

This Distributor Agreement is entered into between **VCubed Pty Ltd** (ACN 074 524 879) (V3) of 3/8 Alvan Street, Subiaco 6008 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:

Additional Support means the additional support required by You which will be provided at the V3 standard rates as detailed in Your Application.

Application refers to one or more application forms, authorities or agreements that You must execute to participate as a Distributor in TXA 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 a booking and electronic payment processing system to be made available on agreed terms to Participants in TXA by V3 or one or more third party suppliers, to be automatically calculated and processed in accordance with pre-set Data populated in TXA 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.

Dashboard means a restricted access web site that makes various account creation, management and reporting functions of TXA available that may be used strictly in accordance with this Agreement

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.

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

Distribution Fee is a non-refundable fee payable by Product Providers to V3 for accessing distribution services through TXA 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 (excluding On Account Bookings) made through a Distributor at the date the Online Booking is made.

Distribution Services means a suite of software, products and integration tools supplied by V3 that allows Distributors and their Customers to search for Tourism Products on TXA and make Online Bookings via a Distributor's Site.

Distributor Fee is a fee payable by V3 to You for referring Customers to TXA 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 Products 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 means one or more licences of the Licensed Software or any part which is entered into as part of this Agreement and is a prior condition to being granted access to the TXA and Distribution Services or any part of the TXA and Distribution Services and "End User" refers to a person who is granted an End User Licence.

Fees mean fees and payments payable by You to V3 for using TXA and Distribution Services as outlined in the Application.

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 TXA 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 (Good 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.

Licensed Software means software developed, owned, or licensed by V3 and delivered by V3 under the terms of this Agreement.

Licensors means the company(s) which have licensed software to V3

Live Date means the date the Distributor is activated on the TXA 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 1st day of each month) on which TXA automatically generates reports and commences a new monthly accounting period for the purpose of the monthly issuing of Tax Invoices.

Monthly Fee is the monthly payment (if any) for use of TXA and Distribution Services 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 16th day of each month for the Direct Debit from Participants of Fees owing to V3 and the 25th 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, 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.

Open Booking Exchange (OBX) means a software platform suitable for Tourism Products comprising an open booking exchange marketplace offering web services that enables Product Providers to make available Tourism Product to Customers through multiple Distributors. OBX is branded **TXA** (Tourism Exchange Australia) in Australia

Participant means an individual participant who uses TXA 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 TXA.

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 **Error! Reference source not found.**

Site means the Distributor's website; or any website/service using the Distribution Services being used by the Distributor or any other booking interface that is integrated to the TXA

Tax Invoice is defined in GST Law.

Term commences on the date of Application and continues to the period stated detailed in the Application or until terminated in accordance with clause 15.

TXA the name given to OBX in the Australia marketplace.

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

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

2. Appointment as a Distributor

2.1 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 TXA to act as a Participant in the role of Distributor.

2.2 As a Distributor You may:

- (a) connect on a live (real time) basis to TXA in a manner prescribed by V3 utilising the Distribution Services;
- (b) distribute Product Description for Product Providers who electronically accept Your Distributor Terms and Conditions in TXA;
- (c) populate Data in TXA setting out the Distributor Terms and Conditions;
- (d) populate Data in TXA setting out the Booking Terms;
- (e) populate Data in TXA setting out the Distributor Description;
- (f) use the reporting and management functionalities as supplied in Your Dashboard; and
- (g) access other services as detailed in Your Application

2.3 You must not represent or hold Yourself out as an agent of V3 or Licensee for any purpose or make any warranty or representation on their behalf at any time.

2.4 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 TXA beyond those contained in the user guides and training material supplied by V3 and You must not incur any liability on behalf of V3 at any time.

3. Populating Data on TXA

3.1 To ensure the orderly conduct and operation of TXA 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 TXA that such offer complies with:

- (a) all relevant laws, regulations and legally required standards, including but not limited to the Australian 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 TXA. You must ensure that Your appointees have been provided with, and read and understood this Agreement before using TXA.

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 TXA nor for any errors or omissions in that Data nor for any reliance by any person on that Data. Any Data populated by V3 at Your request or the request of any other Participant remains Your responsibility or the responsibility of the

requesting Participant. Nothing in this Agreement is to be read or construed as making V3 responsible for the contents of or accuracy or completeness of Data populated by or on behalf of You or any other Participant.

