

## DISTRIBUTOR AGREEMENT

This Distributor Agreement is entered into between VCubed Pty Ltd (ACN 074 524 879) (**V3**) of 28 John Street, Northbridge, Western Australia and the person (**You** or **Distributor**) whose details are set out in the Application that forms part of this Agreement.

### 1. Definitions

1.1 The following terms are defined for the purposes of this Agreement:

**Application** refers to one or more application forms, authorities or agreements that You must execute to participate as a Distributor in V3Travel System and the Booking and Payment Services.

**Bank** has the meaning set out in the Banking Act, 1959.

**Booking and Payment Services** means services that include an automated booking and electronic payment processing system to be made available on agreed terms to Participants in V3Travel System by V3 or one or more third party suppliers, to be automatically calculated and processed in accordance with pre-set Data populated in V3Travel System by authorised Participants

**Booking Terms** means the terms and conditions set by You upon which a Customer can make an On Account Booking.

**Customer** means a person who purchases Tourism Product.

**Data** means accurate, up to date and complete information that complies with the requirements set out in clauses 2 and 3.

**Direct Credit** is a periodic credit to Your nominated Bank account from the V3 Transaction Account of agreed amounts.

**Direct Debit** is a periodic debit from Your nominated Bank account to the V3 Transaction Account of agreed amounts.

**Distribution Fee** is a non refundable fee payable by Product Providers to V3 for accessing distribution services through V3Travel System and is calculated at the respective Distributor Rates for each Distributor set out in the Distributor Terms and Conditions on the total value of each Online Booking made through a Distributor at the date the Online Booking is made.

**Distribution Services** means a suite of software and integration tools that allows Distributors and their Customers to search for Tourism Product and make Online Bookings via a Distributor's Site.

**Distributor** means a Participant in V3Travel System who agrees on the Distributor Terms and Conditions to distribute Tourism Product.

**Distributor Fee** is a fee payable by V3 to You for referring Customers to V3Travel System by supplying Your distribution services calculated by V3 at the Distributor Rate (or adjusted by V3 in the circumstances described in clause 4.4(f)) and payable by V3 on all Online Bookings (excluding On Account Bookings) using Your distribution services.

**Distributor Rate** is the rate populated by You in the Distributor Terms and Conditions (or subject to clause 6.2 as amended by You) for distributing Product Description through Your distribution services expressed as a percentage of the value of the Online Booking at the date the Online Booking is made.

**Distributor Description** is the Data referred to in clause 3.4 that is accessible to Product Providers when selecting Distributors.

**Distributor Terms and Conditions** means the terms and conditions set by You including Your Distributor Rate upon which You agree to distribute Product Description for Product Providers.

**End User Licence Agreement** refers to the Agreement outlined in Schedule 2 of this Agreement which must be entered into as part of this Agreement as a condition of being granted access to the Licensed software and **End User** refers to a person who has been granted an End User Licence.

**eviivo frontdesk**<sup>®</sup> means business management which is a product of V3Travel System distributed by V3 under the terms of an End User Licence, also referred to as frontdesk.

**Fees** mean fees and payments payable by one or more Participants to V3 for using V3Travel System including in Your case Monthly Fees or other fees (if any) described in Your Application (or subject to clause 6.2 as amended and notified to You).

**Force Majeure Event** means any event outside V3's reasonable control, and includes a failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, act of terrorism, labour dispute (other than a dispute solely between V3 and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation or an act or omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party.

**Gateway** means one or more third party suppliers nominated by V3 during the Term to provide gateway services to V3Travel System to route credit, debit, and stored value card transactions from merchants' point-of-sale

terminals or internet sites to Bank and customer back-end systems for processing.

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

**Intellectual Property Rights** means patents, trademarks, copyrights, topography rights, rights to extract information from a database, design rights, trade secrets and rights of confidence, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them.

**Licensee** means a Participant in V3Travel System authorised by Owners to grant End User Licences.

**Licensed Software** means software developed, owned, or licensed by V3 and Owners and delivered by V3 under the terms of an End User Licence.

**Live Date** means the date the Distributor is activated on the V3Travel System allowing Product Providers to be bookable through the Site.

**Monthly Accounting Date** means a fixed day in each month (which until otherwise notified by V3 shall be the 1<sup>st</sup> day of each month) on which V3Travel System automatically generates Settlement Reports and commences a new monthly accounting period for the purpose of the monthly issuing of Tax Invoices (under clause 5).

**Monthly Fee** is the monthly payment (if any) for use of V3Travel Distribution Products at the rate described in Your Application (or subject to clause 6.2 as amended and notified to You).

**Monthly Payment Date** means one or more days in each month determined by V3 (which may vary according to Participants or Online Booking type) on which Direct Debits and Direct Credits occur which until otherwise determined by V3 shall be the 16<sup>th</sup> day of each month for the Direct Debit from Participants of Fees owing to V3 and the 25<sup>th</sup> day of each month for the Direct Credit of payments owing by V3 to Participants.

**On Account Bookings** are a form of Online Booking in which payment or part payment by the Customer is made direct to the Distributor, the Distributor is responsible for issuing a Tax Invoice to the Customer, the Booking and Payment Services electronically sends a Settlement Report to the Product Provider and the Product Provider is responsible for issuing a Tax Invoice to the Distributor (if applicable).

**Online Bookings** means electronic bookings of Tourism Product made by using the Booking and Payment Services.

**Owners** mean the third party owners of Intellectual Property Rights in the V3Travel System.

**Participant** means an individual participant who uses V3Travel System in a defined manner agreed with V3.

**Person** includes a corporation, partnership or other trading entity and the singular includes the plural and vice versa.

**Product Description** means Data that describes a Tourism Product that includes the minimum requirements to enable Online Bookings of that Tourism Product to be made there and then including but not limited to product name, provider name, booking terms, conditions of use, and a price for the requested time.

**Product Provider** means a supplier of Tourism Product who populates Product Description on V3Travel System.

**Recipient Created Tax Invoices** are defined in GST Law and issued to You in the circumstances set out in clause 4 subject always to clause 15.

**Settlement Reports** are reports automatically created by Booking and Payment Services when an On Account Booking is made that include a calculation of the sum payable by the Distributor to the Product Provider for that On Account Booking based on the Product Description and Distributor Terms and Conditions.

**Site** – means the Distributor’s website; or the V3Booking Centre Module being used by the Distributor or any other booking interface that is integrated to the V3Travel System

**Supply Partner** (and/or Supply Affiliate) means the person (if any) named as Supply Partner (and or Supply Affiliate) in Your Application who has agreed to distribute eviivo frontdesk® or arrange integration to third party booking systems on terms agreed with V3 that include the payment by V3 of a fee.

**Tax Invoice** is defined in GST Law.

**Term** commences on the date of Application and continues to the period stated in Item 6 of Schedule 1 or until terminated in accordance with clause 16.

**Tourism Product** means accommodation, attractions, transport, tours and other tourism and leisure based services and facilities in or relating to a specified geographical location.

