

ACCEPTANCE

READ CAREFULLY: BY CREATING AN ACCOUNT YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

INN8LY

BINDING SERVICES AGREEMENT

SECTION 1. Welcome to Inn8ly. "You" refers to any individual who creates an account with the Services (as defined below) and, if You are using the Service on behalf of an Entity, then "You" refers to such entity and You represent that you are authorized to agree to these this Agreement on behalf of such entity. This Agreement is a binding legal agreement for use of the Service between Red8 Interactive, Inc., a California Corporation d/b/a Inn8ly, ("Inn8ly"). If You do not agree with these terms, do not use this Service.

Inn8ly may also be referred to herein as "We" or "Our" or words of similar import. Additional terms are defined in the body of this document, and in Section 16.

SECTION 2. OUR SERVICES.

Section 2.01 Basic Website Development. Subject to our acceptance of You as a customer, We will develop a website for You ("**Your Website**") using Our design judgment based upon Your answers to Our On-Boarding Form. This basic website development includes up to three rounds of revisions to Your Website without additional fees; provided that:

(a) All necessary text and images are supplied by you promptly, and no later than 30 days following submission of Our On-Boarding form; and

(b) Upon submission of proposed design components to You, We receive approvals (or requests for revisions) within 2 business days.

Please note that final proofing of grammar, spelling, punctuation, dates, times, numbers and accuracy is Your responsibility.

Section 2.02 Hosted Services and Security. We shall host, manage, operate, provide security for and maintain Your **Website** for remote electronic access and use by You and Your Website Visitors (the "**Hosted Services**").

Section 2.03 Further Development. We may provide further development assistance in the event that You revise Your answers to the On-Boarding Form during the development process, choose additional options beyond the basic service or request orally or in writing that We further customize Your Website (all such assistance being "**Provider Assistance**").

Section 2.04 Definition of Services. Development of Your Website in accordance with the On-Boarding Form, together with the Hosted Services and any Provider Assistance, are referred to herein as the “Services.”

SECTION 3. YOUR ASSISTANCE

Section 3.01 Onboarding. To become an Inn8ly customer you must first complete the On-Boarding Form, make all required initial Fee deposits, and be accepted by Inn8ly as a customer.

Section 3.02 Customer Provided Materials. You shall be responsible for:

- (a) providing all text used on Your Website;
- (b) providing all Consents, Privacy Policies, Terms of Service and other contractual or legal requirements for Your Website as may be necessary or appropriate under applicable law.

You may provide also images to be included on Your Website in lieu or in addition to images provided as part of the Provider Materials and the Services. All such text, documents and images provided by You are referred to herein as “**Customer Provided Materials**”.

Section 3.03 Timely co-operation. You acknowledge that Our ability to provide assistance depends upon the full and timely co-operation of You, and the prompt delivery to Us of all Customer Provided Materials, as We may require.

Section 3.04 Corrective Action and Notice. If You becomes aware of any actual or threatened activity prohibited by Section 3.02 (Restrictions) You shall immediately: (a) take all reasonable and lawful measures that are necessary to stop the activity or threatened activity and to mitigate its effects; and (b) notify Us of any such actual or threatened activity.

SECTION 4. LICENSE.

Section 4.01 Grant and Scope. We hereby grant to You (and any companies that may buy or merge with You, including companies which you may acquire) the following license with respect to Your Website.

You may copy, use, and modify Your Website for use in Your business, but You may not transfer Your Website to another entity, except to any companies that may buy or merge with You, and companies which you may acquire. You may, of course, use Customer Provided Materials that You own for whatever purpose You desire independent of this restriction.

This license shall be effective as of the end of the Term of this Agreement, and is subject to the condition that You are current in payment of all Fees as of the date of Termination of this Agreement. There are no fees or royalties with respect to this license and it is irrevocable.

Section 4.02 Restrictions. You shall not

- (a) bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of his or her then valid Access Credentials;

(b) input, upload, transmit or otherwise provide to or through the Services, any information or materials that are unlawful, injurious, or contain, transmit or activate any Harmful Code;

(c) remove, delete, alter or obscure any trademarks, Terms of Service, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Third Party Materials, including any copy thereof;

(d) access or use the Services or Third Party Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Inn8ly customer), or that violates any applicable Law;

(e) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage.

