

LOVETOESCAPE.COM:  
AGREEMENT  
(FOR THE SUPPLY OF SERVICES TO ACCOMMODATION PROVIDERS)

Ref : PCF/AJF/LE148 X001

**MORTON FRASER**  
SOLICITORS

**This Agreement is between you (the Accommodation Provider as defined below), and Lets Portal Ltd, of Q Court, 3 Quality Street, Edinburgh, EH4 5BP, trading as LovetoEscape.com, and referred to in this Agreement as “LovetoEscape.com”.**

## 1 Commencement

This Agreement commences on the date on which the Accommodation Provider clicks the Accept and Continue button below. LovetoEscape.com confirms and agrees that following acceptance of this Agreement the Accommodation Provider will be given access to and use of the LovetoEscape.com online portal and Booking system (together referred to as the **“Booking Payment System”**) to market the Accommodation and to allow Holidaymakers to book the Accommodation, in return for payment by the Accommodation Provider of the Service Fees.

The Accommodation Provider hereby acknowledges that clicking Accept and Continue constitutes the Accommodation Provider placing an order for Services from LovetoEscape.com.

## 2 Interpretation

### Definitions

2.1 In this Agreement, the following definitions apply:

**“Accommodation”** means the accommodation, apartment, cottage, house or other building occupied by a Holidaymaker during a Period of Hire including the accommodation premises together with any annexes (such as garages, gardens, grounds), and all contents, fixtures and fittings, facilities and services (both inside and outside) made available or accessible to any Holidaymakers;

**“Accommodation Provider”** means the person who has registered as an Accommodation Provider on LovetoEscape.com for the purposes of marketing and letting Accommodation for holiday purposes in accordance with this Agreement. This may be a person who owns or co-owns the Accommodation or a person who is the authorised agent of such an owner;

**"Agreement"** means the agreement between LovetoEscape.com and the Accommodation Provider for the supply of Services in accordance with the terms hereof as amended from time to time;

**"Booking"** means the booking of the Accommodation by the Holidaymaker;

**"Client Account"** means the 'client account' operated by LovetoEscape.com with the Royal Bank of Scotland. All Holidaymaker funds paid to LovetoEscape.com (referred to as Holidaymakers' Funds, as defined below) are placed into the client account, a protected trust account maintained by LovetoEscape.com separately from any account used to handle LovetoEscape.com's business funds;

**“Commission”** means the commission payable by the Accommodation Provider to LovetoEscape.com all in accordance with the terms of clause 9 and Schedule 1 hereof;

**“Holidaymaker”** means the person who books Accommodation through the Booking Payment System, by telephone or by post;

**“Holidaymakers' Funds”** means those funds remitted to LovetoEscape.com by the Holidaymaker as a client for the purposes of securing a Booking of Accommodation, which funds are held by LovetoEscape.com in the Client Account;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Period of Hire"** means the period during which the Holidaymaker has booked to stay at the Accommodation through the Booking Payment System;

**"Service Fees"** means the fees payable by the Accommodation Provider to LovetoEscape.com for the supply of the Services in accordance with clause 9, which fees shall include without limitation the Commission due to LovetoEscape.com;

**"Services"** means the services supplied by LovetoEscape.com to the Accommodation Provider, all as fully outlined at clause 4 below; and

**"working day"** means a day (other than a Saturday, Sunday or public holiday) when banks in Edinburgh are open for business.

### **Construction**

2.2 In this Agreement, the following rules of construction apply:

- 2.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.2.2 a reference to a party includes its personal representatives, authorised agents, successors or permitted assignees;
- 2.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 2.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 2.2.5 a reference to **writing** or **written** includes faxes and e-mails; and
- 2.2.6 the headings in this Agreement are for reference purposes only and do not form part of the Agreement. They shall not affect the interpretation of this Agreement and are not deemed to be an indication of the meaning of the clause to which they relate.