**V3Booking Centre Module** means the booking module supplied by V3 and used by the Distributor which allows a consultant to make Online Bookings of Tourism Product.

**V3 Transaction Account** means a Bank account established and maintained by V3 during the Term.

**V3Travel Distribution Products** are products of V3Travel System supplied from time to time by V3 to Distributors.

**V3Travel System** means a software tool suitable for Tourism Products comprising an open booking exchange hub offering web services that enables Product Providers to make available Tourism Product to Customers through multiple Distributors.

## 2. **Appointment as a Distributor**

- 2.1 You warrant to V3 that you are duly authorized to electronically accept this Agreement on behalf of the person (**You** or **Distributor**) whose details are set out in the Application that forms part of this Agreement and that once accepted You will comply with this Agreement.
- 2.2 Subject to You complying with all of the terms and conditions of this Agreement V3 agrees to provide You access to connect to the electronic tourism marketplace known as V3Travel System to act as a Participant in the role of Distributor.
- 2.3 As a Distributor You may:
- (a) Connect on a live (real time) basis to V3Travel System in a manner prescribed by V3;
  - (b) Distribute Product Description for Product Providers who electronically accept Your Distributor Terms and Conditions in V3Travel System;
  - (c) Populate Data in V3Travel System setting out the Distributor Terms and Conditions;
  - (d) Populate Data in V3Travel System setting out the Booking Terms, and
  - (e) Populate Data in V3Travel System setting out the Distributor Description.

## 3. **Populating Data on V3 Travel System**

- 3.1 To ensure the orderly conduct and operation of V3Travel System all Data must:
- (a) only be populated by Participants authorised to do so,
  - (b) comply (in form and content) with the terms and conditions that apply to particular Participants including in the case of Distributors the terms of this Agreement, and
  - (c) be up to date, accurate and complete in all respects.
- 3.2 In populating Data You must ensure that You comply with and where You offer to sell, supply or distribute Tourism Product through V3Travel System that such offer complies with:

- (a) all relevant laws, regulations and legally required standards, including but not limited to the Trade Practices Act 1974 and State and Territory fair trading laws, and
  - (b) all regulatory guidelines and industry codes of conduct in relation to the promotion and sale of Tourism Products.
- 3.3 You must appoint during the Term one or more persons authorised by You to populate Data which will be password protected. You are solely responsible for safe keeping Your passwords and for the activities of Your appointees and for all use by Your appointees of V3Travel System. You must ensure that Your appointees have been provided with, and read and understood the End User Licence and this Agreement before using V3Travel System.
- 3.4 Where You populate Data setting out Your Distributor Description You must complete all the required fields as outlined in the Application.
- 3.5 Where You populate Data setting out Your Distributor Terms and Conditions then You must complete the following fields:
  - (a) Full details of Your Distributor Terms and Conditions;
  - (b) Your Distributor Rate, and
  - (c) Full details of the circumstances in which You can change Your Distributor Terms and Conditions including notifying by e-mail Product Providers who have accepted your Distributor Terms and Conditions at least 30 days prior to the implementation of any changes to Your Distributor Terms and Conditions. This notice will be copied to V3.
- 3.6 Where You populate Data setting out Your Booking Terms then You must complete the following fields:
  - (a) Deposit terms;
  - (b) Cancellation terms;
  - (c) Support process;
  - (d) Privacy policy;
  - (e) Conditions of use.
- 3.7 Data populated and amended (subject to clause 3.5(c)) by You is Your sole responsibility and V3 accepts no responsibility for and is not liable for the contents of Data populated by You or any other person in V3Travel System nor for any errors or omissions in that Data nor for any reliance by any person on that Data.
- 3.8 All Data populated and re-populated by You will be set and reset in V3 Travel System by V3 but You are responsible for checking the accuracy and

completeness of that Data and for immediately informing V3 of any errors. Nothing in this Agreement is to be read or construed as making V3 responsible for the contents of or accuracy or completeness of Data set or reset by V3 on behalf of You or any other Participant.

- 3.9 You must not represent or hold Yourself out as an agent of V3 Owners or Licensee for any purpose or make any warranty or representation on their behalf at any time.
- 3.10 You must not without V3's prior written consent (which must be separately obtained on each occasion that consent is intended to be acted upon) make any promises or guarantees with reference to the functionality of V3Travel System beyond those contained in the user guides and training material (if any) supplied by V3 to You and You must not incur any liability on behalf of V3 at any time.

#### **4. Accessing e-commerce on V3Travel System**

- 4.1 Access to the Booking and Payment Services by You is subject to and conditional upon compliance with this Agreement.
- 4.2 You must provide to V3 and maintain during the Term all necessary authorities to enable Direct Debit and Direct Credit electronic processing of payments generated by Online Bookings together with all necessary accounts, instructions and authorities with Your Bank and Gateway to participate in the processing of Online Bookings using the Booking and Payment Services. All payments generated by Online Bookings to be made by You to V3 or to You by V3 must be made in full by electronic funds transfer by Direct Debit and Direct Credit.
- 4.3 When Online Bookings are made the Booking and Payment Services automatically creates on the next Monthly Accounting Date and delivers to You and the Product Provider Settlement Reports for On Account Bookings made up to the Monthly Accounting Date. All Fees (if any) owing by You to V3 are calculated on the Monthly Accounting Date and processed into Tax Invoices seven days before the Monthly Payment Date for payment by Direct Debit on the Monthly Payment Date. All Distributor Fees owing by V3 to You are calculated by V3 and processed into Recipient Created Tax Invoices seven days before the Monthly Payment Date for payment by Direct Credit on the Monthly Payment Date You must maintain sufficient cleared funds in Your nominated Bank account to ensure that the Direct Debits referred to in clause 4.4 can occur in each month on the Monthly Payment Date.
- 4.4 You agree and authorise:
  - (a) Payment to V3 on the Monthly Payment Date by Direct Debit of all Fees (if any) payable by You as set out in clause 6.1;
  - (b) Payment by V3 on the Monthly Payment Date by Direct Credit of all Distributor Fees owing to You as full and final settlement of payment of all Distributor Rates set out in Your Distributor Terms

and Conditions for the relevant Online Bookings together with any adjustments to correct errors payable to You as described in clause 5.7;

- (c) V3 to periodically Direct Debit You where an overpayment to You has occurred as described in clause 5.7;
- (d) V3 to periodically resubmit a Direct Debit request (and invoice You for any additional fees charges or expenses incurred by V3) 24 hours from the rejection of any Direct Debit request for payment by You made in accordance with this clause and where the Direct Debit request is rejected for a second time (or 3 times in any 6 month period) You agree that V3 may immediately terminate Your use of V3Travel System without prejudice to any other remedies available to V3;
- (e) V3 to generate a Recipient Created Tax Invoice in compliance with GST Law in the circumstances described in clause 15;
- (f) V3 to adjust the rate of Distributor Fee for a particular Online Booking on the Monthly Payment Date (or any following Monthly Payment Date) by issuing a Recipient Created Tax Invoice for the adjusted amount to a flat rate (which may be zero) which is equivalent to the amount (if any) received by V3 from a Product Provider on the Monthly Payment Date (or any following Monthly Payment Date) in payment of the Tax Invoice described in clause 4.10(a); and
- (g) Where V3 becomes liable for any penalties or interest as a result of the late payment of GST due to Your failure to comply with the terms of this Agreement or your obligations under any applicable law, then You agree to pay to V3 an additional amount equal to those penalties and interest.