- 3.8 All Data populated and re-populated by You will be set and reset in TXA 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.

4. Accessing e-commerce on TXA

- 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 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 Your Application;
- (b) payment by V3 on the Monthly Payment Date by Direct Credit of all Distributor Fees (if any) 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 (excluding On Account 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 TXA and Distribution Services without prejudice to any other remedies available to V3;
- (e) if required V3 to generate a Recipient Created Tax Invoice in compliance with GST Law;
- (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) TXA 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 TXA or any part including Distribution Services for any reason in circumstances where TXA is available for use.
- 4.6 On each Monthly Accounting Date Booking and Payment Services 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 or Bank accounts You may use.
- 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 where applicable
- (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 clause (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 TXA 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 TXA 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 TXA 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 TXA, and You must ensure that Your appointees have read and understood the terms and conditions of this Agreement, and conditions of any Gateway and Bank accounts maintained by You before using TXA.
- 5.9 V3 may change the date upon which Tax Invoices are electronically sent to You at any time but must give You 30 days' notice of any proposed change
- 6. Commercial Terms**
- 6.1 You agree that some or all (as set out in Your Application) of the following payments will be made in using TXA:
 - (a) Distributor Fee (if any) 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 TXA and Distribution Services at the rate set and listed in Your Application or subject to clause 6.2 as amended and notified to You;
 - (c) Additional Support fees (if any) for use by You of TXA and Distribution Services 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 3.5(c) the rate of Your Distributor Fee will change where You re-set Your Distributor Rate.
- 6.4 Subject to clause **Error! Reference source not found.** 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.
- 6.5 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.
- 6.6 You must not represent Yourself as an agent of V3 for any purpose nor make any warranty or representation on V3's behalf.
- 6.7 You will act as the merchant for all ON Account Bookings made in respect of Tourism Product distributed by You to Your Customers and sourced through TXA.
- 6.8 You must not without prior written consent (which must be obtained on each occasion that consent is intended to be acted upon) make any Product Descriptions or other data sourced from TXA available to any other Party including but limited to other persons or corporations including but not limited to those who distribute travel products.
- 6.9 You agree during the Term to discharge the responsibilities set out in this Agreement including but not limited to the responsibilities set out in Your Application using first class manpower and equipment and in compliance with the terms of this Agreement and all relevant regulatory requirements.
- 7. TXA – Operating Environment**
- 7.1 TXA and Distribution Services are only operable in accordance with the requirements set out in the user documentation issued. V3 cannot guarantee that Your use of TXA and/or Distribution Services 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 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 TXA and/or Distribution Services 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 TXA and/or Distribution Services is unavailable for use or malfunctioning
- 7.4 Except to the extent expressly provided for in this Agreement You are solely responsible at Your cost and expense for the control of the operations of any and all hardware and software.
- 7.5 If You report an error or fault in TXA and/or Distribution Services and ask V3 to repair it and, V3 determines that TXA and/or Distribution Services is not faulty or the fault is associated with Your equipment, telecommunications or network connections rather than TXA and/or Distribution Services, V3 may charge You its then applying its support and maintenance fee and, any reasonable fee to undertake repairs.

7.6 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 its Licensors own all Intellectual Property Rights capable of being owned or held in the TXA and Distribution Services or any part including but not limited to all documentation, training manuals and user guides in any medium supplied in connection with TXA and Distribution Services and that any update, modification, improvement, new release, new version or enhancement to TXA and Distribution Services ('Upgrade') made by any person is equally owned by V3 or V3's Licensors. 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 TXA and Distribution Services must not be used or modified in any way without the prior written consent of V3 and Your use of TXA or Distribution Services 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 8 are intended to survive termination of this Agreement for any reason.

9. Warranties and Indemnities

9.1 Except as otherwise expressly provided the use of TXA and/or Distribution Services is a grant to use software "as is" and without 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 particular purpose or that use of TXA and/or Distribution Services including any manner specifically required under this Agreement shall comply with the applicable laws and relevant regulatory requirements in any place of use.