### 3 **Basis of contract**

Selecting the Accept and Continue button constitutes an offer by the Accommodation Provider to purchase the Services from LovetoEscape.com in accordance with the terms of this Agreement. LovetoEscape.com shall indicate its acceptance of that offer by opening an account for the Accommodation Provider on [www.LovetoEscape.com](http://www.LovetoEscape.com).

### 4 **Supply of Services**

- 4.1 Subject to the Accommodation Provider's compliance with this Agreement, LovetoEscape.com shall supply the following Services to the Accommodation Provider or to the Holidaymaker on behalf of the Accommodation Provider as appropriate, using reasonable care and skill:
- 4.1.1 access to the Booking Payment System;
  - 4.1.2 acceptance of credit or debit card payments from the Holidaymaker. This shall be done through a secure portal on the Booking Payment System provided by an authorised provider. In accepting such payments, LovetoEscape.com shall be authorised by the Accommodation Provider to make a Booking;
  - 4.1.3 the deposit of Holidaymakers' Funds in the Client Account as soon as reasonably practicable after receipt and the retention of the same in the Client Account for and on behalf of the Accommodation Provider and in accordance with the terms of this Agreement; and
  - 4.1.4 the remittance of Holidaymakers' Funds to the Accommodation Provider in accordance with the terms more fully set out in this Agreement;
  - 4.1.5 when requested to do so by the Accommodation Provider, and at LovetoEscape.com's discretion, the remittance of funds to the Holidaymaker from the Accommodation Provider; and
  - 4.1.6 when the Holidaymaker makes a Booking, LovetoEscape.com will quote a price inclusive of the Accommodation Fee (the "**Accommodation Fee**" means the total hire charge payable in respect of the Booking, including but not limited to the payment required to secure the Booking, which payment shall include the booking fee, Insurance Cover, as defined below, any applicable fees added by credit card or debit card companies, and any applicable additional fees indicated by LovetoEscape.com, which fee shall be notified to the Holidaymaker at the time the Booking is made) and holiday insurance cover ("**Insurance Cover**"); LovetoEscape.com will arrange Insurance Cover on the Holidaymaker's behalf. This Insurance Cover is arranged through UK General Insurance Limited, a company authorised and regulated by the Financial Services Authority (registration number 354568). The Insurance page of [www.LovetoEscape.com](http://www.LovetoEscape.com) contains more details of the Insurance Cover and a sample policy. If the Holidaymaker does not wish insurance to be arranged by LovetoEscape.com, the insurance premium will be deducted from the quotation.
- 4.2 For the avoidance of doubt, nothing in clause 4.1 shall restrict the right of LovetoEscape.com or the Accommodation Provider to refuse a requested Booking.
- 4.3 LovetoEscape.com shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services. LovetoEscape.com shall notify the Accommodation Provider in any such event.
- 4.4 The Accommodation Provider hereby acknowledges that LovetoEscape.com will not be responsible for the collection from Holidaymakers and/or holding in the Client Account of any Service Fees which the Accommodation Provider fails to enter as prices in the Booking Payment System
- 4.5 If LovetoEscape.com's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Accommodation Provider or

failure by the Accommodation Provider to perform any relevant obligation (“**Accommodation Provider Default**”):