4.5 You must make each payment described in clause 4.4 even if:

- (a) Your distribution services are not working;
- (b) V3 Travel System is unavailable or has limited availability for a period of time as a result of a network or system outage; or
- (c) You are unable to use V3Travel System or any part including V3Travel Distribution Products for any reason in circumstances where V3Travel System is available for use.

4.6 On each Monthly Accounting Date Booking and Payment Services automatically generates Settlement Reports for all On Account Bookings made since the last Monthly Accounting Date and calculates Fees and Distributor Fees (subject always to clause 4.4(f)) for all Online Bookings made since the last Monthly Accounting Date. V3 try to include all Fees and Distributor Fees accrued at the last Monthly Accounting Date in the Tax Invoice and Recipient Created Tax Invoices created and sent seven days

before each Monthly Payment Date. Where that does not happen, Tax Invoices including Recipient Created Tax Invoices may relate to Online Bookings that occur in previous monthly periods except where a Tax Invoice is for a payment request older than 190 days from the date the payment was incurred by You.

- 4.7 V3 is not responsible for the administration of any third party approval or contractual requirements that are included in the Booking and Payment Services Gateway.
- 4.8 Inclusion in the Booking and Payment Services of any third party material is not an endorsement by V3 of the services offered by any third party and does not constitute an offer by V3 to provide or promote those services to You. It is Your responsibility to evaluate the accuracy and usefulness of any third party information including the reliability and fitness for purpose of any underlying goods or services offered and to seek independent information and advice before acting in reliance on that information.
- 4.9 You must make payment of all amounts described in this Agreement due and owing by You in full without any set-off, counter-claim or deduction of any kind. V3 may deduct amounts due and owing by You before making any payment to You.
- 4.10 Subject to You continuing to perform Your obligations under this Agreement V3 agrees:
  - (a) to issue Tax Invoices to Product Providers seven days before the Monthly Payment Date in each month for all Distribution Fees that have accrued since the last Monthly Accounting Date;
  - (b) to require all Product Providers using Booking and Payment Services to agree to terms and conditions for use of Booking and Payment Services that are consistent with the provisions of this clause 4;
  - (c) to monitor performance by Product Providers of the terms and conditions referred to in paragraph (b) including payment of all Distribution Fees and where a Product Provider breaches those terms and conditions (as determined by V3 in its reasonable discretion) to deny access to Booking and Payment Services to that Product Provider.

## 5. **Tax Invoices**

- 5.1 V3Travel System includes functionality to process and calculate Tax Invoices monthly by reference to the Monthly Accounting Date so that (subject to clause 4.6) Tax Invoices including Recipient Created Tax Invoices under clause 5.2 are electronically sent to Participants seven days before the Monthly Payment Date for all Online Bookings made during the period commencing on the last Monthly Accounting Date and ending at midnight before the Monthly Accounting Date. You are responsible for checking the receipt of all Tax Invoices including Recipient Created Tax Invoices and You

must promptly check the accuracy of all Tax Invoices including Recipient Created Tax Invoices and advise V3 immediately of any errors or omissions.

- 5.2 Tax Invoices including Recipient Created Tax Invoices will be Created by reference to the Data pre-set for each Online Booking on the date when an Online Booking is made (including number of Online Bookings, Product Description, Online Booking value, Fees and Distributor Fees) and the commercial terms described in clause 6.
- 5.3 V3 will promptly investigate any alleged errors or omissions in the Tax Invoices notified by a Participant and advise the Participant in writing within 10 working days of either:
- (a) the outcome of V3's investigation, detailing the reasons for V3's decision; or
  - (b) the need for more time to complete V3's investigation.
- 5.4 V3 will promptly correct any manifest errors or omissions caused by:
- (a) an incorrect or incomplete mathematical computation; or
  - (b) the calculation of payments other than in accordance with the relevant, number of Online Bookings, Product Description, Online Booking value, Fees and Distributor Fees pre-set in V3Travel System on the date when an Online Booking is made.
- 5.5 V3 will not be obliged to correct any alleged errors or omissions in the Tax Invoice:
- (a) to the extent that they are caused or contributed to by a Participant,
  - (b) that are reported to V3 more than 5 working days from the date of the Tax Invoice,
  - (c) where the Tax Invoice is consistent with the number of Online Bookings, Product Description, Online Booking value, Fees and Distributor Fees pre-set in V3Travel System on the date when an Online Booking is made which shall be final and conclusive.
- 5.6 V3 may independently review the accuracy of Tax Invoices at any time and correct any manifest errors or omissions.
- 5.7 Where V3 corrects an error in a Tax Invoice (under clauses 5.4 or 5.6) it may in its sole discretion either immediately cancel the relevant Tax Invoice and issue a replacement Tax Invoice or make any adjustments required in a succeeding Tax Invoice provided that where it has not already done so it must advise the relevant Participants in writing of the reasons for V3's decision. Where Tax Invoices are cancelled or adjusted in the circumstances described in this clause then the payment processing described in clause 4.4 will be activated to correct overpayments or underpayments.

5.8 You must appoint during the Term one or more persons authorised by You to receive and check Tax Invoices including Recipient Created Tax Invoices. You are solely responsible for the activities of Your appointees and their use of V3Travel System, and You must ensure that Your appointees have read and understood the terms and conditions of this Agreement, the End User Licence Terms and the terms and conditions of any Gateway and Bank accounts maintained by You before using V3Travel System.

## 6. **Commercial terms**

6.1 You agree that the following payments will be made in using V3Travel System:

(a) Distributor Fee payable by V3 to You in each month on the Monthly Payment Date for all Distributor Fees accrued up to the preceding Monthly Accounting Date subject always to clause 4.4(f));

(b) Monthly Fee (if any) payable by You to V3 in each month on the Monthly Payment Date if You were registered as a Participant on the preceding Monthly Accounting Date for use by You of V3Travel Distribution Products at the rate set and listed in Your Application or subject to clause 6.2 as amended and notified to You;

(c) Additional fees (if any) for use by You of V3Travel System payable by You in each month on the Monthly Payment Date for all payments that have accrued up to the last Monthly Accounting Date at the rate set and listed in Your Application or subject to clause 6.2 as amended and notified to You.

6.2 The rates in clauses 6.1(b) and 6.1(c) may be amended by V3. provided at least 30 days' notice of proposed price increases is given.

