13 Should a Customer's Licence Agreement be automatically extended on a periodical yearly basis the "Subsequent Term", the one-year commission rate band shall be charged at their respective previous year's revenue band. The one-year commission rate is higher than a four-year contract rate.

2.9.14 Bookeasy offers various commission rates depending on your contract length. Bookeasy offers a one, two and four year contract periods.

## 2.10 Maintenance and Backup

2.10.1 BOOKEASY will use reasonable endeavours to perform all Scheduled Maintenance between the hours of 0100 and 0600 AEST.

2.10.2 BOOKEASY will perform Unscheduled Maintenance as reasonably required from time to time.

2.10.3 If Unscheduled Maintenance is to be performed due to data corruption, security requirements or equipment

failure and requires the Customer's Service to be off-line for more than 5 minutes BOOKEASY will use reasonable endeavours to alert the Customer via the online console before rebooting or taking servers out of service.

2.10.4 BOOKEASY's priority in undertaking a reboot or taking servers out of service is to restore services as a matter of urgency. Where BOOKEASY is unable to give prior notice to Customer, it will notify the Customer as soon as possible after Unscheduled Maintenance has occurred.

2.10.5 BOOKEASY gives no warranty that backups will be complete and/or accurate.

2.10.6 The Customer must ensure that all files are accessible, not locked or in use, during backup.

2.10.7 The Customer warrants to BOOKEASY that it will maintain an up to date copy of the Customer Data at its premises at all times.

2.10.8 On termination or expiry of this Licence Agreement, any Customer Data stored on BOOKEASY backup media will "age" out over the period of the normal tape rotation. (It is not possible to selectively delete the Customer Data from the backup sets).

## 2.11 BOOKEASY's Warranties and Liabilities

2.11.1 BOOKEASY's warranties are subject to the limitations on its liability set out in this Licence Agreement.

2.11.2 BOOKEASY warrants that it has the right, power and authority to licence the BookEasy™ Tourism Technology upon the terms of this Licence Agreement.

2.11.3 BOOKEASY does not warrant that:

- it is the owner of the Inventory or the Customer Data or that it has the right to distribute same;
- the Services will be uninterrupted or error free;
- the Services will meet the Customer's requirements, other than as expressly set out in this Licence Agreement; or that
- the Services will be free from external intruders (hackers), unauthorised virus or worm dissemination, or other persons having access to the services or systems of BOOKEASY without the consent of BOOKEASY.

2.11.4 BOOKEASY warrants that the following physical security will be provided:

- the data centres utilised by BOOKEASY's Web Hosting Contractor are secure areas and accessed only by authorised personnel and via authentication systems;
- all servers from which the Services are supplied are housed in a lockable equipment rack and are accessed only by authorised BOOKEASY or contractor's staff.

2.11.5 Except as expressly provided by this Licence Agreement, BOOKEASY makes no warranty to any person in relation to any goods or services provided under this Licence Agreement.

2.11.6 BOOKEASY does not exclude or limit the application of any provision of any statute (including the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Aus) where to do so would contravene that or any other statute, or cause any part of this clause to be void.

2.11.7 BOOKEASY excludes:

- from this Licence Agreement all conditions, warranties and terms implied by statute, general

law, or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non-excludable Condition");

- all liability to the Customer in contract for consequential, indirect or special damages arising out of or in connection with this Licence Agreement even if: (i) BOOKEASY knew they were possible; or (ii) they were otherwise foreseeable, including without limitation lost profits and damage suffered as a result of claims by any third person, such as a customer of the Customer;
- all liability to the Customer in negligence for acts or omissions of BOOKEASY, its employees, agents and contractors arising out of or in connection with this Licence Agreement, except in respect of death or personal injury or acts or omissions outside the four corners of the contract; and
- all liability to the Customer for costs, claims, loss or damage of any kind: (i) resulting from the wilful, fraudulent or negligent acts or omissions of the Customer; (ii) arising from any information, Customer Data, Customer IP or other material provided to BOOKEASY by or on behalf of the Customer.