- 4.5.1 LovetoEscape.com shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Accommodation Provider remedies the Accommodation Provider Default, and to rely on the Accommodation Provider Default to relieve it from the performance of any of its obligations to the extent the Accommodation Provider Default prevents or delays LovetoEscape.com's performance of any of its obligations; and
- 4.5.2 LovetoEscape.com shall not be liable for any costs or losses sustained or incurred by the Accommodation Provider arising directly or indirectly from LovetoEscape.com's failure or delay to perform any of its obligations as set out in this clause 4.5; and
- 4.6 The Accommodation Provider shall reimburse LovetoEscape.com on written demand for any costs or losses sustained or incurred by LovetoEscape.com arising directly or indirectly from the Accommodation Provider Default.
- 4.7 LovetoEscape.com accepts no liability whatsoever for any claims, losses or damages (direct or indirect) of any description suffered by any Holidaymakers or the Accommodation Provider arising out of inaccurate or incomplete pricing for any Booking where the Accommodation Provider has accepted the Booking request, or for any inaccuracies as to availability resulting from information not provided to LovetoEscape.com by the Accommodation Provider.
- 4.8 In the event of LovetoEscape.com being unable to arrange the holiday accommodation requested by the Holidaymaker after the Holidaymaker has paid part of the Accommodation Fee, or if the Accommodation Provider informs LovetoEscape.com that the Accommodation has become unavailable, LovetoEscape.com will, in its sole discretion, endeavour to arrange alternative accommodation for the Holidaymaker of an equivalent type and standard in a suitable alternative location. If no alternative suitable accommodation is available, where less than 7 working days has passed since the Booking was made, LovetoEscape.com shall refund all monies paid by the Holidaymaker as part of the Accommodation Fee to the Holidaymaker. Where more than 7 working days has passed since the Booking was made, the Accommodation Provider hereby undertakes to refund the Accommodation Fee (to the extent that it has been paid) directly to the Holidaymaker.
- 4.9 LovetoEscape.com will use reasonable endeavours to provide access to and availability of the Booking Payment System at all reasonable times subject to maintenance and other factors, whether planned or unplanned, which require or result in the suspension or interruption of or any deficiencies in the Booking Payment System or its operation in whole or part or the available access to the same. Without limiting the generality of the above, LovetoEscape.com does not guarantee that the operation of the Booking Payment System will be uninterrupted, continuous or error free, and LovetoEscape.com has no liability to Accommodation Providers in respect of any such deficiency of service or for any loss or damage of any nature whatsoever (including for the avoidance of doubt and not by way of limitation any loss of bookings) which Accommodation Providers may suffer or incur as a result.

## 5 **Use of Booking Payment System**

6 The Accommodation Provider hereby agrees and confirms that:

- 6.1 the Accommodation Provider is solely responsible for uploading the description, details, prices and all other information relating to the Accommodation onto the

Booking Payment System and for regularly and promptly maintaining, checking, updating and amending, removing (if applicable) the same so that all information (including photographs) at all times remains accurate, complete and not misleading in any respect;

- 6.2 all prices, discounting, extras, offers, payment terms, and cancellation fees entered onto the Booking Payment System by the Accommodation Provider relating to the Accommodation will at all times be up to date and accurate;
- 6.3 any Booking request presented to the Accommodation Provider will be checked by the Accommodation Provider to ensure that it is correctly priced before being accepted;
- 6.4 it is solely responsible for the accuracy, legality, currency and compliance of all information (including written and pictorial descriptions) uploaded by the Accommodation Provider onto the Booking Payment System and/or otherwise provided to any Holidaymaker and will be solely liable for any false, misleading, inaccurate, incomplete, infringing or other actionable information or material contained or referred to therein;
- 6.5 the Accommodation Provider has prepared all descriptions and other material uploaded on the Booking Payment System, that all photographs or other graphics used are owned by the Accommodation Provider, and that the Accommodation Provider will not upload any material of any description (including photographs) which infringes or may infringe the Intellectual Property Rights of any third party;
- 6.6 it will regularly and promptly update the dates on which the Accommodation is shown as available for let using the Booking Payment System;
- 6.7 it undertakes to respond promptly to any questions from Holidaymakers regarding the Accommodation and/or any Booking whether received before or after bookings have been confirmed;
- 6.8 it undertakes to notify the Holidaymakers promptly if any alterations or amendments to Accommodation details require to be made either before or after bookings have been confirmed;
- 6.9 it undertakes to notify the Holidaymakers promptly if the Accommodation Provider has to cancel a Booking;
- 6.10 it will promptly deal with any complaints received from Holidaymakers whether passed onto the Accommodation Provider by LovetoEscape.com or received directly from Holidaymakers and respond to the same directly to the Holidaymaker concerned within a reasonable time limit; and
- 6.11 it will not use or attempt to use the Booking Payment System in any way or for any purpose other than the use outlined in this Agreement.