6.3 Subject to clause 15.4 You agree that You alone are responsible for complying with the requirements imposed on suppliers of a taxable supply by GST Law. Without limiting the generality of that obligation You are responsible for ensuring that a Tax Invoice has been issued in respect of every supply (including but not limited to Customers where You make On Account Bookings) and that the record keeping and retention requirements of GST Law applicable to You are complied with.

6.4 The Distributor must ensure for the Term of this Agreement that the Distributor's Site exclusively uses the V3Travel Distribution Products and or V3Travel Distribution Services as detailed on the Application to deliver the Distributors booking functionality.

6.5 You agree that nothing in this Agreement makes V3 responsible for or appoints V3 as your agent in Your name or on Your behalf to:

(a) collect, request or demand payment of Your debts from any third party including but not limited to Customers or Product Providers;

- (b) process requests from Customers including but not limited to requests for refunds for On Account Bookings (in whole or part);
- (c) check the accuracy or completeness of Your Data including but not limited to Your Product Descriptions, Distributor Terms and Conditions, Booking Terms or Distributor Description;
- (d) except only as specifically provided for in clause 5 refund any payment made by You or any third party in connection with Online Bookings whether or not You or any third party are required to refund any amount to a third party including but not limited to Customers.

## 7. **V3Travel System – operating environment**

- 7.1 V3Travel System and V3Travel Distribution Products are only operable in accordance with the requirements set out in the user documentation issued with the relevant End User Licence. V3 cannot guarantee that Your use of V3Travel System will be uninterrupted or free from error.
- 7.2 V3 may during the Term change one or more of the requirements referred to in clause 7.1 provided that any changes do not unreasonably interfere with Your operations as a Participant. All changes that affect You will be emailed to You.
- 7.3 Except to the extent expressly provided for in any End User Licence You are solely responsible at Your cost and expense for the control of the operations of any and all hardware and software.
- 7.4 If You report an error or fault in V3Travel System and ask V3 to come to Your premises to repair it and, once at Your premises, V3 determines that V3Travel System is not faulty or the fault is associated with Your equipment, telecommunications or network connections rather than V3Travel System, V3 may charge You its then applying incorrect call-out fee and, any reasonable fee to undertake repairs.
- 7.5 V3 may charge You for repairing a fault if it is caused by something You or Your agents, servants or sub contractors do (or do not do) intentionally, recklessly, negligently or outside manufacturers specifications.

## 8. **Ownership of Intellectual Property Rights and Upgrades**

- 8.1 You agree that V3 or Owners own all Intellectual Property Rights capable of being owned or held in the Licensed Software and V3Travel System or any part including but not limited to V3Travel Distribution Products and all documentation, training manuals and user guides in any medium supplied in connection with V3Travel System and the Licensed Software and that any update, modification, improvement, new release, new version or enhancement to V3Travel System or the Licensed Software (**Upgrade**) made by any person is equally owned by V3 or Owners. The terms of this Agreement apply to each Upgrade from first release.

- 8.2 You agree that trademarks whether registered or unregistered and logos forming part of V3Travel System must not be used or modified in any way without the prior written consent of V3 and Owners and Your use of V3Travel System must not in any way infringe the Intellectual Property Rights of any person.
- 8.3 Each party agrees and undertakes that during the Term of this Agreement and thereafter it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party, disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to that party from the other party ("confidential information") unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of that party from a third party.
- 8.4 To the extent necessary to implement the provisions of this Agreement each party may disclose the confidential information to those of its employees as may be reasonably necessary or desirable provided that before any such disclosure each party must make those employees aware of its obligations of confidentiality under this Agreement and must at all times procure compliance by those employees with them.
- 8.5 The provisions of this clause 10 are intended to survive termination of this Agreement for any reason.

## 9. **Warranties and indemnities**

- 9.1 You understand that You download or otherwise obtain Product Description, Tourism Product, and other data (together '**Material**') through the use of V3Travel System entirely at Your own discretion and risk and that You disseminate or provide links to that Material entirely at Your own discretion and risk. In the event that You provide links to the Material to any third party You must ensure that such third party is aware of the limitations of liability and exclusion of warranties set out in this Agreement including but not limited to the requirement that any use of V3Travel System or the Material is undertaken entirely at the risk of the party accessing or using it.
- 9.2 V3 and Owners will not be liable to You or any third party for any use by You or any third party of V3Travel System, any transaction entered into by You or a third party using V3Travel System which is disputed, declared void or voidable, avoided or defaulted by any person or any breach of an agreement between You or any third party and any person arising from the use of V3Travel System.
- 9.3 V3 and Owners and their respective officers, employees, agents or contractors will not be liable for any damages including but not limited to indirect, consequential or incidental loss, damage or injury, including but not limited to damages for loss of business profits, savings, revenue, use, business interruption, loss of business information, data, goodwill or other

pecuniary loss under any cause of action or theory of liability arising out of the use, inability to use, or defect in V3Travel System or arising from or in connection with this Agreement or any act or omission of V3 or Owners or their respective officers, employees, agents or contractors, even if V3 and Owners have been advised of the possibility of such damages. This limitation of liability will apply whether the damages arise from use, misuse or reliance on V3Travel System including but not limited to the Data, from any inability to use V3Travel System, from the interruption, suspension, or termination of V3Travel System (and extends to any damages incurred by third parties). This limitation of liability also applies to damages incurred by reason of other services or goods received through or advertised on V3Travel System (including but not limited to Tourism Product) or received through or advertised on any links provided on V3Travel System as well as by reason of any information or advice received through or advertised on V3Travel System or received through or advertised on any links provided on V3Travel System.

9.4 V3's maximum liability in respect of any damages, costs, expenses or other claims arising out of or in connection with this Agreement whether in contract, tort or otherwise shall except in the case of death or personal injury resulting from V3's negligence (for which no limitation will apply) be limited at the election of V3 in the case of services to the resupply of or the payment of the cost of resupply of the services and in the case of goods to any one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired;

or in any case the payment to You of an amount not exceeding the Fees paid by You during the immediately preceding 12 months.

9.5 You must indemnify V3 and Owners against any loss, damage, liability expense, cost or charge (including court costs and reasonable legal fees) arising from or incurred in connection with Your use of V3Travel System in any manner that breaches or is in contravention of any relevant law, regulation, or requirement of any relevant regulatory authority in the Territory, or the claims of Customers or other third parties arising from or connected with Your use of V3Travel System except in each case to the extent such claims are attributable to the negligence or knowing or wilful misconduct of V3 and in that case provided that You must not settle any claim without V3's prior written approval which will not be unreasonably withheld, delayed or conditioned.

9.6 You also agree to indemnify and hold harmless V3 and Owners and their respective past, present and future officers, directors, employees or agents and the owners of third party software included in V3Travel System from and

against any and all claims, suits or actions asserted against any or all of them to the extent that it is caused or contributed to by any negligent or wilful act or omission of You or Your present or future employees, officers, directors, members or agents.

