

## Bookings Unlimited Establishment Terms & Conditions

### Your Accommodation Establishment Agreement with Bookings-Unlimited

#### Between:

Bookings-Unlimited

Registered Name: Granadilla Media Pty Ltd t/a Bookings-Unlimited

36 Main Road, Strand, Western Cape, South Africa 7139

(Hereafter referred to as **Bookings-Unlimited**)

#### And You, The Accommodation Establishment

(Hereafter referred to as **Accommodation Establishment**)

#### Have agreed as follows:

##### 1. Commission percentage

The commission percentage shall be 15% excluding VAT

##### 2. Execution and performance

The Agreement is only effective after approval and confirmation by Bookings-Unlimited

##### 3. General delivery terms

This Agreement is subject to and governed by the General Delivery Terms (the "Terms and Conditions"). The Accommodation Establishment declares that it has read and hereby accepts the terms and conditions.

#### General Delivery Terms

These general delivery terms (the "**Terms**") form an integral part of the Accommodation Establishment Agreement (the "**Accommodation Establishment Agreement**" and together with the Terms, "**Agreement**") entered into between an Accommodation establishment and Bookings-Unlimited r (each a "**Party**" and collectively the "**Parties**").

#### 1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement, unless the contrary intention appears:

"**Bookings-Unlimited Platform**" means the website(s), apps, tools, platforms or other devices of Bookings-Unlimited on which the Service is made available.

"**Customer Service**" means the customer service desk of Bookings-Unlimited which can be reached at [info@bookings-unlimited.com](mailto:info@bookings-unlimited.com) or such other address as set out in this Agreement.

"**Dashboard**" means the online system which can be accessed by the Accommodation establishment (after identification of the username and the password) through the website for uploading, changes, verifying, updates and/or amendments of the Accommodation Establishment Information (including rates, availability, rooms) and reservations.

"**Force Majeure Event**" means any of the following events affecting multiple Guests and multiple accommodation establishment properties: acts of God, volcanic eruptions, (natural) disasters, fire, (acts of) war, hostilities or any local or national emergency, invasions, compliance with any order or request of any national, provincial, port or other public authority, government regulations or interventions, military actions, civil war or terrorism, (biological, chemical or nuclear)explosions, rebellions, riots, insurrection strikes,

civil disorder (or the material or substantial threat or justified apprehension of any of the foregoing events), curtailment of transportation facilities, closing of airports or any other exceptional and catastrophic event, circumstance or emergency which makes it impossible or illegal for Guests to travel to or stay at, or prevents Guests from traveling to or staying at, the Accommodation establishment.

"**Guest**" means a visitor to the Platforms or a customer or guest of the Accommodation Establishment.

"**Intellectual Property Right**" means any patent, copyright, invention, database right, design right, registered design, trade mark, trade name, brand, logo, service mark, know-how, utility model, unregistered design or, where relevant, any application for any such right, know-how, trade or business name, domain name (under whatever extension, e.g. (.com, .net, co.za.) or other similar right or obligation whether registered or unregistered or other industrial or intellectual property right subsisting in any territory or jurisdiction in the world.

"**Platforms**" means the website(s) Bookings-Unlimited, apps, tools, platforms and/or other devices of Bookings-Unlimited and its affiliated companies and business partners on or through which the Service is (made) available.

"**Service**" means the manual booking system of Bookings-Unlimited through which accommodation establishment properties can make their rooms available for reservation, and through which Guests can make reservations at such accommodation establishment properties.

## **2. ACCOMMODATION ESTABLISHMENT OBLIGATIONS**

### **2.1 Accommodation establishment Information**

2.1.1 The Bookings Unlimited website is linked with Nightsbridge and any Accommodation establishment using the Nightsbridge system may list their establishment. Establishments listed with Nightsbridge will have a LIVE booking system on Bookings-Unlimited.

If an establishment is not linked with Nightsbridge you may still list the Establishment and Bookings unlimited will offer you an enquiry based booking system

2.1.2 Information provided by the Accommodation establishment for inclusion on the Platforms shall include information relating to the Accommodation establishment (including pictures, photos and descriptions), its amenities and services and the rooms available for reservation, details of the rates (including all applicable taxes, levies, surcharges and fees) and availability, cancellation and no-show policies and other policies and restrictions (the "**Accommodation establishment Information**") shall comply with formats and standards provided by Bookings-unlimited.com. Bookings-Unlimited reserves the right to edit or exclude any information upon becoming aware that it is incorrect or incomplete or in violation of the terms and conditions of this Agreement.

2.1.3 The Accommodation establishment represents and covenants that the Accommodation Establishment Information shall at all times be true, accurate and not misleading. The Accommodation establishment is at all times responsible for a correct and up-to-date statement of the Accommodation Establishment Information, including additional availability of rooms for certain periods or any extraordinary (material adverse) events or situations (e.g. renovation or construction at or near the facility). The

Accommodation establishment shall update the Accommodation Establishment Information on a daily basis (or such more frequent basis as may be required) and may – at any time – change via the Dashboard

- (i) the rate of its available rooms bookable, and
- (ii) the number or type of available rooms.

