Adventure Engine End User License Agreement

SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING THE SOFTWARE. BY USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE SOFTWARE.

SUBSCRIPTION AGREEMENT

WHEREAS, Adventure Engine Inc. (AEI) develops, maintains and licenses access to a Web-based booking management automation software solution for businesses

WHEREAS, customer wishes to use the Adventure Engine application and obtain such related services, and Adventure Engine desires to provide such services to customer; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

1.1 <u>Definitions</u>. For purposes of this Agreement, the definitions set forth below shall be applicable:
"Authorized User" means an individual who is an employee or contractor of customer who is acting within the scope of a formal employment or agency relationship and who agrees to be bound by the terms of this Agreement.
"Front End Code" means the user interface display and usability platform. This includes, but is not limited to, the layout, color scheme, HTML pages and source code, etc.
"Back End Code" means the Adventure Engine application-specific source code. This includes, but is not limited to, the database schema, field definitions, table relationships, marketing automation, workflow management, application methodology and interface coding, etc.

ARTICLE II.

OWNERSHIP AND USE

- **2.1 <u>GRANT OF LICENSE</u>**. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, ADVENTURE ENGINE HEREBY GRANTS TO CUSTOMER

AND CUSTOMER HEREBY ACCEPTS A NONEXCLUSIVE, NONTRANSFERABLE LICENSE TO ESTABLISH ONLINE BOOKING MANAGEMENT AND RELATED MODULES, ONLINE SHOPPING CARTS, ACCESS TO THE ADVENTURE ENGINE APPLICATION SOFTWARE TO PERFORM CONTACT MANAGEMENT, BOOKING MANAGEMENT AND OTHER RELATED BUSINESS FUNCTIONS THAT THE SOFTWARE IS DESIGNED TO PERFORM.

- **2.2 <u>Title</u>**. Adventure Engine shall retain all right, title and interest (including all copyrights, patents, service marks, trademarks and other intellectual property rights) in and to the Adventure Engine application, including any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes thereto, and all related information, material and documentation, etc. Except for the license granted pursuant to this Agreement, customer shall not acquire any interest in the Adventure Engine application software or any other services or materials, or any copies or portions thereof, provided by Adventure Engine pursuant to this Agreement.

- **2.3 <u>Customer Ownership of prospect, customer and employee data</u>**. Any company-specific data provided to Adventure Engine hereunder, either in hard copy or electronic format, is and shall remain the customer's property property including, without limitation, all data concerning or related to bookings made by and through the Adventure Engine application on behalf or for the benefit of customer, and Adventure Engine shall have no right to use or retain such data apart from use and retention necessary and appropriate to provide the customer Web-based booking management services contemplated under this Agreement.

- **2.4 <u>Adventure Engine intellectual property ownership and restrictions to product use</u>**. Adventure Engine shall retain all rights to proprietary application development, business and technical methodologies, implementation, business processes and all other aspects of Adventure Engine business, application(s) and services. Under no circumstances will the customer be permitted to use any Front End Code to their advantage (or) the advantage of their partner companies (or) potential partner companies outside of the intended design and implementation for which the original service subscription agreement was executed. The technology and business methodologies are proprietary and the sole property of Adventure Engine. Any technology or business replication of any aspect of the application or services provided used for the gain of the customer or above-mentioned business partners or for the use of any level of a competitive nature regarding these proprietary elements is strictly prohibited.

ARTICLE III.

FEES

- **3.1 <u>Fees</u>**. In consideration of the license granted pursuant to Section 2.1, and for the services, customer shall pay Adventure Engine the SETUP (one time licensing and activation fees) and ONGOING fees (transaction fees, credit card fees, commissions) as specified on the customer's original Subscription Agreement (the "Fees") and based on

booking activity. Any charges not paid when due are subject to interest at a rate equal to the lesser of: (i) one and one-half percent (1.5%) per month; or (ii) the maximum interest rate allowed by applicable law. Fees are subject to change.

ARTICLE IV.

CONFIDENTIALITY

- **4.1 <u>Confidentiality</u>**. Each party agrees that the company-associated data including, without limitation, merchant bank information, API log-in for processing credit cards, all credit card information collected for or on behalf of customer, all data concerning or related to bookings made by and through the Adventure Engine application (referred to herein as the "Customer Confidential Information") and any and all materials, documentation and information pertaining to the Adventure Engine application software and the services (referred to herein collectively as the "Adventure Engine Confidential Information") is the confidential property of customer and Adventure Engine, respectively (referred to hereinafter collectively as the "Confidential Information"). The party receiving the Confidential Information, including such party's employees, officers, directors and agents (collectively, the "Receiving Party"), shall hold in confidence all Confidential Information and shall not disclose or distribute Confidential Information, or any portion thereof, in any form or format to any person except on a strict "need to know" basis for the purpose of performance of this Agreement, or as required by valid legal process. Customer agrees it shall not copy, alter, decompile, disassemble, reverse engineer or otherwise modify (except with Adventure Engine's prior written consent) or directly or indirectly disclose any Adventure Engine Confidential Information. Confidential Information under this Section 4 shall not include information that: (i) is or has become publicly available without restriction through no fault of the receiving party; or (ii) has been received without restriction from a third party lawfully in possession of such information.

- **4.2 Employment of Reasonable Security Measures and <u>Cardholder Data Retention Policy</u>**.   Each party agrees and covenants to the other party that it will employ such technologies, and implement such securities measures with its employees and vendors, if any, that are commercially reasonable in the circumstances considering available technologies, to safeguard the other party's Confidential Information. Adventures Engine represents and warrants that Customer Confidential Information will be stored encrypted using up to date encryption technologies, on a fully managed, fully dedicated server that is within Adventures Engine's sole control and that is separate from Adventures Engine's webservers. Adventure Engine further represents and warrants that all credit card information and transactions will be handled through at least Level 1 PCI Data Security Standards compliant systems.