## **7 Handling Holidaymakers' Funds**

In the case of payment transfer to an account held with a UK or French bank, LovetoEscape.com will transfer the Holidaymaker Funds to Accommodation Providers by BACS transfer in the currency in which the Booking payment was made.

## **8 Provisions of Accommodation**

- 8.1 LovetoEscape.com is a booking agent of the Accommodation Provider and the Accommodation Provider hereby agrees and represents that LovetoEscape.com is fully authorised to create a contractual booking between the Holidaymaker and the Accommodation Provider on the Accommodation Provider's behalf.

- 8.2 The Accommodation Provider hereby acknowledges that, as LovetoEscape.com is a booking agent only, the Holidaymaker's principal recourse in relation to any complaints or queries the Holidaymaker has about the Accommodation, refunds of the Accommodation Fee, or issues surrounding cancellation of the Booking, is with the Accommodation Provider.
- 8.3 The Accommodation Provider hereby acknowledges that LovetoEscape.com does not have any responsibility for inspecting, approving, checking, or auditing the quality of Accommodation.
- 8.4 Holidaymakers who make a Booking for the Accommodation through the Booking Payment System will have a direct contract with the Accommodation Provider and the Accommodation Provider hereby accepts liability for that contract as the principal.
- 8.5 The Accommodation Provider represents that it has full and unrestricted power (and, where appropriate, permission) to enter into the Agreement either as owner of the Accommodation or as authorised agent of the owner. Where the Accommodation Provider is not an owner of the Accommodation but is acting as the agent of the owner, the Accommodation Provider represents that the owner has full knowledge of the terms of this Agreement, and that the owner of the Accommodation has been made aware that the owner will be treated as a party to this Agreement in addition to the agent and LovetoEscape.com is entitled to enforce all obligations contained in this Agreement against agents or owners at its sole discretion.
- 8.6 For the purposes of LovetoEscape.com transferring payments to Accommodation Providers rapidly and accurately the Accommodation Provider hereby undertakes to provide LovetoEscape.com with accurate banking information when registering for use of the Booking Payment System and to inform LovetoEscape.com immediately if this information changes.
- 8.7 The Accommodation Provider undertakes to use all reasonable endeavours to:-
- 8.7.1 ensure the Accommodation will at all times remain of a good and clean standard, in full working order and safe for occupation and use by Holidaymakers;
  - 8.7.2 co-operate with LovetoEscape.com in all matters relating to the Services;
  - 8.7.3 provide LovetoEscape.com with such accurate information as LovetoEscape.com may reasonably require in order to supply the Services;
  - 8.7.4 obtain and maintain any necessary licences, permissions and consents to let the Accommodation as holiday accommodation which may be required before the date on which the Services are to start;
  - 8.7.5 provide all services the Accommodation Provider contracts with the Holidaymaker to provide with reasonable skill and care;
  - 8.7.6 ensure that all persons provided or used by the Accommodation Provider (whether or not employed by the Accommodation Provider) in connection with the provision of the Accommodation are appropriately qualified, experienced, insured, regulated (as appropriate), and capable of competently performing the work or jobs for which they are provided;
  - 8.7.7 comply in full with all applicable national, local, trade and other laws, regulations and codes of practice (including EU legislation where

applicable) relating to hygiene, fire, safety and other standards for those staying at or using the Accommodation or contracted services;

- 8.7.8 ensure that at all times the Accommodation Provider maintains in force the appropriate current certificates confirming all appropriate regulatory and safety compliance;