2.1.4 The information provided by the Accommodation establishment for the Platforms shall remain the exclusive property of the Accommodation establishment. Information provided by the Accommodation establishment may be edited or modified by Bookings-Unlimited.

2.1.5 All banking information provided from the Accommodation Establishment as per the listing is secured by an SSL Certificate that encrypts the information so that the Accommodation Establishment information is protected for EFT (Electronic Funds Transfer) payments from the Guest to the Accommodation Establishment. This will only be used when the Establishment is using the enquiry booking system

2.1.6 Unless Bookings-Unlimited agrees otherwise, all changes, updates and/or amendments to the Accommodation Establishment Information (including rates, availability, rooms) shall be made by the Accommodation establishment directly and online through the Dashboard or such other ways as Bookings-Unlimited may reasonably indicate. Updates and changes with respect to pictures, photos and descriptions will be processed as quickly as reasonably possible by Bookings-Unlimited.

## **2.2 Parity and room restrictions when using the enquiry booking system**

2.2.1 The Accommodation establishment shall give Bookings-Unlimited rate and availability parity ("**Parity**").

Rate Parity means the same or better rates for the same accommodation establishments, same room type, same dates, same bed type, same number of guests, same or better amenities and add-ons (e.g. free breakfast, Wi-Fi, early/late check-out), same or better restrictions and policies, such as reservation changes and cancellation policy, as are available through the Accommodation establishment's websites, apps or call centres (including the customer reservation system), or directly at the Accommodation establishment, with any competitor of Bookings-Unlimited (which includes any online or offline reservation or booking agency or intermediary) and/or with any other (online or offline) third party that is a business partner of or in any other way related with or connected to the Accommodation establishment.

Availability Parity means that the Accommodation Establishment shall provide Bookings-Unlimited.com with such availability (i.e. rooms available for booking at the Platform) that are at least as favourable as those provided to any competitor of Bookings-Unlimited.com (which includes any online or offline reservation or booking agency or intermediary) and/or with any other (online or offline) third party that is a business partner of or in any other way related with or connected to the Accommodation Establishment.

2.2.2 The restrictions and conditions (including the room price) for rooms made available for reservation on the Bookings-Unlimited Platform shall at all times be in accordance with Clause 2.2.1 and make sense for all parties involved (including consumers).

2.2.3, the Accommodation establishment is encouraged to provide Bookings-Unlimited with fair access to all room types (including various policies and restrictions) and rates available during the term of the Agreement (during periods of low and high demand (including during conventions, congresses and special events)). No fixing or increasing of specified advertised rates are allowed.

### **2.3 Commission & Administration Annual fee**

2.3.1 For each reservation made on the Platforms by a Guest for a Room, the Accommodation establishment shall pay Bookings-Unlimited a commission of 15% excluding VAT (the "**Commission**"). A detailed monthly invoice will be sent to the Accommodation Establishment.

2.3.2. Payment shall be made in accordance with Clause 2.4.

2.3.3 The aggregate Commission per reservation is equal to the multiple of:

(i) the number of nights stayed at the Accommodation establishment by the Guest;  
(ii) the booked rate per room per night (including VAT, sales taxes and such other applicable local taxes or levies (the "**Taxes**")) and such other extras, fees and surcharges which are included in the offered rate at the time of booking of the room by a Guest on the Platforms (such as breakfast, meals (half-board or full-board), bicycle rental, late check-out/early check-in fees, extra person charges, resort fees, roll-away beds, service fees, etc.);  
(iii) the number of rooms booked by the Guest; and  
(iv) the relevant Commission percentage set out in the Agreement (plus VAT/taxes (if applicable)). For the avoidance of doubt, in the event of payment of the room price by the Guest to the Accommodation establishment in accordance with Clause 4.4 (Facilitated Payment), Bookings-Unlimited shall calculate the Commission in the event of no-show or cancellation in accordance with Clause 4.4.8; in all other events Commission will be charged in the event of overbooking or a no-show (unless the Accommodation establishment has notified Bookings-Unlimited of the relevant no-show within 2 business days after the Guest's scheduled check-out date) or a charged cancellation (cancellation in violation of the free cancellation policy of the Accommodation establishment) and shall be calculated in accordance with the confirmed booking.

2.3.3 Unless agreed otherwise in the Agreement, the rate shown to Guests on the Platforms shall be inclusive of VAT, sales tax, charges and all other such local taxes, fees, charges or levies (to the extent that such other taxes, fees and levies can be reasonably calculated up front without further information.

2.3.4 In the event that pursuant to (amendment or entering into force of) the applicable law, rules and legislation applicable to the Accommodation establishment, the rates must be shown to Guests inclusive of VAT, sales tax and all other such local taxes, fees or levies, the

Accommodation establishment shall adjust the rates through the Dashboard in accordance with the terms of Clause 2.1.2 and 2.1.4 as soon as possible, but in any event within 5 business days after

(i) amendment or entering into force of the relevant law, rules and legislation in this respect applicable to such Accommodation establishment; or

(ii) notification thereof by Bookings-Unlimited.