9.2 V3 does not warrant that the use of the TXA and/or Distribution Services shall be free from unauthorised access or modification, uninterrupted, or error free or that any defect shall be correctable. This disclaimer constitutes an essential part of this Agreement and no use of the TXA and/or Distribution Services is authorised except under this disclaimer.

9.3 You understand that You use TXA and/or Distribution Services entirely at Your own discretion and risk and without limiting the generality of that statement that through the use of TXA and/or Distribution Services You download Product Descriptions, Tourism Product and other data and that You access data populated by Participants including but not limited to Product Providers (together "Material") entirely at Your own discretion and risk and that You download, access, rely upon, 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 TXA and/or Distribution Services or the Material is undertaken entirely at the risk of the party accessing or using it.

9.4 V3 and Licensors will not be liable to You or any third party for any use by You or any third party of TXA and/or Distribution Services, any transaction entered into by You or a third party using TXA and/or Distribution Services 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 TXA and/or Distribution Services.

9.5 V3 and Licensors 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 TXA and/or Distribution Services or arising from or in connection with this Agreement or any act or omission of V3 or Licensors or their respective officers, employees, agents or contractors, even if V3 and Licensors 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 TXA and/or Distribution Services including but not limited to the Data, from any inability to use TXA and/or Distribution Services, from the interruption, suspension, or termination of TXA and/or Distribution Services (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 TXA and/or Distribution Services (including but not limited to Tourism Product) or received through or advertised on any links provided on TXA and/or Distribution Services as well as by reason of any information or advice received through or advertised on TXA and/or Distribution Services or received through or advertised on any links provided on TXA and/or Distribution Services.

9.6 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 V3's election 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;
- (b) the repair of the goods;

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

9.7 You must indemnify and hold harmless V3 and Licensors 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 TXA and/or Distribution Services in any manner that breaches or is in contravention of this Agreement or any relevant law, regulation, or requirement of any relevant regulatory authority in the Territory, and against the claims of Customers, Distributors or other third parties arising from or connected with Your use of TXA and/or Distribution Services or your supply or failure to supply any goods or services 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.

9.8 You also agree to indemnify and hold harmless V3 and Licensors and their respective past, present and future officers, directors, employees or agents and the owners of third party software included in TXA and/or Distribution Services 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 and on receipt of Your message this Agreement will automatically terminate and You will have no further right to access or use TXA 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 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. Use of and Changes to TXA, Dashboards and Distribution Services

11.1 Subject to You complying with all of the terms and conditions of this Agreement V3 agrees:

- (a) to grant You a revocable non-exclusive non transferable End User Licence to access or display the software (TXA and Distribution Services) delivered or made available to You (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 Licensed 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 to distribution of Tourism Products on the terms and conditions set out in this Agreement;
- (b) to provide You access to certain functionality of the Licensed Software subject to You observing the terms and conditions relating to that functionality as separately notified to You.

11.2 You must not at any time:

- (a) sell, licence, sub-licence, assign, rent or transfer the Licensed Software, or any part or Your right to Use the Software, or any part to a third party;
- (b) claim ownership of or assert any right contrary to the interests of V3 or any Licensor of the Licensed Software, or any part who has granted any licence or similar right of use or exploitation to V3 (Licensors);
- (c) copy translate adapt modify alter decompile disassemble or otherwise reverse engineer or create any derivative work of the Software or change any Licensed Software 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 Licensors' proprietary rights in the Licensed Software are protected;
- (d) misuse the Licensed Software in any manner including by giving an unauthorised person Your password details, deliberately or unintentionally disrupting TXA and/or Distribution Services, deliberately or unintentionally initiating or distributing a virus, engaging in spamming or similar activities, using the Licensed Software 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 Licensed Software 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
- (f) access, integrate, connect to or use the Software in any manner that does not comply with the provisions of this Agreement.

11.3 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.

11.4 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 Agreement, and
- (b) access to all relevant data generated by Your use of the Licensed Software for V3's use solely in system tuning and similar technical or network purposes related to the TXA and/or Distribution Services and for no other purpose.

11.5 Where V3 terminates or suspends use of TXA and/or Distribution Services 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.