  4.3 Obligations in the Event of a Data Breach. Each party shall report to the other, immediately upon discovery or as soon as practicable thereafter, any use or disclosure of Confidential Information belonging to the other party that is not authorized by this Agreement. Notwithstanding any other provision of this Agreement, each party will be responsible for all damages, fines and corrective action arising from such unauthorized disclosures and shall indemnify, defend and hold the other party harmless from and against

such damages, fines and corrective actions arising from such unauthorized use or disclosure.

4.4 <u>Cardholder Data Retention Policy.</u> The parties agree that all credit card information will be stored the minimum amount of time according to that which is required for business, legal and/or regulatory purposes.

ARTICLE V.

TERM & TERMINATION

- **5.1 <u>Term</u>**. The term of this Agreement begins on the Effective Date and shall continue for a period of one (1) year unless earlier terminated as provided for in this Section 5.
- **5.2 <u>Termination without Cause</u>**. Either party may terminate this Agreement by providing 30 days' written notice to the other party.
- **5.3 <u>Fees; Return of Data</u>**. In the event of termination or expiration of this Agreement, all Fees due and payable to Adventure Engine must be paid in full and all revenues due and payable to customer must be paid in full. Adventure Engine will make all company data available for a period of 30 days and then remove Customer from the production environment.
- **5.4 <u>Standard Marketing</u>**. Customer reserves the right to use Adventure Engine's name and credentials in an appropriate and acceptable manner for standard marketing promotions. Equally, Adventure Engine reserves the right to use customer's name and credentials in an appropriate and acceptable manner for standard marketing promotions. Acceptable and standard marketing promotions include, but are not limited to: client listings, press releases, surveys, interviews, reputable business publications, television, and web site presentation and promotion, etc.

ARTICLE VI.

WARRANTIES/LIMITATION OF LIABILITY/INDEMNITY

- **6.1 <u>DISCLAIMER OF OTHER WARRANTIES</u>**. THIS AGREEMENT IS AN AGREEMENT FOR SERVICES. NOTWITHSTANDING THE FOREGOING, ADVENTURE ENGINE SPECIFICALLY DISCLAIMS ALL WARRANTIES WITH REGARD TO THE ADVENTURE ENGINE APPLICATION SOFTWARE AND SERVICES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NO INFRINGEMENT, UNINTERRUPTED SERVICE OR FITNESS FOR A PARTICULAR PURPOSE. ADVENTURE ENGINE DOES NOT WARRANT THAT THE FUNCTIONALITY OF THE SOFTWARE WILL MEET YOUR REQUIREMENTS, NOR THAT THE SOFTWARE WILL RUN UNINTERRUPTED OR ERROR FREE. ADVENTURE ENGINE IS NOT RESPONSIBLE FOR THE RESULTS OF YOUR USE OF THE SOFTWARE OR FOR ANY ACTION TAKEN BY YOU OR THIRD PARTIES ON THE BASIS THEREOF
- **6.2 <u>LIMITATION OF LIABILITY</u>**. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF

DATA, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OF OR RESULTING FROM THIS AGREEMENT EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL APPLY REGARDLESS OF THE NEGLIGENCE OR OTHER FAULT OF THE PARTY AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LEGAL LIABILITY. Notwithstanding the foregoing, in no event shall Adventure Engine's cumulative liability under this Agreement exceed the amount actually paid by customer to Adventure Engine in the immediately preceding six- (6-) month period.

- **6.3 <u>PARTIES' WARRANTIES</u>**. Notwithstanding anything in this Article VI to the contrary, the parties represent and warrant to the other that each shall, at all times, comply with, and remain solely responsible for compliance with, all applicable federal, state and local laws and regulations. Each party agrees to indemnify and hold the other harmless from and against any and all damages, costs, losses, claims, causes of action and lawsuits and expenses, including reasonable attorneys' fees, relating to breach of the aforementioned representation and warranty.

ARTICLE VII.

GENERAL PROVISIONS

- **7.1 <u>ASSIGNMENT OF AGREEMENT</u>**. CUSTOMER SHALL NOT ASSIGN ITS RIGHTS OR DUTIES UNDER THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF ADVENTURE ENGINE. THIS AGREEMENT SHALL INURE TO THE BENEFIT OF THE AUTHORIZED SUCCESSORS AND ASSIGNS OF THE PARTIES.
- **7.2 <u>Independent Contractor</u>**. Adventure Engine is an independent contractor, and this Agreement does not in any way create the relationship of principal and agent, franchisee, joint venture or partnership between the parties. Neither party shall be liable for any debts or obligations of the other.
- **7.3 <u>Entire Agreement; Precedence</u>**. This Agreement and Exhibit(s) (which may be attached hereto and incorporated herein by reference) contain the entire understanding between the parties and supersede any prior verbal or written agreement between the parties with respect to the subject matter hereof. No amendment or modification of the Agreement shall be valid, unless made in writing and signed by both parties hereto. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any term or condition of any Exhibit hereto, the terms and conditions of this Agreement shall, in all instances, govern and control.
- **7.4 <u>Governing Law</u>**. This Agreement will be governed by and construed in accordance with the laws in force in the Province of British Columbia and the federal laws of Canada applicable therein and any dispute stemming from this Agreement will be submitted to the jurisdiction of the courts of the Province of British Columbia.