

## Terms and Conditions in relation to the supply of Hotel Perfect

### 1 Definitions, interpretation and scope

1.1 In this agreement, unless otherwise provided:

<b>Acceptance or Accepted</b>	means in accordance with clause 8;
<b>Agreement</b>	means the terms and conditions in this Agreement (including the schedules) of this agreement and the Proposal;
<b>Business Day</b>	means any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;
<b>Charges</b>	means any agreed or reasonable charges (in addition to the Licence Fee and Support Fee) for training and initial set up and any other additional Services which will be calculated (unless otherwise agreed) in accordance with the Supplier's current standard rates notified to the Client from time to time;
<b>Commencement Date</b>	means whichever is the earlier of the dates set out in the Proposal (or Subscription Proposal) or the go live date;
<b>Client</b>	means a person or legal entity to whom the Software and the Services are supplied pursuant to the terms and conditions of this Agreement;
<b>Hardware</b>	computer equipment, hardware and consumables set out in the Proposal;
<b>Hardware Costs</b>	the costs for the Hardware set out in the Proposal;
<b>Hotel Perfect Software</b>	means the package of software programs provided by the Supplier set out in the Proposal and/or supplied after the Commencement Date;
<b>Initial Term</b>	means the period set out in the Proposal (or Subscription Proposal or Subscription Agreement) or if not specified means 12 months from the Commencement Date;
<b>Intellectual Property Rights</b>	means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

<b>Licence</b>	means the licence granted by the Supplier to the Client in respect of the Hotel Perfect Software, any Third Party Licence, any sub – licence of Third Party Software granted by the Supplier to the Client and/or any Third Party Licence pursuant to the terms of this Agreement;
<b>Licence Fee</b>	means the fees due by the Client to the Supplier in respect of the Licence for the Hotel Perfect Software and Third Party Software as set out in the Proposal;
<b>Licence Period</b>	means the duration of the Licence pursuant to this Agreement;
<b>Location</b>	means the main trading address of the Client;
<b>Licensed Users</b>	means the number of users as agreed from time to time in writing between the Parties;
<b>Modifications</b>	means any correction, modification, enhancement, update or other change made by the Supplier to the Software as part of providing the Services;
<b>Platform</b>	means the Supplier’s underlying Technology (including any software, hardware or other platform technology or software) used to provide the Software.
<b>Proposal</b>	means the proposal (or where relevant the Subscription Proposal) sent by the Supplier in relation to Software, Training, Hardware or Services;
<b>Renewal Term</b>	means the period set out in the Proposal (or Subscription Proposal or Subscription Agreement) or if not specified means the 12 month period after the expiry of the Initial Term and each subsequent 12 month period;
<b>Representatives</b>	means the employees, agents, contractors or representatives of the Client;
<b>Services</b>	means the provision of the Support Services, Training and any other services under this Agreement;
<b>Software</b>	means the Hotel Perfect Software and the Third Party Software package of computer programs and documentation provided by or made generally available to the Client in connection with the Software;
<b>Subscription Proposal</b>	means (if relevant) the subscription proposal for certain Software to be supplied as a service;

<b>Supplier</b>	means Databasics Hospitality Systems Limited (crn 03727106) whose registered office is Tremough Innovation Centre, Penryn, Cornwall TR10 9TA;
<b>Support Fee</b>	means the fees due by the Client to the Supplier in respect of the Support Services as set out in the Proposal;
<b>Support Services</b>	means the provision of the support services pursuant to this agreement;
<b>Third Party Licence</b>	means any licence granted by a Third Party to the Supplier or the Client in relation to Third Party Software;
<b>Third Party Licensor</b>	means any licensor of Third Party Software;
<b>Third Party Software</b>	means any software that is supplied to the Supplier and incorporated into the Hotel Perfect Software or software that the Supplier provides to the Client in addition to Hotel Perfect as agent partner or reseller as set out in the Proposal and/or supplied after the Commencement Date;
<b>Training</b>	means any training that the Supplier specifies in the Proposal or otherwise provided by the Supplier;
<b>Use</b>	means accessing the Software or any part of its functionality or accessing data that is generated by the Software;

1.2 Unless the context otherwise requires:

1.2.1 each gender includes the others;

1.2.2 the singular includes the plural and vice versa;

1.2.3 references to clauses and to schedules mean to clauses and schedules of this Agreement;

1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations; and

1.2.5 the words 'including' or 'includes' means including or includes without limitation.

## **2 Formation of Agreement**

2.1 Proposals issued by the Supplier are valid for the number of Business Days from issue as set out in the Proposal. They do not constitute an offer to sell or supply. If the Client wishes to purchase Software or Services it will need to place an order.

- 2.2 Any orders submitted by the Client are offers that are not binding until accepted by the Supplier by way of sending a Proposal acceptance to the Client or commencement of the supply of Software or Services if earlier.
- 2.3 Marketing and other descriptive matter relating to Software or Services are illustrative only and do not form part of the contract.
- 2.4 These terms and conditions (including the Proposal) and any Third Party Licences alone will apply to and will form the Agreement for the supply of the Software and Services by the Supplier to the Client. They supersede any previously issued terms and conditions of supply.
- 2.5 No terms or conditions endorsed on, delivered with, or contained in the Client's purchase order, confirmation of order, specification or other document will form part of the contract.
- 2.6 No variation will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.