2.3.5 The Dashboard shows details of all reservations made at the Accommodation establishment through the Platforms and the corresponding Commission Statement. On the 1st day of each month, an online reservation statement (the "**Bookings-Unlimited Online Reservation Statement**") is available on the Dashboard showing the reservations of all Guests whose date of departure fell in the previous month.

## **2.4 Payment Commission & Annual fees**

2.4.1 Commission for bookings in a calendar month that contains the (scheduled) departure date of the Guest in such month will be invoiced (except for free cancellations made through Bookings-Unlimited and in accordance with the cancellation policy of the Accommodation establishment) and paid in the subsequent month in accordance with the following terms:

(a) Invoices are processed on a monthly basis and shall be sent to the Accommodation establishment by email.

(b) The Commission invoiced with respect to a month shall be paid by the Accommodation establishment within 14 days of the invoice date to the bank account details as specified on the invoice prepared by Bookings Unlimited.

(c) Payment shall be made by the Accommodation establishment directly to Bookings-Unlimited by means of Electronic Funds Transfer (to such bank account as identified by Bookings-Unlimited). other means of payment (such as by check or through "payment agencies" or cash) cannot be processed by Bookings-Unlimited and therefore will not be accepted. The Accommodation establishment shall bear all costs as charged by the banks for the transfer of the funds.

(d) All Commission payments to be made under this Agreement shall be made in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any taxes, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority. If the Accommodation establishment is compelled to make any such deduction or withholding, it will pay to Bookings-Unlimited such additional amounts as are necessary to ensure receipt by Bookings-Unlimited of the full (net) amount as set out in the invoice which Bookings-Unlimited would have received but for the deduction. The Accommodation establishment is responsible and liable for the payment and remittance of any taxes, charges, fees and withholdings over and above the full (net) Commission payment due from the Accommodation establishment to Bookings-Unlimited.

2.4.3 In the event of a dispute between Bookings-Unlimited and the Accommodation establishment (e.g. over the amount of the Commission), any undisputed amount of the

Commission will be paid in accordance with the terms of this Agreement, notwithstanding the status or nature of the dispute.

2.4.4 In the case of late payment on commissions and annual fees, Bookings-Unlimited reserves the right to claim statutory interest, to suspend its service under the Agreement (e.g. by suspending the Accommodation establishment from the Platforms), and/or to ask for a bank guarantee or other form of financial security from the Accommodation establishment. Interest will be calculated per month based on the prevailing ABSA lending rate at the time.

## **2.5 Procedure for Provisional Bookings**

2.5.1 All letters and confirmations are done via the dashboard. The procedure for the Guest to make a booking via the advertised Accommodation Establishment is as follows:

- (a) The guest will make a Provisional booking on Bookings Unlimited or on Discount Traveler. The Provisional Booking will appear on the Accommodation Establishment dashboard as Pending.
- (b) The Accommodation Establishment will confirm that the dates are available via the dashboard.
- (c) The dates will be reserved as "Booked" for 48 hours.
- (d) The Guest will receive confirmation of booking on the required dates and the Accommodation Establishment banking details.
- (e) The Guest will make payment to the Accommodation Establishment via EFT (Electronic Funds Transfer)
- (f) The Accommodation Establishment will need to block the room once payment has been received.
- (g) The Guest will receive confirmation of payment and reservation of dates.

This is a manual property management system and the establishment calendar needs to be amended manually on all other channels that you have contracted into.

### **Decline Provisional Booking:**

If the guest declines a Provisional booking, the Accommodation Establishment will receive notification via the dashboard of the decline. The Accommodation Establishment must login to the dashboard and make the rooms and dates available. Failure to unlock the dates will result in the room being unavailable for other guests that want to utilise the unit or room on those dates.

It's the Accommodation Establishment responsibility to ensure that an "EFT" or "Cancellation is confirmed and recorded on the Dashboard.

All Guest letters are automated on the dashboard, to activate the letters the Accommodation Establishment must login to the dashboard and do the necessary confirmations. For the avoidance of doubt, the Accommodation establishment shall on a

regular basis (but at least on a daily basis) check and verify on the Dashboard (the status of) the reservations made.

2.5.2 By making a reservation through the Platforms, a direct contract (and therefore legal relationship) is created solely between the Accommodation establishment and the Guest.

2.5.3 The Accommodation establishment is bound to accept a Guest as its contractual party, and to handle the online reservation in compliance with the Accommodation Establishment Information (including rate) contained on the Platforms at the time the reservation was made and the reservation confirmation, including any supplementary information and/or wishes made known by the Guest.

2.5.4 Other than the fees, extras and discounts as set out in the confirmed booking, the Accommodation establishment shall not charge the customer any transaction/administration fee or charge for the use of any payment method (e.g. credit card charge).