## 9 Commission, Service Fees and Payment

- 9.1 The Accommodation Provider agrees and acknowledges that:-
- 9.1.1 the Accommodation Provider will pay to LovetoEscape.com Commission on every Booking of the Accommodation made via the Booking Payment System in accordance with this Agreement at the rate set out in the Schedule or such other rate as is agreed in writing between the parties;
- 9.1.2 LovetoEscape.com will become entitled to Commission at the full value of a Booking when that Booking is made;
- 9.1.3 LovetoEscape.com will be entitled to deduct the Commission due to LovetoEscape.com from any Holidaymaker Funds prior to remitting those to the Accommodation Provider in terms of clause 4.1.4 of this Agreement.
- 9.2 LovetoEscape.com reserves the right to increase its Commission rates, provided that such Service Fees cannot be increased more than once in any 6 month period. LovetoEscape.com will give the Accommodation Provider written notice of any such increase 3 months before the proposed date of the increase.
- 9.3 LovetoEscape.com shall invoice the Accommodation Provider for any Commission or Service Fees not deducted at the point of remittance of funds monthly in arrears.
- 9.4 The Accommodation Provider shall pay each invoice submitted by LovetoEscape.com:
- 9.4.1 within 30 days of the date of the invoice; and
- 9.4.2 in full and in cleared funds to the bank account nominated in writing by LovetoEscape.com, and
- time for payment shall be of the essence of the Agreement .
- 9.5 All amounts payable by the Accommodation Provider under the Agreement are exclusive of amounts in respect of value added tax chargeable for the time being. Where any taxable supply for VAT purposes is made under the Agreement by LovetoEscape.com to the Accommodation Provider, the Accommodation Provider shall, on receipt of a valid VAT invoice from LovetoEscape.com, pay to LovetoEscape.com such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 9.6 Without limiting any other right or remedy of LovetoEscape.com, if the Accommodation Provider fails to make any payment due to LovetoEscape.com under the Agreement by the due date for payment ("**Due Date**"), LovetoEscape.com shall have the right to charge interest on the overdue amount at the rate of [5] per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

- 9.7 The Accommodation Provider shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Accommodation Provider shall not be entitled to assert any credit, set-off or counterclaim against LovetoEscape.com in order to justify withholding payment of any such amount in whole or in part. LovetoEscape.com may, without limiting its other rights or remedies, set off any amount owing to it by the Accommodation Provider against any amount payable by LovetoEscape.com to the Accommodation Provider.

## 10 Intellectual Property Rights, Data Protection and Confidentiality

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services or the Booking Payment System shall be owned by LovetoEscape.com.
- 10.2 The Accommodation Provider acknowledges that, in respect of any third party Intellectual Property Rights, the Accommodation Provider's use of any such Intellectual Property Rights is conditional on the Accommodation Provider obtaining a written licence from the relevant licensor on such terms as will entitle the Accommodation Provider to license such rights to LovetoEscape.com.
- 10.3 The Accommodation Provider acknowledges that LovetoEscape.com is entitled to use personal data about the Accommodation Provider and the Holidaymaker (whether provided by the Accommodation Provider or by the Holidaymaker) in the way and for the purposes set out in LovetoEscape.com's Privacy Policy (as contained on its website at <http://www.lovetoescape.com/privacy.cfm>) as amended and updated from time to time (which Privacy Policy the Holidaymaker acknowledges having read and agreed to) or as otherwise permitted by law.
- 10.4 The Accommodation Provider agrees and undertakes that it shall not at any time, including any times after the termination of this Agreement, send any marketing or promotional material or communications to individuals whose personal or other contact details the Accommodation Provider has been provided with by LovetoEscape.com, except in accordance with all applicable legislation in force at the relevant time (including but not limited to the Data Protection Act 1998 and all amendments thereto).
- 10.5 The Accommodation Provider hereby agrees and undertakes to keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Accommodation Provider by LovetoEscape.com, its employees, agents or subcontractors, and any other confidential information concerning LovetoEscape.com's services which the Accommodation Provider may obtain in the course of the provision of the Services. This clause 10.5 shall survive termination of the Agreement.
- 10.6 In the event that new inventions, designs or processes or other intellectual property rights of any description evolve or come into existence in the performance of or as a result of this Agreement, the Accommodation Provider acknowledge that the same shall be the property of LovetoEscape.com unless otherwise agreed in writing by LovetoEscape.com.