### **3 Grant of licence**

- 3.1 Subject to the payment of the applicable Licence Fee, the Supplier grants to the Client a non exclusive and non transferable limited Licence to use the Software for the Licence Period at the Location in accordance with the terms of this Agreement.
- 3.2 Subject to payment of the applicable Licence Fee and where appropriate the Supplier grants to the Client a Licence of the Third Party Software acting as duly authorised agent, partner or reseller for the Licence Period subject to the relevant Third Party Licence pursuant to the terms of this Agreement.
- 3.3 The Licences set out in clause 3.1 and 3.2 will commence on the Commencement Date and will continue for the Initial Term and automatically renew for the Renewal Term unless or until terminated under clause 15 or any other clause of this Agreement or in relation to any Third Party Software any relevant Third Party Licensor's licence.

### **4 Supply of Hardware**

- 4.1 The Client appoints the Supplier as its agent to acquire the Hardware set out in the Proposal.
- 4.2 The Client acknowledges that the Supplier is the first point of contact in the event that there is a problem with any Hardware but that the Supplier reserves the right to make Charges for Hardware repair Services and/or to request that the Client deals directly with the manufacturer in the event that the issue might be better dealt with by way of a warranty claim and if the Supplier so instructs then the Client hereby agrees to do so and acknowledges that the Supplier is acting as agent and without liability.

### **5 Provision of Services**

- 5.1 Subject to payment of the applicable Support Fee, the Supplier shall provide the Support Services to the Client for the Licence Period in accordance with the terms set out in Schedule 2 and as detailed in the Proposal pursuant to the terms of this Agreement.

- 5.2 The Support Services will commence on the Commencement Date and will continue for the Initial Term and automatically renew for the Renewal Term unless or until terminated under clause 15 or any other clause of this Agreement.
- 5.3 The Supplier shall if requested and subject to payment of the Charges provide additional services from time to time.
- 5.4 The Client acknowledges that the Supplier is the first point of contact in the event that there is a problem with any Third Party Software but that the Supplier reserves the right to make Charges for any resolution of problems and/or to request that the Client deals directly with the Third Party Licensor and if the Supplier so instructs then the Client hereby agrees to do so.

## **6 Training**

- 6.1 Subject to the payment of any Charges the Supplier shall provide the Training to the Client in accordance with the terms set out in the Proposal.
- 6.2 In default of any other agreement in the Proposal the Training will be provided on the basis of no more than 6 hours in any one day and a maximum of 4 individuals in any training group and the Charges for the trainer will be on the rates charged from time to time by the Supplier.

## **7 Fees and payment**

- 7.1 The Client shall pay to the Supplier the Licence Fee on or before the Commencement Date notwithstanding any Modifications or additional modules being supplied after the Commencement Date and shall pay the Support Fee and any Charges which become due and payable pursuant to this Agreement within 30 days of the date of the Supplier's invoice in each instance, or, if earlier, in the amounts and at the times specified in the Proposal or on the applicable invoice.
- 7.2 The Licence Fee, Support Fee and Charges are exclusive of VAT and any other sales tax or duty which, if applicable, shall be paid additionally by the Client at the then prevailing rate.
- 7.3 Where appropriate and when requested by the Supplier or a Third Party Licensor the Client shall pay any fees or charges direct to the Third Party Licensor.
- 7.4 In addition to the provisions of clause 7.1, the Client shall either provide or reimburse the Supplier for any reasonable and demonstrable accommodation and subsistence expenses and reimburse any reasonable travel expenses incurred in the course of providing the Services.
- 7.5 If any sum due to the Supplier under the Agreement is in arrears for more than 10 days after the due date and notification thereof, the Supplier may without prejudice to any other right or remedy:
- 7.5.1 charge interest on such overdue sum on a day-to-day basis from the original due date until paid in full at rate of 3% above Barclays Bank Plc's base lending rate in force from time to time per year pro rata in arrears; and/or

- 7.5.2 suspend (without liability on the Supplier's part) the provision of the Platform, Software, Support Services and/or other Services on immediate prior written notice.
- 7.6 The Supplier shall have the right to increase the Licence Fee with immediate effect at any time in order to pass on any increase by a supplier of Third Party Software.
- 7.7 The Supplier shall have the right to increase the Licence Fee, the Support Fee and/or the Charges by an amount no more than the increase of the RPI in any 12 month period.
- 7.8 In addition to and independently of the provisions of clause 7.7, the Supplier shall have the right to increase the Support Fee by giving the Client not less than 30 days' prior written notice of such increase provided always that the Client shall be entitled to give the equivalent period of notice to terminate the provision of the Support Services for which the increased Support Fee is being incurred but for the avoidance of doubt this does not give the right to terminate any other aspect of this Agreement.
- 7.9 Other than in relation to termination of Support Services and the Support Fee pursuant to clause 7.8, all amounts paid in advance are non refundable notwithstanding the date of termination.

## **8 Installation and Acceptance**

- 8.1 The Client irrevocably and unconditionally appoints the Supplier as its agent and gives the requisite authority to the Supplier for the purpose of ordering and accepting all Hardware and accepting and installing all Software.
- 8.2 The Hardware and the Software shall be deemed accepted by the Client upon installation of the Software.
- 8.3 The Supplier shall use all reasonable endeavours to assemble and configure the Hardware and install the Software for the Client at the Location by the date specified in the Order Confirmation or as soon thereafter as is possible but time shall not be of the essence.
- 8.4 Where payment of any part of the Licence Fee or any other Charges is due before delivery or installation of the Software or Hardware or performance of any of the Services, the Supplier may withhold delivery, installation or performance until such payment has been received.
- 8.5 If the Supplier is delayed from performing its obligations by reason of any fault or negligence of the Client, then the Client shall pay to the Supplier all reasonable and demonstrable costs attributable to such delay.
- 8.6 The Client shall provide accommodation and meals without charge to the Supplier's representatives, agents or contractors for the purpose of attendance at the Location to install any Software or Hardware pursuant to the terms of this agreement. If the Client is unable to provide accommodation and meals then the Client shall reimburse the costs reasonably incurred by the Supplier's representatives or contractors for accommodation and meals for installation. The Client shall also pay for all reasonable travel expenses.