2.5.5 Complaints or claims with respect to (the products or service offered, rendered or provided by) the Accommodation establishment or specific requests made by Guests are to be dealt with by the Accommodation establishment, without mediation by or interference of Bookings-Unlimited. Bookings-Unlimited is not responsible for and disclaims any liability with respect to such claims from Guests. Bookings-Unlimited may at all times and at its sole discretion:

- (a) offer customer (support) services to a Guest;
- (b) act as intermediate between the Accommodation establishment and a Guest;
- (c) provide – at the costs and expenses of the Accommodation establishment – alternative accommodation establishments of an equal or better standard in the event of an overbooking or other material irregularities or complaints with respect to the Accommodation establishment; or
- (d) otherwise assist a Guest in its communication with or actions against the Accommodation establishment.

2.5.6 In the event of a valid claim from a Guest, Bookings-Unlimited shall promptly notify the Accommodation establishment of such claim and provide the Accommodation establishment with the relevant details of the claim. The Accommodation establishment shall immediately adjust – to the extent applicable – the rate(s) made available at the Bookings-Unlimited Platform such that the lower rate is available for further booking(s). Furthermore, the Accommodation establishment shall immediately adjust the rate in the reservation made by the relevant Guest in its administration. Upon check-out of the Guest, the Accommodation establishment shall offer the room for the lower rate and shall either:

- (i) settle the difference between the booked rate and the lower rate by charging the Guest for the lower rate; or
- (ii) refund (in cash) the Guest the difference between the two rates.

## **2.6 Overbooking and cancellation**

2.6.1 The Accommodation establishment shall provide the rooms booked and in the event that the Accommodation establishment is not able to meet its obligations under this Agreement for any reason whatsoever, the Accommodation establishment shall promptly inform Bookings-Unlimited via Customer Service (customer.service@bookingsunlimited.travel); whereas the subject line of each email shall state "overbooking").

Unless Bookings-Unlimited has arranged for alternative accommodation establishments (to be verified by the Accommodation establishment with Bookings-Unlimited), the Accommodation establishment will use its best endeavours to procure alternative arrangements of equal or superior quality at the expense of the Accommodation establishment and in the event that no Room Is available upon arrival, the Accommodation establishment will:

- (a) find suitable alternative accommodation establishments of an equal or better standard to the Accommodation establishment holding the Guest 's guaranteed booking;
- (b) provide free private transportation to the alternative accommodation establishments for the Guest and other members of the Guest's party who are listed in the Guest's guaranteed booking; and
- (c) reimburse and compensate Bookings-Unlimited and/or the Guest for all reasonable costs and expenses (e.g. cost of alternative accommodation establishments, transportation, telephone costs) made, suffered, paid or incurred by the Guest and/or Bookings-Unlimited due to or caused by the overbooking. Any amount charged by Bookings-Unlimited in this respect shall be paid within 14 days after receipt of the invoice.

2.6.2 The Accommodation establishment is not allowed to cancel any manual reservation.

2.6.3 Cancellations made by Guests before the time and date beyond which a cancellation fee applies will not attract commission. Cancellations made by Guests after the time and date beyond which a cancellation fee applies will attract commission in accordance with the terms of this Agreement.

## **2.7 Direct marketing to Guests**

The Accommodation establishment agrees not to specifically target Guests that have been obtained via Bookings-Unlimited in either online or offline marketing promotions or solicited or unsolicited mail.

## **2.8 Dashboard**

Bookings-Unlimited will provide the Accommodation establishment with a user ID and password which allows the Accommodation establishment to access the dashboard. The Accommodation establishment shall safeguard and keep the user ID and password confidential and safely stored and not disclose it to any person other than those who need

to have access to the Dashboard. The Accommodation establishment shall immediately notify Bookings-Unlimited of any (suspected) security breach or improper use.

## **2.9 Force Majeure Event**

In the event of a Force Majeure Event, the Accommodation establishment shall not charge (and shall repay (if applicable)) the Guests affected by the Force Majeure Event any fee, costs, expenses or other amount (including the (non-refundable) rate or the no-show, (change of) reservation or cancellation fee) for

(i) any cancellation or change of the reservation made by the Guests, or

(ii) that part of the reservation that was not consumed, due to the Force Majeure Event. In the event of reasonable and justified doubt, the Accommodation establishment may ask a Guest to provide reasonable evidence of the causality between the Force Majeure Event and cancellation, no-show or change of reservation (and provide Bookings-Unlimited upon request with a copy of such evidence). In order for Bookings-Unlimited to register any cancellation, no show or amendment of the reservation due to a Force Majeure Event, the Accommodation establishment shall inform Bookings-Unlimited within 2 business days after

(a) the scheduled check-out date of the no-show or cancellation, or

(b) check-out, the number of days actually stayed. Bookings-Unlimited will not charge any commission in the event of a registered no-show or cancellation or over that part of the booking which is not consumed due to the Force Majeure Event.