## **10. Changes, conflicts and continuation of this Agreement**

10.1 The terms and conditions of this Agreement may be amended by V3 from time to time. You will be notified of any amendments which may have an adverse effect on You. If You do not agree with an amendment at any time then You may terminate this Agreement by sending an appropriately worded message to V3 at [customerservice@v3leisure.com](mailto:customerservice@v3leisure.com) and on receipt of Your message this Agreement will automatically terminate and You will have no further right to access or use V3Travel System and You will have no claim against any person including but not limited to V3 and Owners and their respective directors, officers and representatives arising from the termination of this Agreement. Notwithstanding termination You must continue to pay all Fees that accrue up to the next Monthly Accounting Date after the termination date and You will be entitled to receive all payments due and owing to You that accrue up to the termination date in each case subject to the terms and conditions of this Agreement.

10.2 If there is any conflict between the terms and conditions of this Agreement and the terms and conditions of an End User Licence the terms and conditions of the End User Licence will prevail.

10.3 If any part of this Agreement is illegal void or unenforceable then it will be excluded so that the remaining provisions of this Agreement will continue in full force and effect. Any part of this Agreement that should by sense and context continue after termination will survive termination for any reason.

## **11. Communications Plan**

### **11.1 Press Releases and Public Announcements**

Any public announcement or public statement made by the parties, other than those required by law, concerning this Agreement or the matters referred to in this Agreement shall be first approved in writing by both parties.

### **11.2 Initial Communications Plan**

Distributor and V3 agree to develop a Communications Plan to cover the initial period from execution of the Agreement to 3 months after the Live Date.

### **11.3 New Opportunities**

Distributor and V3 agree during the Term to jointly pursue opportunities relating to encouraging Product Providers which have a commercial relationship with the Distributor to be bookable through the Site(s) which utilise the V3Travel Distribution Products and or V3Travel Distribution Services including but not limited to, the

provision of Distributor databases and to develop an agreed plan for communication to the database and the promotion of new distribution opportunities.

To assist V3 in maximising the number of Product Providers available to be booked by You, You will:

- (a) use reasonable endeavours to assist V3 in encouraging Product Providers to become a part of the Open Booking Exchange and therefore bookable through Your Site.
- (b) (where applicable) assist V3 to identify suitable persons to act as a local contact point for Product Providers to assist Product Providers to become a part of the Open Booking Exchange.

#### 11.4 Use of Logos and reference to Distributor or V3 in promotional material

11.4.1 Distributor agrees that V3 may use the Distributor's name and logo in promotional material relating to the Open Booking Exchange and current and potential Participants in the Open Booking Exchange provided V3 complies with the branding guidelines provided by the Distributor from time to time.

11.4.2 V3 Agrees that the Distributor can use the name and logo of the Open Booking Exchange in promotional material, provided Distributor complies with the guidelines provided by V3 from time to time.

### 12. **Changes to the V3Travel System**

12.1 Licensed Software may be Upgraded by V3 and Owners at any time without reference to the Distributor or End Users. Where an Upgrade for the Licensed Software occurs V3 must promptly provide the revised integration specification free of charge to the Distributor.

12.2 The Distributor must use its reasonable endeavours to promptly undertake to modify the integration to V3Travel to the new integration specifications to the intent that the integration is undertaken and operating within 90 days from the date of delivery.

12.3 V3 and Owner intend to continually develop the V3Travel System and to issue and release Upgrades. Each Upgrade will be supplied subject to acceptance of the relevant End User Licence the terms of which may vary from the terms and conditions of End User Licences previously granted to the Distributor and End Users. If the terms of any End User Licence issued with an Upgrade include amended terms that are commercially disadvantageous to the Distributor or the End User then notice of the amended terms will be provided to the Distributor and the End User by V3 at the time of delivery of the Upgrades.

12.4 The Distributor or an End User may decline to enter into an End User Licence issued with an Upgrade, but if so will not be entitled to install and

operate the Upgrade and in that case acknowledge that V3 will not continue to support the previous version of the Licensed Software and therefore the Distributor or the relevant End User must cease all use of the Licensed Software within 90 days from the date of delivery of the Upgrade

**13. Rights of Owners to enforce this Agreement**

13.1 You acknowledge the rights of the Owners of the Software and that the Owners are entitled to enforce strict compliance with this Agreement upon notice to You at any time. That notice may require You to make any payments that You owe to V3 to the Owners in place of V3.

**14. Customer Data**

14.1 You acknowledge that V3Travel System includes a central data collection and storage system that will collect and store upon generation all information relating to Online Bookings made direct by Customers with Product Providers, (but excluding all Banking or credit card details of any person) and excluding all information relating to On Account Bookings (“**Customer Data**”). You acknowledge that Customer Data is owned by V3 together with its nominees and may be jointly accessed and exploited by V3 and its nominees.

14.2 Customer Data may only be accessed and used by V3 (either alone or with its nominees) in compliance with the National Privacy Principles (“**NPP’s**”) set out in Schedule 3 to the Privacy Act 1988 (C’t’h) or an applicable privacy code approved by the Federal Privacy Commissioner under the Privacy Act 1988 (C’t’h).

14.3 You must at all times comply with Your own obligations arising under the Privacy Act 1988 (C’t’h) in relation to the collection, use, disclosure, storage or handling of personal information in Your use of V3Travel System and indemnify V3 against any loss or damage suffered by V3 arising as a result of a breach of Your obligations arising under that Act or any similar legislation.

14.4 All personal information supplied or otherwise acquired by V3 about You will be dealt with in accordance with V3’s privacy policy which is available at [www.v3leisure.com](http://www.v3leisure.com)

**15. GST**

15.1 In this Agreement the expressions “consideration”, “GST”, “supply”, “tax invoice”, “recipient” “Recipient Created Tax Invoice” and “taxable supply” have the meanings given to those expressions in GST Law.

15.2 Unless otherwise expressly stated, all amounts or considerations payable are inclusive of GST.

15.3 The recipient of a supply is entitled to a valid tax invoice in respect of the supply at or about the time of the supply.

- 15.4 Where V3 issues a Recipient Created Tax Invoice the Distributor must not issue a tax invoice for the V3Travel Supply.
- 15.5 The Distributor must be registered for GST prior to making a supply and must immediately notify V3 if it ceases to be registered.
- 15.6 V3 must be registered for GST at all times when it administers V3Travel System and must notify each Participant if it ceases to be registered.

**16. Suspension and Termination**

16.1 V3 may without liability immediately suspend the operation of V3Travel System for an indefinite period or restrict Your access to V3Travel System by notice to You where:

- (a) An essential supplier of services terminates its agreement with V3 or ceases to supply services to V3;
- (b) there is an emergency, or V3 reasonably believes a threat or risk exists to the security of V3Travel System or the integrity of the platform or the network or a supplier's network;
- (c) a Force Majeure Event occurs;
- (d) V3 is required by law or in order to comply with an order, direction or request of any relevant regulatory authority;
- (e) V3 reasonably suspects fraud or other illegal conduct by You or any other person in connection with V3Travel System;
- (f) doing so is necessary to maintain, repair or restore any part of V3Travel System or any telecommunication or network service used to supply services to V3Travel System or for other operational reasons, or
- (g) while investigating any breach on Your part of this Agreement or Your End User Licence.