## **9 Permitted use**

- 9.1 The Client's Licensed Users may use the Software only at the Location for its own internal purposes. The use of the Software at different locations requires the prior written consent of the Supplier.
- 9.2 The Client shall not (whether on behalf of, or for the benefit of, itself or a third party) or permit or allow any third party:
- 9.2.1 to distribute or resell the Software;
  - 9.2.2 to use or attempt to use the Software contrary to any restriction stated in the Agreement or unless otherwise expressly permitted by the Agreement.
- 9.3 If the Software cannot be used at the Location because the Location becomes temporarily inoperable, then the Client may access the Platform and use the Software at a different location on a temporary basis provided any PC used to access the Platform is owned by and under the direct control of the Client. The Client shall promptly notify the Supplier of any such temporary location and its commencement and cessation.
- 9.4 The Client shall ensure that its Licensed Users and Representatives:
- 9.4.1 are aware of the obligations or restrictions imposed on the Client under the Agreement; and
  - 9.4.2 shall use its reasonable endeavours to ensure that they comply with the provisions of the Agreement.
- 9.5 The Client undertakes to be responsible and liable for all acts, omissions, fault, default or negligence of the Licensed Users, or its Representatives or by an authorised third party arising in respect of, or in connection with, the obligations or restrictions imposed on the Client pursuant to the Agreement, to the extent that it would be liable had such act, omission, fault, default or negligence been caused by the Client under this Agreement, and to indemnify the Supplier in respect of all losses, damages or expenses incurred by the Supplier as a result of any use of the Software in breach of this Agreement.
- 9.6 The Client acknowledges that the Supplier is not responsible for the Client's connectivity or broadband speeds and that in the event that the Client has a slow broadband connection then the Client may suffer from poor performance of the Software and/or it may be difficult for the Supplier to provide the Software and the Services.
- 9.7 The Client shall ensure that the Client has a dedicated broadband connection that is not shared with its guests.

## **10 Restrictions on use**

- 10.1 Except to the extent required to be permitted by applicable law or as expressly allowed in this Agreement, the Client shall not:

- 10.1.1 translate, adapt, disassemble, reverse engineer, decompile or copy the whole or any part of the Platform or Software, nor arrange or create derivative works based on the Software;
- 10.1.2 make for any purpose including (without limitation) error correction, any Modifications, additions or enhancements to the Software;
- 10.1.3 permit the whole or any part of the Software to be combined or merged with or become incorporated in any other program;
- 10.1.4 assign, distribute, licence, sell, charge or otherwise deal in or encumber the Software;
- 10.1.5 use the Software on behalf of or make it available to any third party nor allow or permit a third party to do so; or
- 10.1.6 remove or alter any copyright or other proprietary notice on any of the Software.

## **11 Software operation**

- 11.1 The Client acknowledges that:
  - 11.1.1 the Supplier is not and cannot be aware of the extent of any potential loss or damage to the Client resulting from any failure of the Software to conform to the Order Confirmation or any failure by the Supplier to discharge its obligations under the Agreement;
  - 11.1.2 the Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce or maintain economically (if at all) computer programs known to be entirely error free or which operate in uninterrupted manner.
- 11.2 The Supplier does not warrant that the operation of the Software shall be uninterrupted or error-free.
- 11.3 The Client acknowledges that the Software has not been prepared to meet the Client's individual requirements and that it is the Client's responsibility to ensure that the facilities and functions of the Software described in the Order Confirmation meet the Client's requirements.
- 11.4 To the extent permitted by applicable law, the Supplier disclaims all other warranties and conditions as to the Software and the Services including but not limited to implied warranties relating to quality, fitness for a particular purpose, or ability to achieve a particular result.
- 11.5 Without prejudice to the Client's right to terminate this Agreement for material breach the Client's sole remedy against the Supplier for any failure on the part of the Software shall be to require the Supplier to use reasonable endeavours to correct such failure.
- 11.6 The Supplier will not be liable or obligated to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) by persons other than Supplier without its express prior written consent.

- 11.7 The Supplier will take reasonable care in inputting any data provided by the Client but it is the Client's responsibility in all instances to verify any such data input.
- 11.8 Certain Software programs that are hosted by the Supplier require maintenance from time to time and although the Supplier will try to give reasonable notice of any downtime it does not warrant an uninterrupted service and accepts no liability for any downtime.
- 11.9 Updates are provided free of charge but in the event that a new version is released then the Supplier reserves the right to charge the Client for the new version and any installation at the Supplier's rates that are in force at that time.

## **12 Limitation of liability**

- 12.1 Nothing in the Agreement shall exclude or restrict either Party's liability for:
- 12.1.1 fraud;
  - 12.1.2 death or personal injury resulting from the negligence of a Party or its employees while acting in the course of their employment; or
  - 12.1.3 any other liability that cannot be limited or excluded by law.
- 12.2 All warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this Agreement
- 12.3 In the event that the Client does not request Support Services or Training then the Client accepts that it uses the Software at its own risk.
- 12.4 The Supplier shall have no liability for any customer or other data loss stored within the Software suffered by the Client (and the Client acknowledges its obligation to back up data pursuant to clause 14.1.7 of this Agreement where it is the recipient of "on premises" Software) save for where in the case of Software that is hosted by the Supplier pursuant to Schedule 3 such loss arises conclusively from negligence on the part of the Supplier and then subject to the exclusions and limitations set out in clause 12.8 .
- 12.5 The Supplier shall have no liability for any failure of the Software due to third party maintenance or use with other software programs.
- 12.6 The Supplier shall have no liability to the Client in the event of the failure of: (i) any third party sub-contractor or such third party's equipment or servers used for hosting the Platform or any elements of the Software; or (ii) cables, networks or broadband connection.
- 12.7 A list of compatible operating systems for the relevant version of any Software is available from the Supplier and the Supplier accepts no responsibility for any failure of Software on an operating system that is not approved as compatible for the relevant version.
- 12.8 Subject to clause 12.1 and 12.2, the Supplier's liability to the Client in contract, tort (including negligence), misrepresentation (whether innocent or negligent) breach of statutory duty or

otherwise arising out of or in connection with the Software, and the Services, or other performance or non-performance of the Supplier's obligations under the Agreement shall:

12.8.1 not extend to any:

- (a) loss of profits;
- (b) loss of bookings;
- (c) loss of revenue;
- (d) loss of business;
- (e) loss of goodwill;
- (f) loss of contracts;
- (g) loss of anticipated savings;
- (h) loss of production;
- (i) corruption to data; or
- (j) any other special, indirect or consequential loss or damage whatsoever, whether sustained by the Client or any other person and even if foreseeable or if the Supplier has been advised of their possibility;

12.8.2 be limited to the aggregate of all Licence Fees, Support Fees and Charges paid by the Client under the Agreement for the preceding twelve months in respect of any one incident or any series of connected incidents;

12.9 All advice and recommendations given by the Supplier and its representatives shall be made in good faith and on the basis of information provided to the Supplier by the Client. Where a piece of advice or recommendation does not form part of the Services, that advice or recommendation shall in no circumstances constitute a warranty by the Supplier as to the accuracy of such advice or recommendation and the Supplier shall not in any event be liable for any loss or damage that may be suffered whether directly or indirectly as a result of the Client acting upon such advice or recommendation.

12.10 The Client shall fully indemnify and keep indemnified the Supplier against any loss, damages, costs or expenses incurred as the result of the Supplier being in breach of the terms of this Agreement including without limitation in relation to any breach of any Third Party Licence.

### **13 Proprietary rights**

13.1 The Client shall not acquire in any way any title, rights of ownership, Intellectual Property Rights of whatever nature in the Platform or the Software or in any copies of it. All such interests and rights are and shall remain the exclusive and absolute property of the Supplier or the Supplier's Licensor as applicable.

13.2 The Intellectual Proprietary Rights and all other proprietary rights in any materials developed under this Agreement including any Modifications in connection with the Services will remain vested in and be the absolute property of the Supplier or the Supplier's Licensor. The Client will

do all such acts and things as the Supplier may reasonably require for the purpose of preserving or perfecting such vesting.

13.3 Modifications and Updates supplied for use as part of the Software will be deemed to form part of the Software and be subject to the Licence.

13.4 The Client agrees not to conceal, modify, remove, or destroy in any way any proprietary markings of the Supplier or the Supplier's Licensor on or in the Software including without limitation any copyright notices or confidential legends placed upon or contained within the Software or any related materials and documentation. The Client shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

13.5 The Client acknowledges and understands that the Software contains confidential and proprietary information and the Client shall:

13.5.1 not provide or otherwise make any of the Software available for any reason to any other person except as permitted by the Agreement or otherwise in accordance with express written authority signed by an authorised signatory of the Supplier;

13.5.2 keep confidential the Software and limit access to the Licensed Users;

13.5.3 use its reasonable endeavours to ensure that all relevant Representatives are advised that the Software constitutes confidential and proprietary information of the Supplier and/or the Third Party Licensors and that all Intellectual Property Rights therein are the property of the Supplier and/or the Supplier's Licensor and that they owe a duty of confidentiality to the Supplier and/or the Supplier's Licensor.

13.6 The Client shall effect and maintain adequate security measures to safeguard the Platform and the Software from unauthorised access, use or copying by any person.

13.7 The Client shall notify the Supplier as soon as reasonably practicable if the Client becomes aware of any unauthorised access to, use or copying of any part of the Platform or Software by any person.

#### **14 Client's obligation**

14.1 The Client undertakes to:

14.1.1 provide the Supplier with all necessary information, facilities, support and, services reasonably required by the Supplier for the performance of its obligations to the Client under the Agreement including without limitation at no charge to the Supplier adequate office accommodation, a secure work space, telephone services, access to the applicable computers, software, hardware and systems of the Client at the Client's premises, and full access to the areas in which the Services are to be performed at the Client's premises;

14.1.2 take all reasonable steps to ensure the health and safety of the Supplier's representatives while they are at the Client's premises;

- 14.1.3 ensure that the computer and operating system and any other hardware or software which the Supplier is asked to use or modify for the purpose of the Services are either the property of the Client or are legally licensed to the Client;
- 14.1.4 provide or arrange at its expense for any specialist training in the Client's methods, business practices, applications or products which it is required to reasonably undertake by the Supplier or which the Supplier considers reasonably necessary for the proper performance of its obligations under the Agreement;
- 14.1.5 ensure that the Software is used in a proper manner by the Licensed Users only;
- 14.1.6 not request or permit or require anyone other than the Supplier to provide any Support Service in respect of the Software;
- 14.1.7 in the case of "on premises" Software, back up all data to a remote site; and
- 14.1.8 allow the Supplier, at reasonable times during Working Hours, to check on the use by the Client of the Software and all materials and information belonging to or under the control of the Supplier to which the Client is given access or receives directly or indirectly as a result of the operation of the Agreement. The Client acknowledges and agrees that the Supplier needs to and shall be entitled to remotely access the Client's systems to provide the Services and the Software on an ongoing basis.