2.11.8 BOOKEASY's liability to Customers for:

- breach of any Non-excludable Condition will be limited at BOOKEASY's election to supplying again the Services;
- Breach of any other express provision of this Licence Agreement or in respect of any other claim (including for indemnity) arising in relation to this Licence Agreement, is limited in aggregate to an amount equal to the Services Fees paid by the Customer to BOOKEASY in the calendar month immediately prior to the event occurring in respect of which the claim is made.

2.11.9 Subject to clause 2.11.6, BOOKEASY will not be liable to the Customer in respect of any claim which has not been notified to BOOKEASY in writing within six (6) calendar months of the date of the earliest event giving rise to the claim.

2.11.10 Other than in respect of Non-excludable Conditions, the benefit of any warranty will not be available to Customers whilst they are in breach of payment obligations under this Licence Agreement, and in respect of which outstanding amount no dispute notification (as contemplated by clause 2.9.9 has been received by BOOKEASY.

2.11.11 BOOKEASY makes no warranty that the touchscreen used for the beTouch application is suitable for the intended purpose.

## 2.12 Customer's Warranties

2.12.1 Without limiting clause 2.13, the Customer makes the following warranties to BOOKEASY in respect of its use of the Customer Data.

- the Customer takes sole responsibility for the accuracy of the Customer Data.
- it holds, and will continue to hold, the Intellectual Property Rights in the Customer Data or that it is, and will remain, otherwise entitled or licensed to use, publish and otherwise deal with the Customer Data;



- the Customer Data does not and will not constitute breach of copyright, passing off, defamation, breach of confidence, interference with privacy or any contravention of any other law or right whatsoever;
- its use in connection with advertising does and will continue to materially comply with, all relevant laws and applicable codes of conduct;
- the Customer is solely responsible for dealing with persons who supply, licence and access the Customer Data, and must not refer complaints or enquiries in relation to the Customer Data to BOOKEASY.

2.12.2 The Customer acknowledges that the Software is very complex and that by its nature cannot be guaranteed error free and further acknowledges that the existence of any such errors will not constitute a breach of this Licence Agreement.

2.12.3 The Customer acknowledges that BOOKEASY is under no obligation to remedy any defect or error in the Software other than as expressly stated in this Agreement.

2.12.4 The Customer acknowledges that BOOKEASY is under no obligation to remedy any defect or error in the Customer Data.

2.12.5 The Customer acknowledges that it has exercised its independent judgement in entering into this Licence Agreement and has not relied on any representation made by BOOKEASY or any other party which has not been stated expressly in this Licence Agreement or upon any collateral materials provided by BOOKEASY.

2.12.6 The Customer warrants that it will keep secure any Passwords used to access the BookEasy Console and the Services generally.

2.12.7 The Customer will be solely responsible for any insurances in respect of its property or other insurable interests it may have arising out of its use of the Services (including Customer Data) and will exercise best endeavours to ensure that its insurers waive rights of subrogation against BOOKEASY.

2.12.8 The Customer will provide and pay for the installation and use of telephone lines and all other equipment needed to access the Services.

2.12.9 The Customer warrants that it has the power and authority to enter into this agreement and if the signatory is not the Customer the signatory warrants that it has the power and authority to enter into this Licence Agreement on behalf of the Customer.

2.12.10 The Customer warrants that the touchscreen selected is suitable to operate the BOOKEASY software.

2.12.11 The Customer warrants that they are the owner of the touchscreen and any repairs, fixes and maintenance of the touchscreen will be the sole responsibility of the Customer.

2.12.12 The Customer warrants that the touchscreen will be locked down to the URL that operates beTouch.

## 2.13 Customer Data

2.13.1 The Customer acknowledges the following.

2.13.2 BOOKEASY is not the author of the Customer Data.

2.13.3 BOOKEASY has not made any attempt to verify the accuracy of the facts, statements and opinions in the Customer Data.

2.13.4 BOOKEASY is not responsible for any loss, injury, claim or expense incurred by the Customer's end user as a result of any user relying on any fact, statement or opinion

in the Customer Data (whether negligent or otherwise).

2.13.5 BOOKEASY is not responsible for any offence taken by any user to any fact, statement or opinion in the Customer Data.