Section 4.03 Affirmative Obligations

You agree to promptly notify Us of any notice (whether under the Digital Millennium Copyright Act or otherwise) and to assist in the removal of any content from Your Website that may be required pursuant to the Digital Millennium Copyright Act or other Applicable Law.

SECTION 5. OPERATION OF THE SERVICES

Section 5.01 Service and System Control. Except as otherwise expressly provided in this Agreement, as between You and Us:

We shall have sole control over the selection, deployment, modification and replacement of the Hosted Service as well as performance of support services, maintenance, upgrades, corrections and repairs.

Section 5.02 Changes. We reserve the right, in Our sole discretion, to make any changes to the Services, the software underlying the Service, and the Documentation that We deems necessary or useful to:

- (a) maintain or enhance (i) the quality or delivery of Our services to Our customers, (ii) the competitive strength of or market for Our services or (iii) the Services' cost efficiency or performance;
- or (b) to comply with applicable Law.

Section 5.03 Suspension or Termination of Services. We may, directly or indirectly, suspend, terminate or otherwise deny access to or use of all or any part of the Services, by You or any Website Visitor if:

(a) We receive a judicial or other governmental demand or order, subpoena or law enforcement request that requires Us to do so; or

(b) We believe in good faith and in Our sole discretion, that:

- (i) You or any Website Visitor has failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or in any manner that does not comply with any material instruction or requirement set forth in any description of the Services which We may provide; or

(ii) You or any Website Visitor is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities, or activities that threaten the security of the Website or any of any other customer websites.

This **Section 4.03** does not limit any other rights or remedies We may have, whether at law, in equity or under this Agreement.

Section 5.04 Access & Control of Website. You will provide Us and our employees and contractors, with full access to and control of Your Website, including “owner permissions”.

SECTION 6. INTELLECTUAL PROPERTY RIGHTS.

Section 6.01 Ownership of Website. You acknowledge that We own all right, title and interest, including all copyright and other Intellectual Property Rights in Your Website and the Provider Materials, except for Customer Provided Materials You may have provided and any Third Party Materials that may be owned or licensed by other vendors. You shall not acquire any Intellectual Property rights with respect to Your Website and the Provider Materials (including Third-Party Materials) except for the limited authorization set forth in the license granted in Section 3.01 immediately below and any applicable third-party licenses.

Section 6.02 Ownership and Use of Website Data. As between You and Us, You are and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Provided Material and Website Data; provided, however, that:

(a) You hereby grant to Us, Our subcontractors and Our personnel all such rights and permissions in or relating to Customer Provided Material and Website Data as are necessary or useful to perform the Services;

(b) You further grant us a non-exclusive, irrevocable, royalty free, perpetual license to compile, use, transmit and publish aggregated and statistical data from the Website Data.

SECTION 7. SERVICE LEVELS AND CREDITS.

Section 7.01 Hosted Services. We will make the Hosted Service available to You and Your Website Visitors 24 hours per day, seven days per week every day of the year, except for:

- (a) Scheduled Downtime in accordance with **Section 6.05**;
- (b) Service downtime or degradation due to a Force Majeure Event;
- (c) Misuse of the Hosted Services, or use of the Services by You or any Website Visitor other than in compliance with the express terms of this Agreement and the Specifications;
- (d) Any other circumstances beyond Our reasonable control; and
- (e) any suspension or termination of Your or any Website Visitors' access to or use of the Hosted Services as permitted by this Agreement.

Section 7.02 Service Levels. We will use commercially reasonable efforts to make the Website and the Hosted Services Available at least ninety-eight percent (98%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding

unavailability as a result of any of the Exceptions described below in this **Section** (such commitment being the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Hosted Services to meet the Availability Requirement. "**Available**" means the Hosted Services are available for access and use by You and Your Website Visitors over the Internet and operating in material accordance with the Specifications.

Section 7.03 Exceptions. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Hosted Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of You or Your Website Visitors to access or use the Hosted Services that is due, in whole or in part, to any:

- (a) Access to or use of the Hosted Services by You or any Website Visitor, or using Your or a Website Visitor's Access Credentials, that does not strictly comply with this Agreement and the Specifications;
- (b) Any delay or failure of performance caused in whole or in part by Your delay in performing, or failure to perform, any of its obligations under this Agreement (any such delay or failure being a "You Failure").
- (c) The failure of Your Internet connectivity or that of or any Website Visitor;
- (d) Force Majeure Event;
- (e) Failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Us pursuant to this Agreement;
- (f) Scheduled Downtime; or
- (g) The disablement, suspension or termination of the Services pursuant to Section 4.03.