## **15 Termination**

- 15.1 The Client may, subject to any Third Party Licence terms, terminate the licence for the Software by giving the Supplier at least 90 days' written notice to expire at the end of the Initial Term or any Renewal Term.
- 15.2 The Supplier may terminate the Licence for some or all of the Software (including the Modules) and/or the Support Services and or this Agreement (including a Subscription Agreement) by giving at least 90 days' written notice to expire at the end of the Initial Term or any Renewal Term.
- 15.3 If, pursuant to clause 15.1, the Client wishes to terminate the Licence for some and not all of the Software then this is subject to the Supplier being able to comply with this request.
- 15.4 If the Client wishes to terminate the Licence or the Supplier terminates the Licence pursuant to the provisions of clauses 15.6 or 15.7 prior to the end of the Initial Term the Client shall be liable to pay the Licence Fee for the duration of the Initial Term.
- 15.5 The Client may terminate the provision of Support Services by giving the Supplier written notice to expire at the end of the next three monthly invoice period following the invoice period during which the notice is served.
- 15.6 Either Party may (without prejudice to its other rights and to the Supplier's rights in clause 15.7) terminate the Agreement at any time forthwith by notice in writing to the other if:

- 15.6.1 a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of the other Party's assets or undertaking or resolution or petition to wind up the other Party is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order; or
- 15.6.2 the other Party defaults in due performance or observance of any of its material obligations under the Agreement, and (in the case of a remedial breach) fails to remedy the breach within 30 days of receipt of a written notice to do so;
- 15.7 The Supplier may terminate this Agreement at any time forthwith by notice in writing to the Client if the Client, Licensed Users or Representatives:
- 15.7.1 infringes the Supplier's or any Third Party Licensor's Intellectual Property Rights and/or is in breach of clause 10 or the terms of the Software licence as set out in Schedule 1;
- 15.7.2 The Client fails to make payment when due on three or more occasions in any six month period; or
- 15.7.3 The Client fails to make any payment when due and such non payment has not been remedied within 30 days.
- 15.8 Termination of this Agreement for any reason, shall be without prejudice to the rights and liabilities of either Party which may have accrued on or at any time up to the date of termination nor affect the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 15.9 Upon termination of this Agreement for any reason then the Licence granted under clause 3.1 will terminate and the Client shall forthwith cease accessing the Platform and using the Software and shall remove or destroy forthwith all copies of the Software or, at the Supplier's request, return all copies of the same to the Supplier and the Supplier shall upon request and subject to payment of reasonable Charges assist the Client with migration or data transfer.

## **16 Force Majeure**

- 16.1 **Force Majeure** means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.
- 16.2 A Party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 16.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 16.2.2 uses reasonable endeavours to minimise the effects of that event.
- 16.3 If, due to Force Majeure, a Party:

16.3.1 is unable to perform a material obligation; or

16.3.2 is delayed in or prevented from performing its obligations for a continuous period of more than 90 Business Days;

the Parties will, within 30 Business Days, renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.

## **17 Confidentiality/Data processing**

17.1 Each Party will treat as confidential all information obtained from the other Party under or in connection with this Agreement which is designated as confidential by the other Party or which is by its nature clearly confidential including but not limited to, the Software and the Services. The recipient Party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information without the other Party's prior written consent. This clause will not extend to information which:

17.1.1 was in the possession of the recipient Party (with full right to disclose) before receiving it;

17.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this clause);

17.1.3 is independently developed by the recipient Party without access to or use of such information;

17.1.4 is required to be disclosed by law or regulatory authority.

17.2 Each Party will ensure that all persons to whom it discloses any confidential information of the other Party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other Party. These obligations of confidentiality will survive any termination of this Agreement.

17.3 The parties agree that the Supplier shall process the Client's data in accordance with the provisions of schedule 4 (Data Processing Schedule).

## **18 Assignment**

18.1 In the event of a transfer of the Licensee's business, and subject to any Third Party Licence Terms, the Client may transfer the Licence solely in relation to the Hotel Perfect Software to the third party purchaser of the Client's business. The Client shall not otherwise be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without the Supplier's prior written consent.

18.2 The Supplier shall be entitled to assign or sub-contract its rights and obligations under this Agreement to any person including without limitation the sub-contracting of hosting and provision of the Platform.

## **19 Restrictive Covenant**

- 19.1 The Client covenants with the Supplier that for the duration of the term of this agreement and for the period of 24 months thereafter, and the Client shall procure that all Representatives and anybody providing services to the Client, will not directly or indirectly engage or employ solicit or contact any employee, agent or contractor of the Supplier with a view to their engagement or employment by the Client or by any third party operating a business developing and/or providing software, IT, websites, or related services or support.
- 19.2 The Client agrees and accepts that if the Client and/or its Representatives are in breach of the provisions of clause 19.1 then the Client shall pay to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, agent or contractor or, if higher, 20% of the annual remuneration (inclusive of all benefits and bonuses paid or to be paid in relation to that period) to be paid by the Client to that employee, agent or contractor for the first 12 months.
- 19.3 The Client acknowledges and agrees that the duration application and extent of the provisions contained in clauses 19.1 and 19.2 are no greater than is reasonable and necessary for the protection of the interests of the Supplier but that, if a covenant is held to be illegal, invalid or unenforceable but would be legal, valid or enforceable if some part were deleted or the period or extent of the application were reduced, then the covenant shall apply with such modification as may be necessary to make it legal, valid and enforceable.
- 19.4 The Client shall, on a full indemnity basis, pay all of the legal and other costs incurred by the Supplier in enforcing any of the provisions of clauses 19.1 and 19.2.

## **20 Severability**

If any part, term or provision of the Agreement not being of a fundamental nature be held illegal or unenforceable the validity or enforceability of the remainder of the contract shall not be affected.