2.13.6 BOOKEASY is not responsible for preservation of Customer Data and is not responsible for loss or damage of customer data.

2.13.7 The Customer hereby grants to BOOKEASY a licence to use and reproduce all Customer Data in order to fulfil BOOKEASY's rights and obligations under this Licence Agreement.

2.13.8 The Customer will not remove the Bookeasy system from its Customer Website/s or Visitor Centre/s for the Term of this Agreement.

2.13.9 The Customer grants to BOOKEASY the right to provide the Inventory to distributors of such information in the tourism industry anywhere in the world and BOOKEASY will have no liability to the Customer in this respect. However the Customer's operators will be able to opt out of such distribution by using the tick box in the online booking control screen and in this case BOOKEASY will not distribute such operator's Inventory.

## 2.14 BOOKEASY'S Rights regarding Customer Data

2.14.1 Without limiting clause 2.12, the Customer acknowledges that BOOKEASY may remove, amend or alter the Customer Data without notice in the following circumstances:

- Upon being made aware of a Court order, judgment, decree, determination or otherwise being made by a Court, tribunal or other competent body that the Customer Data is or has been alleged to be illegal, offensive, objectionable, defamatory or in breach of a third party's rights;
- Upon receipt of notification of a claim by a third person that the Customer Data is illegal, offensive, objectionable, defamatory or in breach of a third party's rights;
- Upon being directed to do so by the Australian Broadcasting Authority pursuant to a take-down notice in accordance with its obligations under the Broadcasting Services Act 1992 (as amended); or
- If required to do so by the terms of any applicable industry code of conduct from time to time (such as the Internet Industry Association Internet Industry Codes of Practice).

2.14.2 BOOKEASY will use reasonable efforts to consult with the Customer before any action is taken pursuant to clause 2.14.1 using the contact details listed in the SOF; however, BOOKEASY will not be liable to the Customer for any consequences of its actions reasonably taken under this clause.

2.14.3 This clause does not impose any obligation whatsoever on BOOKEASY to monitor, review or edit the Customer Data.

## 2.15 Intellectual Property Rights

2.15.1 The Customer acknowledges that the Intellectual Property Rights in the BookEasy™ Tourism Technology, and any other TH and/or BOOKEASY IPR, are the sole property of TH and/or BOOKEASY, and that the Customer

will not during the term of this Licence Agreement, or at any time following its termination or expiry, do any act, or permit any act to be done which infringes upon or causes any detriment to TH's and/or BOOEASY's Intellectual Property Rights.

2.15.2 BOOEASY acknowledges that the Customer owns all right, title and interest in the Customer IPR.

2.15.3 The IP Rights in any general content or materials provided by one party to the other in connection with this Licence Agreement will remain vested in the party that created the material or content.

2.15.4 The IP Rights in new content, functionality and software which BOOEASY develops to procure that the appearance and functionality of the Services conforms with the Customer's requirements or which the Customer specifically requests BOOEASY to develop including Customisations and Suggestions will vest in TH.

2.15.5 Except as set out in this Licence Agreement, BOOEASY may not use the Customer IPR and the Customer may not use TH and/or BOOEASY IPR:

- in or as the whole or part of its own or other trademarks;
- in connection with activities, products or services not related to this Licence Agreement;
- in a manner which may be confusing, misleading or deceptive;
- in a manner which disparages the other party or its information, products or services; or
- otherwise than in accordance with this Licence Agreement.

## 2.16 Indemnity

The Customer indemnifies BOOEASY for and against any loss, damage, costs, claims and expenses which BOOEASY may incur (including reimbursement for legal fees on an indemnity basis) from:

2.16.1 claims by third parties that the distribution of Inventory to the Customer or for the Customer as contemplated in this Licence Agreement, breaches that persons rights in the same;

2.16.2 third parties for the Customer's breach of TH's or BOOEASY's IPR or any of the provisions of this Licence Agreement;

2.16.3 the existence and/or publication of the Customer Data and any other content (a) on any server provided as part of the Services; or (b) on or forming part of the Customer's Website or in emails.