## 11 Limitation of liability

### **THE ACCOMMODATION PROVIDER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 11.1 Nothing in this Agreement shall limit or exclude LovetoEscape.com's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, or for fraud or fraudulent misrepresentation.

- 11.2 Subject to clause 11.1:
- 11.2.1 LovetoEscape.com shall under no circumstances whatever be liable to the Accommodation Provider, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement;
- 11.2.2 LovetoEscape.com's total liability to the Accommodation Provider in respect of all other losses arising under or in connection with the Agreement, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount paid by the Accommodation Provider to LovetoEscape.com by way of Service Fees (including, without limitation, Commission) under this Agreement; and
- 11.2.3 LovetoEscape.com will not be liable to the Accommodation Provider or any Holidaymaker for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement and/or the Booking Payment System, its use, application, support or otherwise, damage or corruption to other software or data or for loss of profit, business, revenue or goodwill except to the extent to which it is unlawful to exclude such liability.
- 11.3 Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement .
- 11.4 This clause 11 shall survive termination of the Agreement.

## 12 Amendments and Cancellations

13 The Accommodation Provider agrees and acknowledges that:-

- 13.1 LovetoEscape.com carries no responsibility for the failure of the Holidaymaker to pay any monies due to the Accommodation Provider outwith the terms of this Agreement, nor for the collection of cancellation Service Fees which exceed the total amount of monies already received from the Holidaymakers; and
- 13.2 the Accommodation Provider is solely responsible for all losses, claims, expenses, costs and other sums incurred, suffered or made by a Holidaymaker arising out of the Accommodation Provider's cancellation or change of the Booking.

## 14 Termination

- 14.1 Without limiting its other rights or remedies, each party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 5 working days of that party being notified in writing of the breach;
- 14.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 14.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 14.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
  - 14.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 working days;
  - 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 14.1.8 a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 14.1.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
  - 14.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 14.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, LovetoEscape.com may terminate the Agreement with immediate effect by giving written notice to the Accommodation Provider if:
- 14.2.1 the Accommodation Provider fails to pay any amount due under this Agreement on the due date for payment;
  - 14.2.2 the Accommodation Provider becomes subject to any of the events listed in clause 14.1.1 to 14.1.12 inclusive, or LovetoEscape.com reasonably believes that the Accommodation Provider is about to become subject to any of them;
  - 14.2.3 LovetoEscape.com believes the details of the Accommodation provided by the Accommodation Provider on the Booking Payment System are

deliberately misleading, confusing or will lead to complaint or error in the Booking process;

14.2.4 the Accommodation Provider attempts to promote another website or enter an email address, phone number or other means of communication in the descriptive area of the Booking Payment System or elsewhere whether intended to deal directly with Holidaymakers or done unintentionally;

14.2.5 the Accommodation Provider enters any information or material into the Booking Payment System which in the reasonable opinion of LovetoEscape.com is or may be in breach of copyright or subject to complaint by another party or on any basis is or may be fraudulent, offensive or misleading.

14.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Agreement by giving the other party 1 months' written notice.

## 15 **Consequence of Termination**

On termination of the Agreement for any reason:

15.1 the Accommodation Provider shall immediately pay to LovetoEscape.com all of LovetoEscape.com's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, LovetoEscape.com shall submit an invoice, which shall be payable by the Accommodation Provider immediately on receipt;

15.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and

15.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16 In the event of termination by either party the Accommodation Provider's access to the Booking Payment System will be terminated and will cease. LovetoEscape.com will cease to advertise the Accommodation and will remove it from the Booking Payment System. LovetoEscape.com will no longer accept payments for the Accommodation.