## **21 Entire agreement**

- 21.1 This Agreement including any Third Party Licences, is the entire agreement between the Parties in relation to its subject matter. To the fullest extent permitted by law no other terms apply.
- 21.2 Without prejudice to clause 21.1, or to liability for fraudulent misrepresentation, each Party acknowledges that it has not relied on any statement or representation given by or for the other in entering into this Agreement.

## **22 No waiver**

Unless otherwise agreed in writing, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

## **23 Notice**

Notices under this Agreement will be in writing and sent to the Party's address in the Proposal above. They may be given, and will be deemed received:

- 23.1 by first-class post: two Business Days after posting;
- 23.2 by airmail: seven Business Days after posting;
- 23.3 by hand: on delivery;
- 23.4 by facsimile: on receipt of a successful transmission report from the correct number;
- 23.5 by email: on receipt of a read return mail.

## **24 Variation**

The Supplier may make reasonable amendments to this Agreement from time to time but the Client may only amend this Agreement with the written agreement of the Supplier.

## **25 Relationship of the parties**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided in this Agreement.

## **26 Rights of third parties**

A person who is not a Party to this Agreement has no right to benefit or to enforce any term of this Agreement.

## **27 Advertising**

The Client grants permission and a licence to the Supplier for the Supplier to use the Customer's name and any trademark/logo of the Client as part of the Supplier's advertising materials including without limitation on the Supplier's website.

## **28 Governing law**

The Agreement shall be governed by and construed and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.

## Schedule 1

### Licence Agreement for Hotel Perfect Software

#### END USER SOFTWARE LICENCE AGREEMENT

*THIS IS A SOFTWARE LICENCE AGREEMENT BETWEEN DATABASICS HOSPITALITY SYSTEMS LIMITED (registered in England and Wales with number 03727106 whose registered office is at Tremough Innovation Centre, Penryn, Cornwall, TR10 9TA) (the 'LICENSOR') AND YOU.*

PLEASE READ THIS LICENCE AGREEMENT CAREFULLY BEFORE USING THIS SOFTWARE. IF YOU USE THIS SOFTWARE THEN YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENCE AGREEMENT.

#### 1. Licence

Upon accepting the terms of this agreement, the Licensor grants you, the licensee, ("you") a non-exclusive, non-transferable limited licence to use the accompanying software, including (if applicable) electronic documentation and associated material (the "Software") strictly in accordance with the terms and conditions of this licence agreement.

This licence agreement enables you to use the Software on the number of computers for which you have a licence. You are not permitted to copy or transfer the Software to any additional computer or hard drive save that you may make one copy of the Software for back-up purposes.

#### 2. Payment

The licence fee payable is as stipulated by the Licensor and is non refundable.

#### 3. Restrictions

You are not permitted to copy the Software otherwise than for use of the Software for normal operation in accordance with this licence agreement. You shall not (save as to the extent allowed by law) disassemble, decompile or reverse engineer the Software, nor translate, adapt, modify, lease, rent, loan, redistribute, sub-lease, sub-license or create derivative works from the Software. You must ensure that the copyright notice of Licensor is duplicated as it appears in or on the Software on all authorised copies.

This licence agreement does not entitle you to use any other version of the Software unless you have entered into a separate licence agreement for that version.

#### 4. Disclaimer

The Software is provided on an "as is" basis and all warranties express or implied are excluded to the fullest extent permitted by law. The Licensor does not warrant that the Software will be error-free or that any such errors will be corrected and you are solely responsible for all costs and expenses associated with rectification, repair or damage caused by such errors. The Licensor does not warrant that: (i) the Software will meet your requirements; (ii) your use of the software will be uninterrupted, timely, secure, or free from error; or (iii) any information obtained by you as a result of your use of the Software will be accurate or reliable.

No advice or information, whether oral or written, obtained by you from the Licensor shall create any warranty not expressly stated in this licence agreement.

## **5. Updates and Defects**

The Licensor grants you a licence of the Software in its current version only. New features are added at the sole discretion of the Licensor. While minor updates may be made available free of charge as part of the Support Services, nothing in this licence agreement guarantees such updates and the Licensor reserves the right to charge for major updates or new versions.

Nothing in this agreement constitutes a promise about future features or versions of the Software.

In the event that: (i) the Software does not comply with the express terms of this licence agreement; (ii) the usability of the Software is affected severely and sustainably due to fault on the Suppliers part; or (iii) any bug or severe anomaly could not be detected at the time of install then the Licensor shall use its reasonable endeavours to fix such fault but no warranty or guarantee is given.

You are responsible for checking that your operating system and any software that you use on that operating system will not affect the functionality of the Software.

While the Licensor and its staff will always do their best to assist, nothing in this licence agreement constitutes a promise of support unless you have entered an agreement with the Licensor for the supply of support services.

## **6. General**

This Licence together with our terms and conditions and Proposal comprise the entire agreement between the Licensor and you.

The Licensor shall at all times remain the sole owner of all intellectual property and other proprietary rights subsisting in or used in connection with the Software or created by unlawful use of the Software. You shall be the owner of all customer data and database rights.

The Software, including all components (sound and graphics), whether on disk, in read-only memory, or on any other media, and the related documentation are licensed to you by the Licensor. You own the disk on which the Software is recorded (to the extent that a disk is supplied) but the Licensor retains the title to the Software and related documentation.

The Licensor may terminate this licence agreement immediately at any time if you are in breach of any of the terms and conditions of this licence agreement.

You shall destroy the Software and all upgrades or copies and any related materials in your possession promptly upon termination of this licence agreement or discontinuance of the licence granted for any reason whatsoever.