Section 7.04 Service Level Failures and Remedies. In the event of a Service Level Failure, We shall issue a credit to You equivalent to the Fees for the Hosted Services in which the Service Level Failure occurred, prorated for that portion of the month for which the Service Level Failure existed, (each such pro-rated credit being a "**Service Credit**").

Any Service Credit payable to You under this Agreement will be issued to You in the calendar month following the Service Period in which the Service Level Failure occurred. This **Section 6.04** sets forth Our sole obligation and liability and Your sole remedy for any Service Level Failure.

Section 7.05 Scheduled Downtime. We will use commercially reasonable efforts to (i) schedule downtime for routine maintenance of the Hosted Services between 12.00 A.M and 5.A.M. Pacific time; and (ii) give You at least five hours prior notice of all scheduled outages of the Hosted Services ("**Scheduled Downtime**")

Section 7.06 Service Support. The Services include Our standard customer support services ("**Support Services**") as described at www.inn8ly.com.

Section 7.07 Service Use and Data Storage. The Hosted Service includes specified limits data storage, bandwidth and data traffic (each a "**Service Allocation**"). We will use commercially reasonable efforts to

promptly notify You by e-mail if You have reached 80 percent of its then current Service Allocation and You may increase c and corresponding Fee obligations in accordance with Our published price lists. You acknowledge that exceeding Your then-current Service Allocation may result in service degradation for You and other of Our customers and You agree that We have no obligation to permit You to exceed its then-current Service Allocation; and that You are not entitled to any Service Level Credits for periods during which You exceed Your then-current Service Allocation, regardless of whether the Hosted Services fails to meet the Availability Requirement during such period.

SECTION 8. SECURITY.

Section 8.01 Our Systems and Security Obligations. We will employ standard commercial security measures in accordance with Our data privacy and security policy as amended from time to time, as available on Our website at www.inn8ly.com ("**Privacy and Security Policy**"). We may use third party suppliers to host the Services and such suppliers may have their own security policies, which will be available to You upon request.

Section 8.02 Data Breach Procedures. We maintain a data breach plan in accordance with the criteria set forth in Our Privacy and Security Policy and shall use our best efforts to implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan). We will inform You if such breach may have exposed Personal Information and You are responsible for notifying the individuals whose information may have been exposed and for making any required governmental notices and filings with respect to such Data Breach. Please note that we are not responsible for any data loss you may suffer with respect to a Data Breach – See Section 13 Limitation on Liability.

Section 8.03 Prohibited Data. You acknowledge that the Services are not designed with security and access management for Processing the following categories of information (each of the following being "Prohibited Data):

- (a) Personal Information as defined in the California Privacy Law and similar laws relating to privacy, data protection or data security of other applicable jurisdictions;
- (b) Personal Data as defined in the European Union General Data Protection Regulation;
- (c) Data that You do not have full rights to copy, transmit, store, process or distribute;
- (d) Data that is classified and or used on the U.S. Munitions list, including software and technical data; articles, services and related technical data designated as defense articles or defense services; and ITAR (International Traffic in Arms Regulations) related data.

You shall not, and shall not permit any Website Visitor or other Person to, provide any Prohibited Data to, or Process any Prohibited Data through, the Services.

Section 8.04 Your Control and Responsibility. You have sole responsibility for:

- (a) all Website Data provided by You or Your Website Visitors, including the content and use of such data;
- (b) all information, instructions and materials provided by or on behalf of You or any Website Visitor in connection with the Services;

- (c) the security and use of Your Website Visitors' Access Credentials; and
- (d) all access to and use of the Services and Provider Materials directly or indirectly by or through the Your systems.

SECTION 9. FEES; PAYMENT TERMS.

Section 9.01 Fees. You shall pay to Us the fees set forth on Our standard price list, found at www.Inn8ly.com ("**Fees**") in accordance with this **Section**. As described on Our Website, separate Fees are charged for distinct options for website development and hosting services, custom development, website revision, expanded Service Allocations and packaging and delivery of the Website to You upon Termination.