2.16.4 Publication, importing, editing or use of the Customer Data by BOOEASY for the purposes of (a) providing the Services in accordance with this Licence Agreement; and (b) making it available to Internet users accessing the Customer Data on the Customer's Website;

2.16.5 BOOEASY making the Customer Data available to (a) users of the Customer's current Password/s; and (b) unauthorised users who obtain the Customer's current Password/s where the Password/s have come into their possession as a result of the Customer's deliberate act or negligence, but excluding unauthorised users who access the Customer's website by means of deliberate security breach including "hacking", "cracking", theft of passwords and passcodes.

2.16.6 any of the Customer's warranties under this Licence Agreement being, or becoming false, misleading or deceptive;

2.16.7 any loss, damage, injury, or claim by any user arising as a result of reliance on any fact, statement or opinion in the Customer Data (whether negligent or otherwise);

2.16.8 the acts and omissions of the Customer, its agent or contractor in respect of its administration of the servers to which it has administration access;

2.16.9 all software (except BookEasy™) and other tools installed on servers to which the Customer has administration access, whether installed by the Customer or at its direction;

2.16.10 third party claims in defamation or breach of the Customer's obligations under the Privacy Act, arising out of the Customer's use of the Services,

2.16.11 third party claims in respect of any aspect of the Services which if true would constitute a breach by Customer of the Acceptable Use Policy;

2.16.12 death and injury to any person or damage to property caused by the Customer, its employees or contractors; and

2.16.13 breach of credit card security on the Customer's website.

## 2.17 Termination

2.17.1 Either party may terminate this Licence Agreement immediately by notice in writing and without prejudice to any other rights either party may have under this Licence Agreement or at law if the other party:

- being the Customer, breaches any payment obligation of this Licence Agreement, and does not remedy the breach within thirty (30) days of written notice to do so;
- breaches any material provision of this Licence Agreement and does not remedy the breach within thirty (30) days of written notice to do so;
- ceases to carry on business;
- enters into any arrangement between itself and its creditors;
- ceases to pay its debts as they fall due; or
- has appointed a receiver, receiver and manager, trustee in bankruptcy, provisional liquidator, administrator, liquidator or other like person to part or all of its assets or business.

2.17.2 Either party may terminate this Licence Agreement in writing and without breach if any Force Majeure event continues for more than 30 days.

2.17.3 If the Customer terminates this Licence Agreement without cause before the end of the Initial Term or if BOOEASY terminates this Agreement under Clause 2.17.1, the Customer must pay BOOEASY as liquidated damages an amount equal to the amount of the Services Fees that would have been payable from the date of termination to the end of the Term as defined in clause 2.8 The Customer's Obligations and 2.8.13, plus all other amounts then owing to BOOEASY, less any amount already paid in respect of that period. The Customer agrees that liquidated damages under this Clause is reasonable and represents a genuine pre-estimate of the loss likely to be suffered by BOOEASY due to the early termination.

2.17.4 If either party gives notice under clause 2.17.1, then in addition to the right of termination the party giving notice may be regarded as discharged from any further obligations under this Licence Agreement and may pursue



any additional or alternative remedies provided by law.

2.17.5 BOOKEASY reserves the right to terminate Services provided to a customer who has previously had its account with BOOKEASY terminated for breach. In this clause "customer" includes:

- (if the customer is a corporation) its Related Entity or Related Party (as these phrases are defined in the Corporations Act 2001 Cwth); and
- (if the customer is an individual) any corporation in which the customer was at the relevant time an officer or shareholder, or a Related Party (as this phrase is defined in the Corporations Act 2001 Cwth) of a shareholder.