## **3. LICENSE**

3.1 The Accommodation establishment hereby grants Bookings-Unlimited a non-exclusive, royalty-free and worldwide right and license (or sublicense as applicable):

(a) to use, reproduce, have reproduced, distribute, sublicense, communicate and make available in any method and display those agreed upon elements of the Intellectual Property Rights of the Accommodation establishment as provided to Bookings-Unlimited by the Accommodation establishment pursuant to this Agreement and which are necessary for Bookings-Unlimited to exercise its rights and perform its obligations under this Agreement;

(b) to use, reproduce, have reproduced, process, distribute, sublicense, display and utilize (including without limitation to publicly perform, modify, adapt, communicate, reproduce, copy and make available to the public in any manner whatsoever) the Accommodation Establishment Information.

3.2 Bookings-Unlimited may sublicense, make available, disclose and offer the Accommodation establishment Information (including the relevant Intellectual Property Rights) of the Accommodation establishment and special offers made available by the Accommodation establishment on the Platforms and all such further rights and licenses set out in this Agreement via or in collaboration with (the websites, apps, platform, tools or other devices of) affiliated companies and/or third parties (the "**Third Party Platforms**").

3.3 In no event shall Bookings-Unlimited be liable to the Accommodation establishment for any acts or omissions on the part of any Third Party Platforms. The sole remedy for the Accommodation establishment with respect to such Third Party Platforms is

- (i) to request Bookings-Unlimited (which has the right and not the obligation) to disable and disconnect with such Third Party Platform, or
- (ii) termination of this Agreement, all in accordance with the terms of this Agreement.

## **4. RANKING, MARKETING**

### **4.1 Ranking**

4.1.1 The order in which the Accommodation establishment is listed on the Platforms (the "**Ranking**") is determined automatically and unilaterally by Bookings-Unlimited. Ranking is based on and influenced by various factors, including but not limited to the discounts or non-discounts offered, a paid or free listing, the minimum availability stated by the Accommodation establishment, the number of bookings related to the number of visits to the relevant accommodation establishment property page on the Platform (the "**Conversion**"), the volume realized by the Accommodation establishment, the ratio of cancellations, the customer service history, the number and type of complaints from Guests and the on-time payment record of the Accommodation establishment.

4.1.2 The Accommodation establishment can influence its own rank by changing the availability for certain periods, and continuously improving the other factors. The Accommodation establishment shall not make any claim against Bookings-Unlimited regarding the Ranking of Accommodation establishment; the Ranking system is automated. The automated Ranking (as defined hereafter) system uses on-time payment as a factor, so failure to pay Commissions on time will result in a reduced rank.

#### **4.1.3 Dashboard**

The Property Management System is manual and does not offer any channel or distribution software. The Accommodation Establishment will make use of the Provisional booking system and ensure that other software is in line with Bookings Unlimited Calendar. The Accommodation Establishments are identified by a Book Now Button on the websites. The Guest will request a Provisional Booking and the accommodation establishment will confirm the dates. The dashboard interfaces the availability server operated by the availability software provider and allows the guest to view availability or different accommodation establishment and make an enquiry.

## **4.4 Facilitated Payment**

4.4.1 The Accommodation establishment agrees and acknowledges that for each reservation, the relevant total amount of the reservation (including all applicable Taxes,

fees, extras and add-ons made or included during the reservation process (e.g. breakfast) to the extent disclosed to Bookings-Unlimited by the Accommodation establishment (unless indicated otherwise by Bookings-Unlimited)) will be collected and processed by the Payment Processor (the relevant amount hereafter the "**Room Price**") in accordance with the applicable payment policy of the Accommodation establishment for the relevant reservation and disclosed on the Platform.

4.4.2 The Accommodation establishment agrees and acknowledges that it is – at all times – responsible for the collection, remittance, withholding and payment to the relevant (tax) authorities (as applicable) of the relevant Taxes, (sur)charges, extras and fees over the Room Price (including the relevant Taxes, (sur)charges, extras, amounts and fees not included in the Room Price) and remittance, withholding and payment (as applicable) of the Taxes over the Commission, to the relevant tax authorities. Unless Bookings-Unlimited has indicated that certain Taxes, fees, charges, add-ons (e.g. breakfast) or other amounts are not included in the Room Price (the "**Excluded Elements**"), the Accommodation establishment shall not further charge, request payment of or collect any amount from the Guest that has not already been included in the Room Price (except for the Excluded Elements (if applicable) ).