16.2 V3 may terminate this Agreement immediately by notice to You:

- (a) if You have breached this Agreement and in V3's reasonable opinion that breach is not capable of remedy;
- (b) if You have breached this Agreement and where the breach is capable of remedy You have failed after notification to remedy the breach within 14 days of receiving email notice from V3 of that breach;
- (c) if Your End User Licence is terminated at any time;
- (d) if a provisional liquidator, liquidator, receiver or receiver and manager or any other administrator of Your business or assets is appointed or

if You enter into any composition or arrangement with Your creditors;  
or

(e) if You are a natural person in the event of Your death.

16.3 Where this Agreement is terminated by V3 You remain liable for payment of all Fees calculated to the next Monthly Accounting Date after the termination date and notwithstanding termination V3 and Owners will have the right to claim from You any costs and damages incurred or sustained by V3 or Owners as a result of Your breach.

16.4 You may terminate this Agreement at any time after a period of 180 days following commencement of this Agreement by giving 90 days prior written notice by sending an appropriately worded message to V3 at [customerservice@v3leisure.com](mailto:customerservice@v3leisure.com) and at the end of that notice period this Agreement will automatically terminate and You will have no further right to access or use V3Travel System and You will have no claim against any person including but not limited to V3 and Owners and their respective directors, officers and representatives arising from the termination of this Agreement. Notwithstanding termination You must continue to pay all Fees that accrue up to the next Monthly Accounting Date after the termination date and You will be entitled to receive all payments due and owing to You that accrue up to the termination date in each case subject to the terms and conditions of this Agreement.

16.5 V3 may without liability terminate this Agreement by giving 90 days notice and at the end of that notice period this Agreement will automatically terminate and You will have no further right to access or use V3Travel System and You will have no claim against any person including but not limited to V3 and Owners and their respective directors, officers and representatives arising from the termination of this Agreement.

## 17. **Assignment and sub-contracting**

17.1 You can assign or transfer legal responsibility for this Agreement if you obtain V3's prior written consent provided such assignee has the technical financial and managerial resources to discharge Your obligations hereunder and also enters into a Deed on terms and conditions acceptable to V3 (acting reasonably) agreeing to be bound by and assuming each and every one of Your obligations hereunder..

17.2 To the extent they are assignable; V3 may at any time assign:

(a) its rights under this Agreement to any person;

(b) its obligations under this Agreement to the surviving entity of any merger or where V3 sells its entire business and assets provided that in those circumstances the assignee undertakes to perform those obligations in which case V3 will be released from any further performance with effect from the date of assignment.

17.3 V3 may perform any of its obligations under this Agreement by arranging for them to be performed by another person or organisation.

18. **Applicable Law**

This Agreement is governed by and is to be construed according to the laws applicable in the State of Western Australia and the Commonwealth of Australia. The provisions of this Agreement may not satisfy the laws of any other country.

19. **Trustee provisions**

19.1 Where You enter into this Agreement in the capacity as a trustee pursuant to any trust deed, will, deed of settlement or other instrument ("**Trust**") then You warrant undertake and covenant with V3 and each other Participant that:

- (a) as trustee You have power to:
  - (i) enter into this Agreement;
  - (ii) carry out your obligations (including by making payments) to V3 and each other Participant in the manner and to the extent required under this Agreement;
- (b) You are the sole trustee of the Trust;
- (c) during the Term You will not without the prior written consent of V3 (which will not be unreasonably delayed or withheld):
  - (i) cause to vest or distribute prior to the final date for distribution the whole or any part of the Trust property other than the income;
  - (ii) vary, alter or revoke either wholly or in part any of the terms of or powers of the Trust;
  - (iii) appoint, or consent to the appointment of any person, firm or corporation as a new or substitute or custodian trustee;
  - (iv) delegate any powers or duties conferred upon You; or
  - (v) do or omit to do any act or thing that may harm or impair this Agreement or Your performance of it.

20. **Notices**

20.1 Any notice, claim or demand in connection with this Agreement (each a "Notice") shall be sufficiently given to the recipient at its address, and in the case of V3 as stated at the beginning of this Agreement.

## SCHEDULE 1

### Item 1

#### Distributor Business Details

As detailed in the Application

### Item 2

#### V3Travel Distribution Product

As detailed in the Application

### Item 3

#### V3 obligations:

Any additional support required will be provided at the V3 standard rates. As at October 2008, these hourly rates are (ex GST):

Director	\$350.00
Senior Business Analyst	\$250.00
Business Analyst	\$175.00
Systems Architect	\$175.00
Account Manager	\$120-155
Co-ordinator/Trainer	\$110.00
Senior Developer	\$175.00
Developer	\$135.00
Help Desk Support	\$100.00

V3's standard support costs are to recoup travel, accommodation and meals at cost +5% Administration Charge.

These rates will change in line with V3 standard rate changes.

### Item 4

#### Distributor –Obligations:

You must report to V3 at least once in each quarter in an agreed form and which must include advising V3 immediately if You become aware of any breach by any Participant of the End User Licence Agreement.

**Item 5****Non exclusive rights:**

You will have the non-exclusive right to act as a Distributor for V3Travel Product Providers.

**Item 6****Term**

This Agreement commences on the date of execution of this Agreement and continues for 3 years unless otherwise terminated in accordance with clause 16.

## SCHEDULE 2

Copyright © VCubed Pty Ltd, 2005 - 2009

28 John Street

Northbridge WA 6003

E-mail:customerservice@v3leisure.com  
Telephone:0892273933

### END USER LICENCE AGREEMENT FOR V3TRAVEL SYSTEM

This Software Licence is entered into between VCubed Pty Ltd (ACN 074 524 879) (**V3**) of 28 John Street, Northbridge, Western Australia and the person (**You**) to whom this Software is delivered or made available. YOU AGREE TO BE BOUND BY THE TERMS OF THIS SOFTWARE LICENCE BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY, OR USE THE SOFTWARE.

#### 21. Licence Grant

##### 21.1 Subject to You complying with all of the terms and conditions of this Software Licence V3 agrees:

- (a) to grant You a revocable non-exclusive non transferable licence to store load install execute or display the software delivered or made available to You in object code only (together with the associated media, printed materials, and electronic documentation (**Documentation**)) add-on components, or internet based services components, delivered or made available in conjunction with the software (together called **Software**) on a personal computer or similar device with a single user screen (unless You have purchased from V3 additional user screen rights in which case this Software Licence will extend to the number of user screens specifically authorised by V3) (each of those activities being called **Use**) only in respect of accommodation, attractions, events and other tourism and leisure based services (**Tourism Products**) physically located in the Commonwealth of Australia (**Territory**) in conjunction with the electronic tourism platform operated by or on behalf of V3 and known as V3 Travel System (**Software System**) and on the terms and conditions set out in this Software Licence;
- (b) to provide You access to certain functionality of the Software System subject to You observing the terms and conditions relating to that functionality as separately notified to You.