2.17.6 On termination or expiry of this Licence Agreement for any reason:

- Where the Customer is not in breach of a material term of this Licence Agreement BOOKEASY will exercise reasonable endeavours, without charging the Customer, to ensure that BOOKEASY's Web Hosting Contractor provides to the Customer an electronic copy of the Customer Data. If the Customer is in breach of a material term then BOOKEASY has no such obligation but may do so at its sole discretion and require the Customer to pay BOOKEASY at its standard hourly rate for such services. On termination BOOKEASY will, if required to do so by notice from the Customer, return to the Customer any Customer Data and Customer materials in BOOKEASY's possession, erase, wipe clean or otherwise destroy all copies of Customer materials, Customer confidential information and Customer Data and request BOOKEASY's Web Hosting Contractor to do likewise.
- the Customer or its representative will destroy all remaining copies of the Software and the documentation or otherwise dispose of same as directed by BOOKEASY;
- BOOKEASY may, subject to the above provision, delete all Customer Data from any BOOKEASY or BOOKEASY Web Hosting Contractors' storage media;
- all licences granted under this Licence Agreement including the BookEasy™ Software Licence will terminate forthwith;
- BOOKEASY may bill all amounts then due but unbilled;
- the Customer will pay to BOOKEASY all amounts owing for Services up to the date of termination, without deduction; and
- the parties will have no further rights or obligations under this Licence Agreement save for: (i) rights and obligations arising in respect of matters occurring prior to termination; and (ii) provisions of this Licence Agreement which by their nature survive termination or expiry, including without limitation this clause, clauses 2.20 and 2.15.

2.17.7 Either party may terminate this Licence Agreement upon the expiry of the Initial Term as provided in the Agreement Schedule.

## 2.18 Suspension and Reactivation

2.18.1 BOOKEASY may from time to time without notice suspend the Services or disconnect or deny the Customer

access to the Services:

- during any technical failure, modification or Maintenance involved in the Services provided that BOOKEASY will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; and
- if the Customer fails to comply with any material provision (including as to payment) in this Licence Agreement, which failure in BOOKEASY's reasonable opinion may have the effect of jeopardising the operation of the Services, or bring BOOKEASY into disrepute until the breach (if capable of remedy) is remedied.

2.18.2 If the Services have been suspended or terminated due to the Customer's breach, reactivation of the Services will be at BOOKEASY's sole discretion. If BOOKEASY agree to reactivate the Services, BOOKEASY will require payment in full of all outstanding amounts and payment of BOOKEASY's standard reactivation fee.

## 2.19 Domain Names and IP Addresses

2.19.1 The Customer acknowledges and accepts that BOOKEASY has subcontracted domain name registration, renewal and re-delegation to BOOKEASY's Web Hosting Contractor. However requests for domain name registration, renewal and re-delegation should be addressed directly to BOOKEASY and fees and costs in relation to domain names will be invoiced to the Customer by BOOKEASY.

2.19.2 If the Customer requests that BOOKEASY register, renew or re-delegate a .com, .com.au, .net, .biz, .info or .org domain name ("TLDs or Top Level Domains") on its behalf, the Customer agrees that upon lodging each such request with BOOKEASY that it has read and accepts the TLD (Top Level Domains) Policy applicable to such domain names issued by the registrars Melbourne IT Limited located at <http://www.melbourneit.com.au/policies/gtldtermcond.php3> and NetSol located at [www.networksolutions.com](http://www.networksolutions.com). The Customer agrees that it is aware of the consents, warranties and indemnity it is required to give to register, maintain, transfer and renew its domain name.

2.19.3 If the Customer requests that BOOKEASY register, renew or re-delegate a .com.au, .id.au, .net.au or .org.au domain name ("2LDs or Second Level Domain") on its behalf, the Customer agrees that it has read and accepts the policies applicable to such domain names issued by auDA via its Registrars, located at <http://www.auda.org.au/policy/>.

2.19.4 The Customer agrees that by maintaining the registration of a domain name after changes or modifications to the applicable policies become effective, the Customer is confirming continued acceptance of these changes and modifications.

2.19.5 The Customer agrees that in the event of a dispute in registering a domain name or about a domain name after registration, the parties are bound by the rules of dispute resolution policy published by the relevant Registry from time to time ("Dispute Policy"). At the time of this Licence Agreement the applicable Dispute Policy for TLDs is the Uniform Domain Name Dispute Resolution Policy and in the case of a 2LD the .au Dispute Resolution Policy. The Customer agrees that in the event of a dispute it will submit to the jurisdiction of the courts as provided in the Dispute Policy.