## **5. REPRESENTATIONS AND WARRANTIES**

5.1 The Accommodation establishment represents and warrants to Bookings-Unlimited that for the term of this Agreement:

- (i) the Accommodation establishment has all necessary rights, power and authority to use, operate, own (as applicable), (sub)license and have Bookings-Unlimited available on the Platforms (a) the relevant accommodation establishments, and (b) the Intellectual Property Rights with respect to, as set out or referred to in the Accommodation Establishment Information made available on the Platforms;
- (ii) the Accommodation establishment holds and complies with all permits, licenses and other governmental authorizations and requirements necessary for conducting, carrying out and continuing its operations and business and making the Accommodation establishment available on the Platforms for reservation (including for short term stay);
- (iii) the price for the rooms advertised on the Platforms correspond to the best available price for an equivalent stay with the Accommodation establishment and a better price cannot be obtained by a Guest making a reservation with the Accommodation establishment directly or via another (third) party or via another medium or channel; and
- (iv) the Accommodation establishment and its directors and (direct, indirect and ultimate (beneficial)) owners (and their directors) are not in any way connected to, part of, involved in or related to or under the control, management or ownership of:
  - (a) terrorists or terrorist organizations;
  - (b) parties/persons (i) listed as (special) designated nationals/entities or blocked person/entities, or (ii) otherwise subject to any applicable trade embargo, or financial, economic and trade sanctions; and
  - (c) parties/persons guilty of money laundering, bribery, fraud or corruption.

The Accommodation establishment shall immediately notify Bookings-Unlimited in the event of a breach of this Clause 5.1 paragraph (iv).

5.2 Each Party represents and warrants to the other Party that for the term of this Agreement:

- (i) it has the full corporate power and authority to enter into and perform its obligations under this Agreement;
- (ii) it has taken all corporate action required by it to authorize the execution and performance of this Agreement;
- (iii) this Agreement constitutes legally valid and binding obligations of that Party in accordance with its terms; and
- (iv) each Party shall comply with all applicable governmental laws, codes, regulations, ordinances and rules of the country, state or municipality under which law the relevant Party is incorporated with respect to the products (to be) offered and/or services (to be) rendered by such Party.

5.3 Except as otherwise expressly provided in this Agreement, neither Party makes any representations or warranties, express or implied, in connection with the subject matter of this Agreement and hereby disclaims any and all implied warranties, including all implied warranties of merchantability or fitness for a particular purpose regarding such subject matter.

5.4 Bookings-Unlimited disclaims and excludes any and all liability with respect to the Accommodation establishment which is related to any (temporary and/or partial) breakdown, outages, downtime, interruption or unavailability of the Platforms, the Service and/or the Dashboard. Bookings-Unlimited provides (and the Accommodation establishment accepts) the Service, the Platform and the Dashboard on an "as is" and "as available" basis.

## **6. INDEMNIFICATION AND LIABILITY**

6.1 Each Party (the "**Indemnifying Party**") shall be liable towards, and compensate, indemnify and hold the other Party (or its directors, officers, employees, agents, affiliated companies and subcontractors) (the "**Indemnified Party**") harmless for and against any direct damages, losses (excluding any loss of production, loss of profit, loss of revenue, loss of contract, loss of or damage to goodwill or reputation, loss of claim or any special, indirect or consequential losses and/or damages), liabilities, obligations, costs, claims, claims of any kind, interest, penalties, legal proceedings and expenses (including, without limitation, reasonable attorneys' fees and expenses) actually paid, suffered or incurred by the Indemnified Party pursuant to:

- (i) a breach of this Agreement by the Indemnifying Party, or
- (ii) any claim from any third party based on any (alleged) infringement of the third party's Intellectual Property Right by the Indemnifying Party.

6.2 The Accommodation establishment shall fully indemnify, compensate and hold Bookings-Unlimited(or its directors, officers, employees, agents, affiliated companies and subcontractors) harmless for and against any liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), damages, losses, obligations, claims of any kind, interest, penalties and legal proceedings paid, suffered or incurred by Bookings-Unlimited(or its directors, officers agents, affiliated companies and subcontractors) in connection with:

- (i) all claims made by Guests concerning inaccurate, erroneous or misleading information of the Accommodation establishment on the Platforms;

(ii) all claims made by Guests concerning or related to a stay in the Accommodation establishment, overbooking or (partially) cancelled or wrong reservations or repayment, refund or charge-back of the Room Price;

((iv) all other claims from Guests which are fully or partially attributable to or for the risk and account of the

The Accommodation establishment (including its directors, employees, agents, representatives and the premises of the Accommodation establishment) (including claims related to (lack of) services provided or product offered by the Accommodation establishment) or which arise due to tort, fraud, wilful misconduct, negligence or breach of contract (including the Guest Reservation) by or attributable to the Accommodation establishment (including its directors, employees, agents, representatives and the premises of the Accommodation establishment) with respect to a Guest or its property; and  
(v) all claims against Bookings-Unlimited in relation to or as a result of the failure of the Accommodation establishment to (a) properly register with relevant tax authorities, or (b) pay, collect, remit or withhold any applicable Taxes, fees and (sur)charges levied or based on the services or other charges hereunder in the relevant jurisdiction (including room price and commission payments).