##### 21.2 You must not at any time:

- (a) sell licence sub-licence assign rent or transfer the Software, or any part or Your right to Use the Software, Software System or any part to a third party;
- (b) claim ownership of or assert any right contrary to the interests of V3 or any owner of the Software, Software System or any part who has granted any licence or similar right of use or exploitation to V3 (**Owners**);
- (c) copy translate adapt modify alter decompile disassemble or otherwise reverse engineer or create any derivative work of the Software or Software System or change any Software or the Software System in whole or in part or allow any other person to do so except only to the extent (if any) allowed under the Copyright Act 1968 and in that case provided that You first make a request to V3 and comply with V3's reasonable requirements to ensure that V3 and Owners' proprietary rights in the Software and Software System are protected.;
- (d) misuse the Software or Software System in any manner including by giving an unauthorised person Your password details, deliberately or unintentionally disrupting V3Travel System, deliberately or unintentionally initiating or distributing a virus, engaging in spamming or similar activities, using V3Travel System in an excessive or unusual way or to menace or harass others, entering inappropriate data including embedding HTML or code which affects other users' websites, systems or general operations, distributing offensive language and offensive pictures or graphics, conducting denial of service attacks on other users or networks, or unlawfully obtaining access to other networks;
- (e) use the Software or Software System in any manner that breaches or is in contravention of any relevant law, regulation, or requirement of any relevant regulatory authority in the Territory; and
- (f) access, integrate, connect to or Use the Software or Software System in any manner that does not comply with the provisions of this Software Licence.

21.3 You may make and use an unlimited number of copies of the Documentation provided that such copies are used only for personal purposes and are not republished or distributed (in any medium) beyond your premises.

21.4 Upon request You must provide V3 with:

- (a) all assistance and information required to enable V3 to determine whether You are in compliance with this Software Licence, and
- (b) access to all relevant data generated by Your use of the Software and Software System for V3's use solely in system tuning and similar

technical or network purposes related to the Software System and for no other purpose. .

## 22. Intellectual Property

22.1 You agree that V3 or Owners own all copyright and other intellectual property rights of whatever nature capable of being owned or held in the Software and Software System and whether those rights are in existence now or arise at any time in the future and that any update, modification, improvement, new release, new version or enhancement to the Software or Software System (**Upgrade**) made by any person is equally owned by V3 or Owners

22.2 You agree that trademarks whether registered or unregistered and logos forming part of the Software and Software System must not be used or modified in any way without the prior written consent of V3 and Owners and Your Use of the Software and Software System must not in any way infringe the intellectual property rights of any person.

## 23. Upgrades

23.1 Where an Upgrade for the Software becomes available V3 will provide that Upgrade free of charge provided You are not in default of this Software Licence but will not be responsible for any costs associated with the provision of third party proprietary software supplied in connection with any Upgrade except where it is entitled to grant sub-licences of that third party proprietary software free of charge or for any deployment costs incurred by You in installing an Upgrade.

23.2 You must accept each Upgrade and use Your reasonable commercial efforts to promptly install and operate each Upgrade and must ensure that each Upgrade is installed and operating within 90 days from the date of delivery. V3 will not be responsible for support or maintenance of non current versions of the Software. The terms of this Software Licence including but not limited to clause 25 will apply to each Upgrade.

## 24. Errors or Interruptions

24.1 V3 cannot guarantee that Your Use of the Software or Software System or any part will be free from error or omissions, uninterrupted or is suitable for Your intended use or will perform in whole or in part any function which V3 has specified it will perform. V3 may regularly conduct maintenance on the Software System including our network, equipment or facilities. V3 will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so.

24.2 V3 is not responsible for any delays or errors in the execution of any transaction or instruction because of any breakdown or interruption in the Software or Software System due to circumstances beyond its control. It is Your responsibility to use other means of effecting transactions, giving instructions and obtaining information if for any reason the Software or Software System is unavailable for use or malfunctioning.

- 24.3 Before reporting a fault to us You must take reasonable steps to ensure that the fault is not a fault in any of Your equipment, network or facilities. V3 is not responsible for rectifying any fault in the Software or Software System where the fault arises in or is caused by Your equipment, network or facilities.
25. Warranties and Limitation of Liability
- 25.1 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED THIS SOFTWARE LICENCE IS A GRANT TO USE THE SOFTWARE "AS IS" AND WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND, EXCEPT AS MAY BE MANDATED BY LAW. V3 TO THE FULLEST EXTENT PERMITTED BY LAW SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR THAT USE OF THE SOFTWARE INCLUDING IN ANY MANNER SPECIFICALLY REQUIRED UNDER THIS SOFTWARE LICENCE) SHALL COMPLY WITH THE APPLICABLE LAWS AND RELEVANT REGULATORY REQUIREMENTS IN ANY PLACE OF USE.
- 25.2 V3 DOES NOT WARRANT THAT USE OF THE SOFTWARE SHALL BE FREE FROM UNAUTHORIZED ACCESS OR MODIFICATION, UNINTERRUPTED, OR ERROR-FREE OR THAT ANY DEFECT SHALL BE CORRECTABLE. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS SOFTWARE LICENCE AND NO USE OF THE SOFTWARE IS AUTHORISED EXCEPT UNDER THIS DISCLAIMER.
- 25.3 V3'S MAXIMUM LIABILITY IN RESPECT OF ANY DAMAGES, COSTS, EXPENSES OR OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS SOFTWARE LICENCE WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL EXCEPT IN THE CASE OF DEATH OR PERSONAL INJURY RESULTING FROM V3'S NEGLIGENCE (FOR WHICH NO LIMITATION WILL APPLY) BE LIMITED AT V3'S ELECTION IN THE CASE OF SERVICES TO THE RESUPPLY OF OR PAYMENT OF THE COST OF RESUPPLY OF THE SERVICES AND IN THE CASE OF THE SOFTWARE TO THE RE-SUPPLY OF THE SOFTWARE OR EQUIVALENT SOFTWARE OR IN EACH CASE THE PAYMENT TO YOU OF THE FEES PAID BY YOU FOR THE GRANT OF THIS SOFTWARE LICENCE DURING THE IMMEDIATELY PRECEDING 12 MONTHS.
- 25.4 IN NO CIRCUMSTANCES SHALL V3 BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS PROFITS, SAVINGS, REVENUE, USE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, DATA, GOODWILL OR OTHER PECUNIARY LOSS), UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY ARISING OUT OF THE USE, INABILITY TO USE, OR DEFECT IN THE SOFTWARE, IRRESPECTIVE OF WHETHER V3 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 25.5 V3 DISCLAIMS ANY WARRANTIES REGARDING THE SUPPLY OF GOODS OR SERVICES ACCESSED OR RECEIVED THROUGH OR ADVERTISED ON THE SOFTWARE SYSTEM OR ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH YOUR USE OF THE SOFTWARE SYSTEM OR THE SECURITY, RELIABILITY TIMELINESS AND PERFORMANCE OF ANY SUCH SUPPLY.
- 25.6 YOU UNDERSTAND THAT YOU DOWNLOAD OR OTHERWISE OBTAIN TOURISM PRODUCT, MATERIAL AND OTHER DATA (TOGETHER DATA) THROUGH THE USE OF THE SOFTWARE AND SOFTWARE SYSTEM ENTIRELY AT YOUR OWN DISCRETION AND RISK AND THAT YOU DISTRIBUTE THAT DATA ENTIRELY AT YOUR OWN DISCRETION AND RISK. IN THE EVENT THAT YOU DISTRIBUTE DATA TO ANY THIRD PARTY YOU MUST ENSURE THAT SUCH THIRD PARTY IS AWARE OF THE LIMITATIONS OF LIABILITY AND EXCLUSION OF WARRANTIES SET OUT IN THIS