2.19.6 The Customer acknowledges that in registering, renewing or re-delegating a domain on its behalf, BOOKEASY is acting as a reseller of the registrars Melbourne IT. The Customer agrees that it must pay for any registration, delegation or other charges imposed by the registrars and any other applicable domain name authorities, and in advance where so requested.

2.19.7 In respect of 2LDs the Customer acknowledges that BOOKEASY is not able to renew the Customer's domain name (and is not liable for any loss resulting from non-renewal) if the Customer does not provide any warranty required by BOOKEASY and does not confirm in writing to BOOKEASY that the domain name should be renewed.

2.19.8 The Customer acknowledges that BOOKEASY's primary method of communication for domain renewal purposes is via email. BOOKEASY will not be held responsible for the non-renewal of the Customer's domain name if the Customer's email contact details are not kept up to date.

2.19.9 BOOKEASY may elect not to renew the Customer's domain name where the Customer has unpaid invoices or is in breach of this Licence Agreement.

2.19.10 The Customer expressly authorises and directs BOOKEASY and BOOKEASY's Web Hosting Contractor, if they are able to do so, to:

2.19.11 be nominated as authorised contact for the Customer's domain name with the applicable domain name registrar; and

2.19.12 subject to receipt of the Customer's confirmation in respect of 2LDs, renew the Customer's domain name registration upon receipt of renewal notification from the applicable domain name registrar.

2.19.13 BOOKEASY makes no representation and gives no warranty about the Customer's chosen domain name being available for registration, use or renewal by it. For the avoidance of doubt the Customer releases BOOKEASY from all present and future claims by it in respect of BOOKEASY's provision of domain name registration, management, renewal or re-delegation services, and in respect of BOOKEASY's failure to provide those services. The Customer indemnifies BOOKEASY and any domain name service provider to BOOKEASY, against all claims arising out of the registration or renewal of a domain name by or on behalf of Customer, and the Customer's use of such domain name.

2.19.14 BOOKEASY may vary the provisions of this clause 2.19 upon 7 days written notice to the Customer in respect of the domain name registration and domain name licensing regime to apply after the date of the notice.

2.19.15 Any Internet Protocol address ("IP address") assigned to the Customer by BOOKEASY in connection with the Services will be used only in connection with the Services. The Customer's right to use an IP address will terminate on termination of this Licence Agreement and the IP address/es must be returned immediately to BOOKEASY. The Customer will be solely responsible for changing the IP address/es of its website and other online applications after termination of this Licence Agreement.

2.19.16 If the Customer closes its account with BOOKEASY or BOOKEASY's Web Hosting Contractor but does not remove the latter as reseller of the Customer's domain name with the domain name registrar, the Customer agrees that BOOKEASY may contact the Customer after account closure to remind the Customer of domain name renewals and to provide marketing material in respect of BOOKEASY services.

## 2.20 Confidentiality

2.20.1 The parties must treat as confidential and keep secret the contents of this Licence Agreement and the Confidential Information and not disclose them to any other person not a party to this Licence Agreement, unless:

- with the prior written consent of the other party;
- to legal representatives or other professional advisers under a duty of confidentiality;
- required by law, the listing rules of any stock exchange, or as part of a third party due diligence inquiry conducted under an obligation of confidentiality; or
- for the purpose of performing or enforcing performance of the provisions of this Licence Agreement.

2.20.2 The parties acknowledge that in performing their respective obligations under this Licence Agreement, each of them may disclose to the other its Confidential Information, including the creation of materials and the development of technology and techniques that are not generally known in the industry.

2.20.3 A party receiving any Confidential Information of the other party agrees to maintain the confidential status of such Confidential Information and not to use any such Confidential Information for any purpose other than the purposes for which it was originally disclosed to the receiving Party, and not to disclose any of such Confidential Information to any third party.

2.20.4 Subject to the requirements of any stock exchange neither party may issue a press release or make a public announcement about this Licence Agreement or anything arising from this Licence Agreement without the prior approval of the other party with respect to the proposed text of such press release or announcement, which approval may not be unreasonably withheld. Customer agrees that BOOKEASY's marketing materials and website may refer to Customer by trade name and trademark and may briefly describe Customer business.