17 In such cases where confirmed but yet to be performed Booking contracts are in existence at the time of termination, LovetoEscape.com shall remit all monies received from the Holidaymakers for such bookings of Accommodation back to the Holidaymaker.

## 18 **Consequence of Cancellations**

18.1 In the event of cancellation by either the Accommodation Provider or the Holidaymaker LovetoEscape.com remains entitled to payment of the Service Fees on the full value of the Booking.

18.2 If the Accommodation Provider cancels a confirmed Booking the Accommodation Provider will remain liable in full for payment of the Service Fees on the full value of the Booking together with the cancellation charge set out in the Schedule. The Service Fees on the full value of the Booking together with the cancellation charge will be noted as sums owing to LovetoEscape.com on the Accommodation Provider's account and LovetoEscape.com will be entitled to deduct these and any other sums due to LovetoEscape.com from the next payment due to the Accommodation Provider from LovetoEscape.com. If there are no further payments

to be made within a period of 1 month from the appropriate date, LovetoEscape.com will invoice the Accommodation Provider for this amount.

- 18.3 Where Holidaymaker Funds remain in the Client Account but are due to be transferred to the Accommodation Provider by LovetoEscape.com, the Accommodation Provider must promptly notify LovetoEscape.com of any refunds to be made to the Holidaymaker. On receipt of such notification, LovetoEscape.com will refund to the Holidaymaker concerned all monies due in full. For the avoidance of doubt, LovetoEscape.com is entitled to refund the Holidaymaker from any Holidaymaker Funds in the Client Account without first obtaining consent from the Accommodation Provider.
- 18.4 The Accommodation Provider hereby acknowledges and agrees that the Accommodation Provider has sole responsibility for all claims made by any Holidaymaker in relation to or in connection with the Accommodation or any other service(s) the Accommodation Provider has contracted to provide to the Holidaymaker.
- 18.5 In the event of LovetoEscape.com having to refund monies to a Holidaymaker due to a credit card chargeback, the Accommodation Provider acknowledges that the Accommodation Provider shall refund such monies to LovetoEscape.com directly within 7 working days.
- 18.6 The Accommodation Provider acknowledges that LovetoEscape.com will not participate in any discussions pursuant to any dispute between the Accommodation Provider and the Holidaymaker. The Accommodation Provider hereby acknowledges that LovetoEscape.com is a booking agent only and agrees that the Accommodation Provider has sole responsibility for all claims made by any Holidaymaker in relation to or in connection with the Accommodation or any other service(s) the Accommodation Provider has contracted to provide to the Holidaymaker.
- 18.7 In the event of a dispute between a Holidaymaker and the Accommodation Provider being notified to LovetoEscape.com by either party, LovetoEscape.com shall be entitled in its discretion to withhold all and/or any monies due to the Accommodation Provider whether relating to that particular Booking or otherwise until such times as the dispute has been settled and both the Accommodation Provider and the Holidaymaker have acknowledged settlement in writing to LovetoEscape.com.

## 19 Indemnity

- 19.1 The Accommodation Provider agrees to indemnify and keep LovetoEscape.com indemnified against and in respect of the full amount of all liabilities, claims, losses, expenses, costs (including legal costs on a full indemnity basis), damages, refunds and all other sums of whatever nature and of whatever description (collectively "liabilities") which are suffered or incurred by LovetoEscape.com or for which LovetoEscape.com become liable or responsible and which arise, from any cause whatsoever, out of or in connection with this Agreement. For the avoidance of doubt and not by way of limitation, the liabilities covered by this indemnity shall include (but are not limited to) those arising, directly or indirectly, from any breach of this Agreement and/or any other agreement between the Accommodation Provider and LovetoEscape.com by the Accommodation Provider and/or any act(s) and/or default(s) of the Accommodation Provider and/or any person(s) provided or used (directly or indirectly) by the Accommodation Provider (including its employees, agents, suppliers and sub-contractors). For the avoidance of any doubt, this indemnity shall apply to any or all liabilities incurred or suffered by LovetoEscape.com including those where there is no finding of negligence, breach of contract, breach of statutory duty or otherwise on the Accommodation Provider's part and the words "out of or in connection with this Agreement" shall be given the

widest possible construction. This indemnity will survive and remain in full force and effect after the termination (for any reason) or expiry of this Agreement.