SOFTWARE LICENCE INCLUDING BUT NOT LIMITED TO THE REQUIREMENT THAT ANY USE OF THAT DATA IS UNDERTAKEN ENTIRELY AT THE RISK OF THE PARTY ACCESSING OR USING IT

25.7 V3 MAKES EACH DISCLAIMER AND LIMITATION OF LIABILITY IN THIS CLAUSE IN RESPECT OF THE SOFTWARE, THE SOFTWARE SYSTEM, AND ANY GOODS, SERVICES, ADVICE OR INFORMATION OBTAINED BY ACCESSING THE SOFTWARE OR SOFTWARE SYSTEM INCLUDING BUT NOT LIMITED TO TOURISM PRODUCT, AND WHETHER SUPPLIED BY V3 OR ANY THIRD PARTY.

## 26. Indemnities

26.1 You must indemnify V3 and Owners against any loss damage liability expense cost or charge (including court costs and reasonable legal fees) arising from or incurred in connection with Your use of the Software or Software System in any manner that breaches or is in contravention of any relevant law, regulation, or requirement of any relevant regulatory authority in the Territory, or the claims of customers or other third parties arising from or connected with Your use of the Software or Software System except in each case to the extent such claims are attributable to the negligence or knowing or wilful misconduct of V3 and in that case provided that You must not settle any claim without V3's prior written approval which will not be unreasonably withheld, delayed or conditioned. You also agree to indemnify and hold harmless V3 and Owners and their respective past, present and future officers, directors, employees or agents and the owners of third party software included in the Software from and against any and all claims, suits or actions asserted against any or all of them to the extent that it is caused or contributed to by any negligent or wilful act or omission of You or Your present or future employees, officers, directors, members or agents.

## 27. Changes to Software Licence

27.1 The terms and conditions of this Software Licence may be amended by V3 from time to time. All amendments will be posted on the Software System and any amendments which may have an adverse effect on You will also be emailed to You. If You do not agree with an amendment at any time then You may terminate this Software Licence by sending an appropriately worded message to V3 at [customerservice@v3leisure.com](mailto:customerservice@v3leisure.com) and on receipt of Your message this Software Licence will automatically terminate and You will have no further right to use the Software or access the Software System and You will have no claim against any person including but not limited to V3 and Owners and their respective directors, officers and representatives arising from the termination of this Software Licence.

27.2 If there is any conflict between the terms and conditions of this Software Licence and the terms and conditions of any other agreement between V3 and You the terms and conditions of this Software Licence will prevail. If any part of this Software Licence is illegal void or unenforceable then it will be excluded so that the remaining provisions of this Software Licence will continue in full force and effect. Any part of this Software Licence that should by sense and context continue after termination will survive termination for any reason.

28. Suspension or Termination

28.1 V3 may without liability to You suspend or terminate this Software Licence by notice in writing to You where:

- (a) You breach this Software Licence in a material way;
- (b) You breach in a material way any other agreement between You and V3 or it is terminated for any reason;
- (c) V3 reasonably suspects fraud or other illegal conduct by You or any other person in connection with the Software or the Software System;
- (d) V3 reasonably believes that the Software or Software System has been used in an excessive or unusual manner
- (e) You become bankrupt or insolvent or in V3's reasonable opinion You are likely to do so;
- (f) V3 is required by law or V3 determines in its reasonable opinion that it must do so in order to comply with the requirements of any relevant regulatory authority;
- (g) There is an emergency or any act occurs outside of V3's reasonable control that V3 reasonably believes affects the operation of the Software or Software System, or V3 reasonably believes a threat or risk exists to the security or integrity of the Software or Software System;
- (h) In V3's reasonable opinion it is necessary to do so in order to undertake technical services to maintain or restore the Software or Software System.

28.2 Where V3 terminates or suspends Your Software Licence then You must immediately cease using the Licensed Software and at V3's request do everything required to permanently delete the Licensed Software from any equipment on which it is loaded or stored and You remain responsible for payment of all outstanding fees and other amounts incurred up to the date of termination or suspension and the provisions of clauses 2, 5 and 6 of this Software Licence continue in full force and effect.

29. Privacy
- 29.1 All personal information supplied or otherwise acquired by V3 about You will be dealt with in accordance with V3's privacy policy which is available at [www.v3leisure.com/Privacy\\_Policy/index.html](http://www.v3leisure.com/Privacy_Policy/index.html). You must comply with Your obligations under the Privacy Act 1988 and must not do any act that puts V3 in breach of its own obligations under the Privacy Act 1988.
30. Dispute Resolution
- 30.1 If You are not satisfied with any decision made by V3 in connection with this Software Licence at any time You may request, in writing, a review by V3's senior management. Please direct any request in writing to [customerservice@v3leisure.com](mailto:customerservice@v3leisure.com). If you are not satisfied after this further review, external avenues of complaint may exist including statutory agencies such as the Consumer Affairs Department, Small Claims Tribunal and Ombudsman in the relevant jurisdiction.
31. Owners' Rights to Enforce
- 31.1 You acknowledge the rights of the Owners of the Software and that the Owners are entitled to enforce strict compliance with this Software Licence in addition to V3 upon notice to You at any time (which notice may require You to make any payments that are due and owing by You to V3, to the Owners).
32. Assignment and sub-contracting
- 32.1 You can assign or transfer legal responsibility for this Software Licence if you obtain our prior written consent.
- 32.2 To the extent they are assignable, V3 may at any time assign:
- (a) our rights under this Software Licence to any person;
  - (b) our obligations under this Software Licence to the surviving entity of any merger or where we sell our entire business and assets, provided that in those circumstances the assignee undertakes to perform those obligations in which case V3 will be released from any further performance with effect from the date of assignment
- 32.3 V3 may perform any of our obligations under this Software Licence by arranging for them to be performed by another person.
33. Applicable Law
- 33.1 This Software Licence and all matters relating to the Software and the Software System are governed by and are to be construed according to the laws applicable in the State of Western Australia and the Commonwealth of Australia. The provisions of this Software Licence may not satisfy the laws of any other country.