This agreement shall be construed in accordance with and governed by English law and subject to the non-exclusive jurisdiction of the English courts.

**Schedule 2**  
**Service Level Agreement**

The Supplier shall only be obliged to provide Support Services if specified in the Proposal.

Subject to receipt of the applicable Support Fee, the Supplier shall provide the Support Services to the Client in relation to the Software during the Initial Term and each subsequent Renewal Term unless or until the provision of Support Services is terminated in accordance with the terms of this Agreement.

The Supplier will use its reasonable endeavours to provide Support Services and meet any response times and target resolution times quoted for commencement or completion of any part of the Support Services but time will not be of the essence.

Provision of the Support Services does not imply any guarantee that the Supplier will be successful in correcting errors or that the Supplier will be able to assist the Client in achieving any results from the Software which are not technically feasible.

To enable the Supplier to provide the Support Services the Client shall:

- notify the Supplier as soon as is reasonably practicable on becoming aware of an error in the Software or of any proposed material change to the operating system or of any other circumstances which might materially affect the operation of the Software;
- use the Software in accordance with the Supplier's reasonable directions as to the operation and protection of the Software and comply at all times with the terms of this Agreement;
- ensure that all Licensed Users are properly trained in respect of such use;
- ensure that any remote access, if and as specified by the Supplier, is installed and operated in conjunction with the Client's operating system by the Client at its own expense, for the purpose of assisting the Supplier in its provision of the Support Services; and
- ensure that all applications, data, interfaces, tools, software, hardware and equipment within its control is used in conjunction with the Software and is properly maintained.

If the Client fails to comply with any of the provisions set out in the terms of this Agreement, then the Supplier may on written notice requiring the Client to remedy the same within ten Business Days suspend the provision of Support Services after such notice period until such failure has been remedied.

The Supplier shall be under no obligation to provide services in relation to the Software additional to the Support Services, or which do not qualify under or are excluded from the Support Services but if it does so at the Client's request, the Client shall pay the Supplier the Charges and expenses (if any) in accordance with the terms of this Agreement.

If a reported problem is found upon investigation to be due to incorrect operation or unauthorised changes of the Software, the Client is liable to the Supplier for the Charges and expenses (if any) for the Services in connection with that investigation.

The Supplier agrees to comply with the security standards or policies of the Client notified to the Supplier in writing.

The Client may contact the Supplier via the email address and telephone numbers provided in the relevant Order confirmation.

**Schedule 3**  
**Subscription Software Supplementary Terms**

**1 Definitions, interpretation and scope**

1.1 In this agreement, unless otherwise provided:

<b>General Terms and Conditions</b>	means the Supplier's general terms and conditions and any support level agreements, Third Party Licence or software licence;
<b>Initial Term</b>	means the initial term set out in the Proposal or if none is stated then as set out in clause 7;
<b>Licensed Users</b>	means three or other number specified in the Subscription Proposal;
<b>Modules</b>	means the Hotel Perfect, Online Bookings and/or Channel Management modules or other modules set out in the Subscription Proposal and references to Software in the General Terms and Conditions shall include modules;
<b>Renewal Term</b>	means the renewal term set out in the Proposal or if none is stated then as set out in clause 7;
<b>Subscription Agreement</b>	means the terms and conditions in this agreement and the General Terms and Conditions;
<b>Subscription Fee</b>	means the amount payable as set out in the Subscription Proposal and all references to Licence Fees in the General Terms and Conditions shall include the Subscription Fee;
<b>Subscription Proposal</b>	means the Subscription Proposal forming part of this Agreement;

1.2 The terms defined in the General Terms and Conditions have the same meaning when used in these terms and conditions or as modified in this Subscription Agreement.

**2 Grant of licence**

The Supplier grants to the Client a licence to use the Modules via the Platform pursuant to this Subscription Agreement and incorporating the General Terms and Conditions.

### **3 Fees and payment**

3.1 The payment provisions set out in clause 7 and 15.4 of the General Terms and Conditions apply and, without limitation, the Client's attention is drawn to the following provisions:

#### *Suspension for non payment*

3.2 If the Subscription Fee or any other amount due to the Supplier is in arrears for more than 10 days after the due date and notification thereof, the Supplier may without prejudice to any other right or remedy suspend (without liability on the Supplier's part) the provision of the Platform, Modules, Support Services and/or other Services on immediate prior written notice.

#### *Early Termination*

3.3 All amounts that would fall due and payable for the duration of the Initial Term will immediately become due and payable in the event that the Client terminates this Subscription Agreement prior to the expiry of the Initial Term.

### **4 Platform**

4.1 The Client shall be permitted to access the Software on the Platform.

4.2 The Supplier owns or is duly authorised to use all components of the Platform and the Client is granted the right to access the Platform but the Supplier reserves all other rights in relation to the Platform.

4.3 The Supplier is permitted to sub-contract the provision of some or all aspects of the Platform.

4.4 The Platform and access to the Software shall for the duration of the Licence Period be available for use by the Client for as much of the time as possible but there will be periods when the Platform is unavailable. The Supplier shall make all commercially reasonable efforts to provide the Client with prior email notification of all scheduled and emergency interruptions to the availability of the Platform and the Software and shall use reasonable endeavours to keep such interruptions to a minimum.

### **5 Broadband Connection**

5.1 The Client's attention is drawn to clauses 9.6, 9.7 and 12.6 of the General Terms and Conditions and the Client acknowledges that it is the Client's responsibility to ensure the operation of broadband to the Location with sufficient bandwidth, speeds and suitable hardware and operating systems and the Client acknowledges and agrees that the Supplier has no liability in relation to these responsibilities of the Client.