- 19.2 Without prejudice to the above the Accommodation Provider also agree to indemnify and keep LovetoEscape.com indemnified (including its directors, officers, employees and agents) from and against any and all liability, damages, fines, losses, claims (including all legal fees) expenses, costs and all other sums of whatever nature which LovetoEscape.com incurs, suffer or become liable for as a result, directly or indirectly, of the Accommodation Provider's use of the Booking Payment System and /or any information or material uploaded by the Accommodation Provider on the Booking Payment System or otherwise provided or made available by the Accommodation Provider to any Holidaymakers.

## 20 **Accommodation Provider Insurance**

The Accommodation Provider will at all times maintain (at the Accommodation Provider's own cost) a comprehensive insurance policy or policies to cover (with an adequate indemnity level) all risks relating to the use and/or occupation of the Accommodation normally covered by insurance including (including by way of example and not by way of limitation) destruction or damage of the Accommodation by any cause and all third party risks including cover for death, personal injury and illness of any Holidaymaker.

## 21 **General**

### 21.1 **Force majeure:**

21.1.1 For the purposes of this Agreement, a "**Force Majeure Event**" means an event beyond the reasonable control of LovetoEscape.com including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of LovetoEscape.com or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

21.1.2 LovetoEscape.com shall not be liable to the Accommodation Provider as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

21.1.3 If the Force Majeure Event prevents LovetoEscape.com from providing any of the Services for more than 4 weeks, LovetoEscape.com shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Accommodation Provider.

### 21.2 **Assignment and subcontracting:**

21.2.1 LovetoEscape.com may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

21.2.2 The Accommodation Provider shall not, without the prior written consent of LovetoEscape.com, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement .

### 21.3 **Notices:**

21.3.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by email to the email address nominated by the recipient where the sending party has obtained a read receipt, prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

21.3.2 Any notice or other communication shall be deemed to have been duly received if emailed where the sending party has obtained a read receipt, delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next working day after transmission.

21.3.3 This clause 21 shall not apply to the service of any proceedings or other documents in any legal action.

**21.4 Waiver:**

21.4.1 A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

21.4.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

**21.5 Severance:**

21.5.1 If a court or any other competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

21.5.2 If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**21.6 No partnership**

21.7 Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**21.8 Third parties**

A person who is not a party to the Agreement shall not have any rights under or in connection with it.

**21.9 Variation**

Except as set out in this Agreement, any variation, including the introduction of any additional terms and conditions, to the Agreement , shall only be binding when agreed in writing and signed by LovetoEscape.com.

**21.10 Entire agreement**

The Agreement constitutes the entire agreement between the parties. The Accommodation Provider acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of LovetoEscape.com which is not set out in the Agreement.

21.11 Any samples, drawings, descriptive matter or advertising issued by LovetoEscape.com, and any descriptions or illustrations contained in LovetoEscape.com's catalogues, brochures, or online advertisements are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.

21.12 This Agreement apply to the Agreement to the exclusion of any other terms that the Accommodation Provider seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

21.13 The Accommodation Provider hereby acknowledges and agrees that in the event of any conflict between the provisions of the agreement entered into between LovetoEscpae.com and the Holidaymaker and a provision in any other document provided by the Accommodation Provider directly to a Holidaymaker (including, without limitation, any terms and conditions of use of the Accommodation), the relevant provisions of the agreement entered into between LovetoEscpae.com and the Holidaymaker shall prevail and the other provision shall only apply subject to such changes as may be necessary to give the prevailing provision full effect.

**21.14 Governing law and jurisdiction**

This Agreement , and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scottish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.

**Schedule 1: Commission**