Section 9.02 Payment. We accept payment only by means of credit and debit cards. You must promptly update all billing data to keep Your Account current, complete and accurate (such as a change in billing address, credit card number or credit card expiration date) and You must promptly notify Us if Your credit or debit card is changed (for example, for loss or theft) or if You become aware of a potential breach of security, such as the unauthorized disclosure or use of Your name or password. The credit card that You provide as part of the billing data will be automatically billed each month on the same day that You first paid for the Service or on the first Business Day thereafter. You agree that We may charge Your credit card all amounts due and owing for Your Account on that monthly basis or upon cancellation (see "**Termination**" below.)

Section 9.03 Change in Fees. We may increase or decrease our Fees after the second contract year of the Initial Term by providing written notice to You of a revised price list at least sixty (60) calendar days prior written notice.

Section 9.04 Taxes. All Fees and other amounts payable by You under this Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use and excise taxes, VAT and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by You hereunder, other than any taxes imposed on Our income.

Section 9.05 Late Payment. If You fail to make any payment within 30 days following the date when due, We may suspend performance of the Services, including the Hosted Services and access to Your Website until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to You or any other Person by reason of such suspension. You agree that in the event We are unable to collect the fees owed to Us for Your account, We may take such additional steps We deem necessary to collect such fees from You and that You will be responsible for all costs and expenses incurred by Us in connection with such collection activity, including collection fees, court costs and attorneys' fees.

Section 9.06 No Deductions or Setoffs. All amounts payable to Us under this Agreement shall be paid by You to Us in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than Service Credits issued pursuant to **Section 6.04** or any deduction or withholding of tax as may be required by applicable Law).

SECTION 10. CONFIDENTIALITY.

Section 10.01 Confidential Information. In connection with this Agreement You (as the "**Disclosing Party**") may disclose or make available Confidential Information to Us (as the "**Receiving Party**"). "**Confidential Information**" means information of the Disclosing Party which is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information may also include oral information provided that such information is designated as confidential at the time of disclosure and is reduced to writing by the Disclosing Party within a reasonable time (not to exceed thirty (30) days) after oral disclosure and such writing is marked in a manner to indicate its confidential nature and delivered to the Receiving Party.

Section 10.02 Exclusions. Except for Personal Information or any third-party information that the Receiving Party is under a contractual or other binding obligation to maintain in confidence, Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records:

- (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party;
- (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement;
- (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or
- (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

Section 10.03 Protection of Confidential Information. The Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement except as may be permitted by and subject to its compliance with Section 9.04 below (Compelled Disclosures).
- (b) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
- (c) not disclose or permit access to Confidential Information other than to those of its Representatives who:
 - (d) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement;
 - (e) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section;

(f) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section; and

(g) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.03.

Section 10.04 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.03 (Protection of Confidential Information) and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.04 the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

Section 10.05 Expiration of Obligation. The Receiving Party's obligations to keep information confidential under this Section shall expire two years following termination of this Agreement.

SECTION 11. TERM AND TERMINATION.

Section 11.01 Initial Term. The initial term of this Agreement commences as of the date that You purchased the Services and shall continue for a period of twenty-four months.

Section 11.02 Renewal. Following the Initial Term, this Agreement will automatically renew for successive one-month terms (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

Section 11.03 Right to Terminate During Initial Term. We may terminate this Agreement at any time upon 30 days notice. We shall promptly repay You the pro rata portion of any unearned Fees you may have paid to us prior to such termination.

Section 11.04 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

We may terminate this Agreement, effective on written notice to You, if You:

(a) fail to pay any amount when due hereunder, and such failure continues more than 30 days after Our delivery of written notice thereof; or

(b) breach any of Your obligations under **Section 3.02.** (Restrictions), **Section 7.03** (Prohibited Data) or **Section 9** (Confidentiality).

Either party may terminate this Agreement at any time following the Initial Term upon 30 days prior written notice.

Section 11.05 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

(b) You shall immediately cease all use of any Services or Provider Materials and permanently erase all Provider Materials from all systems You directly or indirectly control;

notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control We may retain Website Data in Our backups, archives and disaster recovery systems until such data is deleted in the ordinary course; and all such information and materials will remain subject to all confidentiality, security and other applicable requirements of this Agreement;

(c) We may disable all Your and Website Visitor access to the Hosted Services and Provider Materials.