2.20.5 Where disclosure is required by law, government body or agency, or the rules of any stock exchange, the obligated party will immediately notify the other party to give that party an opportunity to seek to limit or prevent that disclosure if it so desires.

2.20.6 Neither party is permitted to make or publish any statement which is, or may be reasonably considered to be, disparaging of the other party or its directors, employees, products or services.

2.20.7 For the avoidance of doubt, references to disclosure being required by law, government body or agency, or the rules of any stock exchange specifically include such of those laws or rules relating to the preparation of information memoranda or prospectuses with respect to fundraising activities and the use of material as reasonably required to comply with such laws and rules.

2.20.8 The obligations of the parties pursuant to this clause will continue for a period of 3 years after the termination of this Licence Agreement.

## 2.21 Taxes

2.21.1 Terms used in this clause have the same meanings as those used in the GST Act.

2.21.2 The Customer is responsible for all value-added

sales, property or other federal, state or local taxes which are or become payable pursuant to this Licence Agreement, except where amounts payable by the Customer have been stated specifically as including those taxes.

2.21.3 BOOKEASY may adjust the Services Fees without prior notice to reflect the amount of any increase in GST that occurs after the commencement of this Licence Agreement.

2.21.4 If GST becomes payable on any supply made or provided under or in connection with this Licence Agreement, on which GST is not payable at the date of this Licence Agreement, the Customer will pay to BOOKEASY an additional amount equal to the value of the consideration for the supply multiplied by the prevailing GST rate. That additional amount will be calculated without any deduction or set-off of any amount, and is payable by the Customer at the same time as the consideration for that supply upon provision of a tax invoice by BOOKEASY.

## 2.22 Entire Understanding

2.22.1 This Licence Agreement contains the entire understanding and agreement between the parties as to the subject matter of this Licence Agreement.

2.22.2 No oral explanation or information provided by any party to another will affect the meaning or interpretation of this Licence Agreement or constitute any collateral Licence Agreement, warranty or understanding between any of the parties.

2.22.3 The Customer warrants to BOOKEASY that it has not relied upon or been induced to enter into this Licence Agreement by any statement made or conduct engaged in by BOOKEASY its agents or employees that is not expressed in this Licence Agreement.

2.22.4 The Customer indemnifies BOOKEASY against any loss or damage suffered by BOOKEASY arising from breach by the Customer of the warranty in clause 2.22.3, including without limitation in respect of legal costs on a full indemnity basis.

## 2.23 Force Majeure

2.23.1 The obligations of a party under this Licence Agreement are suspended during the period and to the extent that such party is prevented or hindered from complying by any of the following causes or circumstances which are;

- beyond its reasonable control not due to its own fault or negligence; and
- which are not reasonably foreseeable; and
- which the Party is by the exercise of reasonable diligence unable to prevent:

(i) act of God; (ii) industrial dispute; (iii) act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion; (iv) lightning, landslide, cyclone, storm, drought, flood, fire, earthquake, explosion, tidal wave, epidemic; (v) any change in law or lawful requirement; (vi) breakage of facilities or machinery (vii) electricity supply failure that extends beyond 7 consecutive days; and (viii) any shutdown, interruption to or corruption of the Internet outside the reasonable control of a party.

2.23.2 Each party must promptly provide notice to the other party of the occurrence or cessation of any Force Majeure event.

2.23.3 A party claiming the benefit of Force Majeure must exercise reasonable endeavours to overcome the cause or circumstance hindering it from complying with its obligations.

## 2.24 Notices

2.24.1 Unless expressly stated otherwise in this Licence Agreement, all notices, certificates, consents, approvals, waivers and other communications ("notices") in connection with this Licence Agreement must be in writing and sent to the postal address, email address or by facsimile (i) if sent to the Customer, specified in the Agreement Schedule, and (ii) if sent to BOOKEASY, to PO Box 3727, Australia Fair, Southport, QLD, 4215, fax (03) 3036 6921 or support@bookeasy.com.au.