### **6 Priority**

6.1 In the event of any conflict between the terms and conditions of this Subscription Agreement and the General Terms and Conditions then the provisions of this Subscription Agreement shall override and take priority over the General Terms and Conditions.

### **7 Initial Term and Renewal Term for Modules**

7.1 The following Initial Terms and Renewal Terms shall apply to the following Modules:

<b>Module Name</b>	<b>Initial Term</b>	<b>Renewal Term</b>
<b>Hotel Perfect Cloud</b>	<b>36 months</b>	<b>12 months</b>
<b>Online Booking Engine</b>	<b>12 months</b>	<b>12 months</b>
<b>Channel Management</b>	<b>12 months</b>	<b>3 months</b>
<b>Dashboard Reporting</b>	<b>12 months</b>	<b>12 months</b>
<b>Additional Modules &amp; Licenses (Cloud)</b>	<b>36 months</b>	<b>12 months</b>
<b>Interfaces</b>	<b>12 months</b>	<b>12 months</b>
<b>Secure Payment &amp; Card Tokenization Module</b>	<b>36 months</b>	<b>12 months</b>

## Data Processing Schedule

### 1. Interpretation

- 1.1 The definitions and rules of interpretation set out in the Agreement and the following definitions apply in this Schedule:

**Business Purpose:** the provision of the Software and Services pursuant to the Agreement;

**Controller:** the Client as defined in the Agreement as data controller as defined in/referred to in the GDPR;

**Controller Data:** the personal Data supplied by the Controller to the Processor in relation to the names (and any other information) of Subjects;

**Controller System:** any information technology system or systems owned or operated by the Controller from which Data is received in accordance with this Agreement;

**Data:** any data or information, in whatever form, including any personal data;

**Privacy and Data Protection Requirements:** the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) and implementing or related legislation;

**Processor:** Databasics Hospitality Systems Limited as data processor as defined in/referred to in the GDPR;

**Processor System:** any information technology system or systems owned or operated by the Processor to which Data is delivered or on which the Services are performed in accordance with this Agreement;

**Subject:** a guest or customer of the Controller as data subject as defined in/referred to in the GDPR;

**Security Breach:** any security breach relating to the Controller Data reasonably determined by the Processor to be sufficiently serious or substantial to justify notification to the Information Commissioner or other relevant supervisory authority in accordance with the Privacy and Data Protection Requirements; or reasonably determined by the Processor to be sufficiently serious or substantial to give rise to a material risk of litigation by third parties affected by the breach; and

**Sub Processors:** any sub processors used and/or as may be used by the Processor;

- 1.2 In the case of conflict or ambiguity between any of the provisions of this Schedule and the Agreement the provisions of the Agreement shall prevail unless it is specifically in relation to data protection compliance in which case the provisions of this Schedule shall prevail.

### 2. Disclosure and use of Controller Data

The Controller confirms that any Controller Data has been collected by the Controller and disclosed to the Processor in accordance with Privacy and Data Protection Requirements. When using the Software, the Controller will take reasonable steps to ensure that its officers and employees (and any other authorised person) do not input, upload into the Processor System or disclose to the Processor any unnecessary information about individuals and in particular will not input any Subject's banking details apart from in the relevant payment application in the prescribed manner.

### **3. Processor's Obligations**

The Processor will only process the Controller Data in accordance with the Controller's instructions for the Business Purpose (or otherwise pursuant to legal requirements) and will comply with the express obligations of a data processor under Article 28 (3) (a) – 28 (3) (h) of the GDPR and any other applicable Privacy and Data Protection Requirements. However, where the Processor is acting as data controller in relation to information held about the Controller, the Controller may not instruct the Processor to delete copies of that data until after the end of the Agreement or other period for which the Processor is legally required to hold such data. The subject matter, types, nature, purpose and duration of the processing by the Processor is, to the extent not set out in this schedule, set out in the Processor's privacy notice or in specific Software product information supplied from time to time.

### **4. Audits**

Subject to agreeing the scope and reasonable costs to be paid by the Controller, the Processor shall permit the Controller or appointed third party auditor, on reasonable notice during normal business hours to audit/inspect the Processor System in compliance with the Processor's obligations under Article 28(3) (h) of the GDPR.

### **5. Sub - Processors**

The Controller acknowledges that the Processor uses Sub – Processors as providers to the Processor and ordinarily on that Sub-Processor's standard terms of business to whom Controller Data is disclosed. A list of the current Sub- Processors is available at <https://www.hotelperfect.co.uk/sub-processors/> which may be changed from time to time. The Controller consents by way of general authorisation to the Processor using such Sub-Processors. The Processor will update this list in advance of making any change. If the Controller reasonably objects to a change, the Processor will either: (1) give the Controller an opportunity to pay for a version of the Services without the use of the sub-processor to which the Controller objects; or (2) terminate the provision of the relevant affected application.

## **6. Security**

The Controller and the Processor will each maintain appropriate physical, technical and organisational measures to protect against accidental, unauthorised or unlawful destruction loss, alterations, closure of access. The Controller will ensure that it only permits authorised people to have passwords and that they shall only use them for inputting Controller Data for the Business Purpose and in accordance with the terms of the Agreement. The Controller will inform the Processor immediately upon the occurrence of any actual or suspected loss of password or theft of password, becoming aware of any unauthorised or unlawful processing of any Controller Data or Security Breach and fully co-operate with the Processor to resolve the issue as soon as reasonably practicable. The Controller will fully indemnify the Processor against any loss, costs, damages incurred by the Processor as a result of any breach of this obligation by the Controller or its employees, staff, agency staff or other person that might gain access to a password or use the Software as the result of being employed or engaged by the Controller in accordance with Article 82, paragraphs 2 and 3, of the GDPR.