6.3 Except as otherwise provided for in this Agreement, the maximum liability of one Party to any other party in aggregate for all claims made against such party under or in connection with this Agreement in a year shall not exceed the aggregate commission received or paid by such Party in the preceding year (whichever is higher), unless in the event of tort, fraud, wilful misconduct, gross negligence, deliberate non-disclosure or deliberate deception on the part of the liable Party (i.e. the Indemnifying Party), in which event the limitation of liability is not applicable for such liable party. Parties agree and acknowledge that none of the limitations of liability set out in Clause

6 shall apply to any of the indemnifications with respect to third party claims (e.g. claims from Guests as described in (6.2) or third party liabilities.

6.4 In the event of a third party claim, Parties shall act in good faith and use their commercially reasonable efforts to consult, cooperate and assist each other in the defence and/or settlement of such claim, whereas the indemnifying Party shall be entitled to take over a claim and assume the defence (in consultation and agreement with the indemnified Party and with due observance of both Parties' interests), and neither Party shall make any admission, file any papers, consent to the entry of any judgment or enter into any compromise or settlement without the prior written consent of the other Party (which shall not unreasonably be withheld, delayed or conditioned).

6.5 In no event shall any Party be liable to any other Party for any indirect, special, punitive, incidental or consequential damages or losses, including loss of production, loss of profit, loss of revenue, loss of contract, loss or damage to goodwill or reputation, loss of claim, whether such damages are (alleged as) a result of a breach of contract, tort or otherwise (even if advised of the possibility of such damages or losses). All such damages and losses are hereby expressly waived and disclaimed.

6.6 Each Party acknowledges that remedies at law may be inadequate to protect the other Party against any breach of this Agreement and without prejudice to any other rights and remedies otherwise available to the other Party, each Party will be entitled to injunctive relief and specific performance.

## **7. TERM, TERMINATION AND SUSPENSION**

7.1 Unless agreed otherwise, this Agreement shall commence on the date hereof for indefinite period of time. Each Party may terminate this Agreement at any time and for any reason, by written notice to the other Party with due observance of a notice period of 14 days.

7.2 Each Party may terminate this Agreement (and close the Accommodation establishment on the Platforms) or suspend this Agreement with respect to the other Party, with immediate effect and without a notice of default being required in case of:

- (a) a material breach by the other Party of any term of this Agreement (e.g. delay of payment, insolvency, breach of rate parity guarantee, the provision of wrong information or receipt of a significant number of Guest complaints); or
- (b) (filing or submission of request for) bankruptcy or suspension of payment (or similar action or event) with respect to the other Party.

7.3 Any notice or communication by Bookings-Unlimited of "closure" ("close", "closed") of the Accommodation establishment on the website (or similar wording) shall mean termination of the Agreement. After termination, suspension or closure, the Accommodation establishment shall honour outstanding reservations for Guests and shall pay all commissions (plus costs, expenses, interest if applicable) due on those reservations in accordance with the terms of this Agreement.

7.4 The following events shall in any event be regarded as a material breach and entitle Bookings-Unlimited to immediately terminate (close) or suspend the Agreement (without a notice of default):

- (i) the Accommodation establishment fails to pay Commissions on or before the due date;
- (ii) the Accommodation establishment posts incorrect or misleading Accommodation Establishment Information on the Dashboard;
- (iii) the Accommodation establishment fails to maintain Information on the Dashboard resulting in overbookings at the Accommodation establishment;
- (iv) the Accommodation establishment fails to accept a reservation at the price shown on a reservation;
- (v) the Accommodation establishment overcharges one or more guests; the guest (a guest provides express agreement if they select a non-refundable or an advance purchase room type);
- (vi) Bookings-Unlimited receives one or more legitimate and serious complaint(s) from one or more guest(s) who made reservations with the Accommodation establishment;
- (vii) misuse of the Guest review process by any behaviour that results in a review appearing on the Platforms that is not an honest expression of a real stay by a real guest at the Accommodation establishment;

(ix) inappropriate, unlawful or unprofessional behaviour toward guests or Bookings-Unlimited staff; or

(x) any (alleged) safety, privacy or health issues or problems with respect to the Accommodation establishment or its facilities (the Accommodation establishment shall at its own costs and upon first request from Bookings Unlimited deliver the relevant permits, licenses, certificates or such statements issued by an independent expert evidencing and supporting its compliance with applicable (privacy, safety and health) laws and legislation).

7.5 Upon termination and except as set out otherwise, this Agreement shall absolutely and entirely terminate with respect to the terminating Party and cease to have effect without prejudice to the other Party's rights and remedies with respect to an indemnification or a breach by the other (terminating) Party of this Agreement. Clause 2.4, 6, 8, 9 and 10 shall survive termination.

## **8. BOOKS AND RECORDS**

8.1 The systems, books and records of Bookings-Unlimited(including Dashboard, the Manual Reservation Statement, faxes and/or emails) shall be considered conclusive evidence of the existence and receipt by the Accommodation establishment of the reservations made by the Guest and the amount of the commission of the Accommodation establishment or damages or costs due to Bookings-Unlimited under this Agreement, unless the Accommodation establishment can provide reasonable and credible counterevidence.