2.24.2 If the intended recipient has notified a changed postal address, email address or fax number, then the service of notices must be to that address or number.

2.24.3 Notices take effect from the time they are received and:

- If sent by post are taken to be received three business days after posting (or seven days after posting if sent to or from a place outside Australia).
- If sent by email deemed to be received when the machine on which the email is sent reports that the notice has been transmitted satisfactorily.
- If sent by fax are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.
- If a notice is received after 5.00pm in the place of receipt or on a non-business day, it is taken to be received at 9.00am on the next business day.

## 2.25 Dispute Resolution

2.25.1 Any dispute or difference arising out of or in connection with this Licence Agreement ('Dispute') must be resolved in accordance with this clause.

2.25.2 The parties must first attempt to negotiate in good faith to resolve the Dispute.

2.25.3 If the Dispute is not resolved within 14 days after the parties first commence good faith negotiations, then either party may refer the Dispute to mediation by a Law Society of Queensland approved mediator agreed by the parties or failing agreement appointed by the President of the Society on the terms of the standard mediation agreement approved or recommended by the Law Society of Queensland Australia. Any information or documents obtained through or as part of the mediation must not be used for any purpose other than the settlement of the Dispute.

2.25.4 If the Dispute is not resolved within 30 days of the commencement of the mediation then the parties submit to the jurisdiction of the law and courts of Queensland.

2.25.5 Each party must continue to perform this Licence Agreement despite the existence of a Dispute or any proceedings under this clause.

2.25.6 Nothing in this clause prevents either party from obtaining urgent injunctive relief, including with respect to the protection of its intellectual property.



- Terms and Conditions.

## 2.26 Miscellaneous

2.26.1 Should the Customer, either before or after entering into this Licence Agreement, wish to negotiate changes to the agreement wording, then the Customer will be responsible for BOOKEASY's reasonable legal costs of negotiating such changes.

2.26.2 BOOKEASY may from time to time run promotions and make special offers of limited time duration ("Promotions"). All Promotions are offered subject to their terms and may be withdrawn or altered at BOOKEASY's discretion. The terms of a promotion, if accepted, will override this Licence Agreement to the extent of any inconsistency.

2.26.3 BOOKEASY may sub contract or otherwise arrange for another person or party to perform all or any part of this Licence Agreement or to discharge any of the obligations of Bookeasy under any part of this Licence Agreement without the consent of the Customer, providing the subcontractor has the requisite capability to carry out the work.

2.26.4 BOOKEASY may assign its interest under this Licence Agreement without the consent of the Customer, provided that the assignee has the requisite financial standing and technical expertise and skill to fulfil BOOKEASY's role under this Agreement and the Assignee signs a Deed agreeing to be bound by the Customer on the terms of this Agreement. The Customer acknowledges that Tourism Holdings holds certain Intellectual Property Rights with respect to the services provided under this Agreement. If that licence to BOOKEASY is terminated for any reason, BOOKEASY would be unable to provide the services under this Agreement. The Customer acknowledges that in such an instance, Tourism Holdings is deemed to have been assigned the benefit of this Contract and to assume the obligations of BOOKEASY under the terms of this Contract. The Customer acknowledges that BOOKEASY has the requisite financial standing and technical expertise and skill to fulfil BOOKEASY's role under this Contract.

2.26.5 Any warranty or indemnity given by the Customer to BOOKEASY is also given for the benefit and can be relied upon and enjoyed by TH.

2.26.6 BOOKEASY may assign its rights or novate its rights and obligations under this Licence Agreement to its related or associated body corporate without the consent of the Customer and it will be as if that related or associated body corporate was a party to this Agreement.

2.26.7 The Customer may not subcontract or assign its rights and obligations under this Licence Agreement without the prior written consent of BOOKEASY, such consent not to be unreasonably withheld or delayed.

2.26.8 A provision of, or a right created under this Licence Agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the Parties.

2.26.9 This Licence Agreement and the transactions contemplated by this Licence Agreement are governed by the law in force in Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

2.26.10 In the event of conflict between the terms of the Agreement Schedule and the Terms and Conditions the following order of precedence will apply:

- Agreement Schedule; then