- 11.6 TXA and/or Distribution Services may be upgraded by V3 at any time without reference to the You.
- 11.7 V3 intends to continually develop the TXA and/ Distribution Services and to issue and release Upgrades. If the Upgrade issued includes amended terms that are commercially disadvantageous to You then notice of the amended terms will be provided to You by V3 at the time of delivery of the Upgrades.
- 11.8 You may decline to utilise 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 software and therefore You must cease all use of TXA and/or Distribution Services within 90 days from the date of delivery of the Upgrade

12. Customer Data

- 12.1 You acknowledge that TXA and/or Distribution Services includes a central data collection and storage system that will collect and store upon generation all information relating to all bookings made by Customers with Product Providers, (but excluding all Banking or credit card details of any person) ("**Customer Data**").
- 12.2 Customer Data may only be accessed and used by V3 (either alone or with its nominees) in accordance with the Privacy Act 1988 (Cth) (Privacy Act), which includes the Australian Privacy Principles.
- 12.3 You must at all times comply with Your own obligations arising under the Privacy Act in relation to the collection, use, disclosure, storage or handling of personal information in Your use of TXA 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.
- 12.4 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

13. Communications

- 13.1 Other than as outlined in this Agreement, 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.
- 13.2 You agree that V3 may use the Your name and logo in promotional material relating to the TXA and current and potential Participants in the TXA provided V3 complies with the branding guidelines provided by You from time to time.
- 13.3 V3 Agrees that You can use the name and logo of TXA in promotional material, provided You comply with the guidelines provided by V3 from time to time which will include:
- (a) under no circumstances will the terms or the logos of TXA and or TXA be used in reference to any fees charged by You;
 - (b) you will not ascribe, communicate or position any fees or charges as caused by or attributable to the connection to the TXA and or OBX;
 - (c) at all times you will refer to the OBX and TXA in a positive manner.

14. GST

- 14.1 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.
- 14.2 Unless otherwise expressly stated, all amounts or considerations payable are exclusive of GST.
- 14.3 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.
- 14.4 Where V3 issues a Recipient Created Tax Invoice the Distributor must not issue a tax invoice for the TXA Supply.

14.5 The Distributor must be registered for GST prior to making a supply and must immediately notify V3 if it ceases to be registered.

14.6 V3 must be registered for GST at all times when it administers TXA and/or Distribution Services and must notify each Participant if it ceases to be registered.

15. Suspension and Termination

15.1 V3 may without liability immediately suspend the operation of TXA and/or Distribution Services for an indefinite period or restrict Your access to TXA and/or Distribution Services 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 TXA 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 TXA and/or Distribution Services;
- (f) doing so is necessary to maintain, repair or restore any part of TXA and/or Distribution Services or any telecommunication or network service used to supply services to TXA or for other operational reasons, or
- (g) while investigating any breach on Your part of this Agreement.

15.2 Either Party may terminate this Agreement immediately by notice to the other:

- (a) if a Party has breached this Agreement and in the other Parties' reasonable opinion that breach is not capable of remedy;
- (b) if a Party has breached this Agreement and where the breach is capable of remedy the Party has failed after notification to remedy the breach within 14 days of receiving email notice from the Party of that breach;
- (c) if a provisional liquidator, liquidator, receiver or receiver and manager or any other administrator of a Parties business or assets is appointed or if a Party enters into any composition or arrangement with their creditors; or
- (d) if a Party is a natural person in the event of Your death.

15.3 Where this Agreement is terminated You remain liable for payment of all Fees calculated to the next Monthly Accounting Date after the termination date.

15.4 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 TXA and/or Distribution Services and You will have no claim against any person including but not limited to V3 and its respective directors, officers and representatives arising from the termination of this Agreement.

16. Assignment and sub-contracting

16.1 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.

16.2 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.

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

17. Applicable Law

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

18. Notices

18.1 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.

EXECUTED by the parties as an Agreement.

SIGNED for and on behalf of
V3 by its duly authorised
representative in the presence of:

Signature of witness

Signature of duly authorised representative

Name of Witness

Name

Date:

Title

SIGNED for and on behalf of

[Full Legal Name of Company]

(_____))

[ABN or ACN]

by its duly authorised representative in the presence of:

Signature of witness

Signature of duly authorised representative

Name of Witness

Name

Date:

Title