8.2 The Accommodation establishment shall upon first request from Bookings-Unlimited fully cooperate and assist Bookings-Unlimited with (and disclose all reasonably requested information with respect to) the identification of the (ultimate) owner, manager and/or controller of the Accommodation establishment.

## **9. CONFIDENTIALITY**

9.1 Parties understand and agree that in the performance of this Agreement, each Party may have access to or may be exposed to, directly or indirectly, confidential information from the other party (the "**Confidential Information**"). Confidential Information includes Customer Data, transaction volume, marketing and business plans, business, financial, technical, operational and other such non-public information either that a disclosing party designates as being private or confidential or which a receiving party should reasonably know should be treated as private and confidential.

9.2 Each Party agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party and receiving party shall not use any Confidential Information for any purpose except in furtherance of this Agreement; (b) it shall maintain, and shall use prudent methods to cause its employees, officers, representatives, contracting parties and agents (the "**Permitted Persons**") to maintain, the confidentiality and secrecy of the Confidential Information; (c) it shall disclose Confidential Information only to those Permitted Persons who need to know such information in furtherance of this Agreement; (d) it shall not, and shall use prudent methods to ensure that the Permitted Persons do not, copy, publish, disclose to others or use (other than pursuant to the terms hereof) the Confidential Information; and (e) it shall return or destroy all ((hard and soft) copies of) Confidential Information upon written request from the other Party.

9.3 Notwithstanding the foregoing, (a) Confidential Information shall not include any information to the extent it

- (i) is or becomes part of the public domain through no act or omission on the part of the receiving party,
- (ii) was possessed by the receiving party prior to the date of this Agreement,
- (iii) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto, or
- (iv) is required to be disclosed pursuant to law, court order, subpoena or governmental authority, and (b) nothing in this Agreement shall prevent, limit or restrict a Party from disclosing this Agreement (including any technical, operational, performance and financial data (but excluding any Customer Data)) in confidence to an affiliated (group) company.

9.4 Parties shall use commercially reasonable efforts to safeguard the confidentiality and privacy of Customer Data and to protect it from unauthorized use or release. Each Party agrees to comply with all applicable (data and privacy) laws, rules and regulations of the jurisdiction where such Party is incorporated

## **10. MISCELLANEOUS**

10.1 Neither party shall be entitled to assign, transfer, encumber any of its rights and/or the obligations under this Agreement without the prior written consent of the other party, provided that Bookings-Unlimited may assign, transfer, encumber any of its rights and/or the obligations under this Agreement (in whole or in part or from time to time) to an affiliated company without the prior written consent of the Accommodation establishment. Any assignment or transfer by the Accommodation establishment shall not relieve the assignor of its obligations under the Agreement.

10.2 All notices and communications must be in English, in writing, and sent by facsimile, email or nationally recognized overnight air courier to the applicable facsimile number or address set out in the Agreement.

10.3 This Agreement (including the schedules, annexes and appendixes, which form an integral part of this Agreement) constitutes the entire agreement and understanding of the Parties with respect to its subject matter and replaces and supersedes all prior agreements, arrangements, ((non-) binding) offers, undertakings or statements regarding such subject matter (including vis-à-vis the Accommodation establishment).

10.4 If any provision of this Agreement is or becomes invalid or non-binding, the Parties shall remain bound by all other provisions hereof. In that event, the Parties shall replace the invalid or non-binding provision by provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.

10.5 By registering and signing up to the Bookings-Unlimited partner program as accommodation establishment partner, the Accommodation establishment agrees, acknowledges and accepts the terms and conditions of this Agreement. The Agreement does not need any chop or seal to make it valid, binding and enforceable.

Bookings-Unlimited is restricted from making the Service available to and accepting payments from or making, processing or facilitating payments to a bank account (the "**Bank Account**") that is not related to the jurisdiction where the Accommodation establishment is located and (but in any event) insofar any of the following warranties is untrue. The Accommodation establishment hereby represents and warrants that (notwithstanding the jurisdiction of the Bank Account):

(i) it holds and complies with all permits, licenses and other governmental licenses, permits and authorizations necessary for conducting, carrying out and continuing its operations and business (including holding and using of the Bank Account);

(ii) it is the holder of the Bank Account;

(iii) the payment and transfer to/from the Bank Account is at arm's length and in accordance with all applicable laws,

10.6 The Accommodation establishment hereby agrees to fully compensate and indemnify Bookings-Unlimited for all damages, losses, claims, penalties, fines, costs and expenses suffered, paid or incurred by Bookings-Unlimited (or any of its affiliated group companies (including any of its/their directors, officers, employees, agents or representatives)) for any (threatening or alleged) claim (including penalty) from any government, authority, organization, company, party or person that the payment to, through or from the Bank Account is illegal.

By confirming your association with Bookings-Unlimited you agree to this agreement and all its terms & conditions.