Section 11.06 Termination Procedure. Upon termination of this Agreement for any reason, we will promptly reregister the Domain in Your name. Provided that You are current Your payment of all Fees due under this Agreement, we will transmit to You electronically:

(a) Copies of all User Provided Materials; and

(b) A list of all images we have acquired from third parties and a list of all third party applications used on Your Website. You understand that in the event that You wish to maintain Your Website on your own or through another supplier, you will need to acquire rights to use such Third Party Materials from the licensors thereof.

Section 11.07 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 9, Section 10.05, this Section 10.07, Section 11, Section 12, Section 13 and Section 16.

SECTION 12. REPRESENTATIONS AND WARRANTIES.

Section 12.01 Your Representations, Warranties and Covenants. You represent, warrant and covenant to Us that: You have and will have the necessary rights and consents in and relating to the Customer Provided Materials and Website Data such that in providing the Services in accordance with this Agreement, We will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

Section 12.02 OUR DISCLAIMER OF WARRANTIES. ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED BY US "AS IS". WE HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AND WE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

WE MAKE NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, WILL MEET YOUR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

SECTION 13. INDEMNIFICATION.

Section 13.01 Your Indemnification. You shall indemnify, defend and hold harmless Inn8ly and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees (each, a "**Inn8ly Indemnitee**") from and against any and all Losses incurred by such Inn8ly Indemnitee in connection with any action or proceeding by a third party (other than an Affiliate of a Inn8ly Indemnitee) that arise out of or relate to any of the following (an "Action"):

- (a) Customer Provided Materials and Website Data, including any Processing of Website Data by or on behalf of Inn8ly in accordance with this Agreement;
- (b) action arising under the Digital Millennium Copyright Act;
- (c) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of You or any Website Visitor, including Our compliance with any specifications or directions provided by or on behalf of You or any Website Visitor to the extent prepared without any contribution by Us;
- (d) allegation of facts that, if true, would constitute Your breach of any of Your representations, warranties, covenants or obligations under this Agreement; or
- (e) negligence or more culpable act or omission (including recklessness or willful misconduct) by You.

Section 13.02 Indemnification Procedure. We shall promptly notify You in writing of any Action for which an Inn8ly Indemnitee believes it is entitled to be indemnified pursuant to Section 12.01. We shall cooperate with You (the "**Indemnitor**") at Your sole cost and expense. You shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Inn8ly Indemnitee to handle and defend the same, at the Your sole cost and expense. Our failure to perform our obligations under this **Section 12.02** will not relieve You of Your obligations hereunder except to the extent that You can demonstrate that You have been prejudiced as a result of such failure. The Inn8ly Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

Section 13.03 Mitigation. If any of the Services or Provider Materials are, or in Our opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Yours or any Website Visitor's use of the Services or Provider Materials is enjoined or threatened to be enjoined, We may, at its option and sole cost and expense:

(a) obtain the right for You to continue to use the Services and Provider Materials materially as contemplated by this Agreement;

(b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or

(c) by written notice to You, terminate this Agreement and take down Your Website from the internet. Upon such notice You must immediately cease any use of the Services and Provider Materials. If such termination occurs prior to the expiration of any period with respect to which You have paid a Fee You will be entitled to a pro-rata refund of any portion of such period following termination.

SECTION 14. LIMITATION OF LIABILITY.

Section 14.01 EXCLUSION OF DAMAGES. IN NO EVENT WILL WE OR ANY OF OUR LICENSORS, SERVICE PROVIDERS OR SUPPLIERS WILL BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY:

(a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT;

(b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO Section 6,

(c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR

(d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES,

REGARDLESS OF WHETHER WE OR ANY OF OUR EMPLOYEES OR ANY OF OUR LICENSORS, SERVICE PROVIDERS OR SUPPLIERS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Section 14.02 CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL OUR COLLECTIVE AGGREGATE LIABILITY AND THAT OF OUR SERVICE PROVIDERS, SUPPLIERS AND SUBCONTRACTORS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE HIGHER OF (i) THE SUM OF ALL FEES PAID BY YOU UNDER THIS AGREEMENT FOR THE PRIOR 12 MONTHS OR (ii) \$500. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Section 14.03 Exceptions. The exclusions and limitations in **Section 13.01** and **Section 13.02** do not apply to Our obligations under **Section 12** (Indemnification) or liability for Our gross negligence or willful misconduct.

SECTION 15. FORCE MAJEURE.

Section 15.01 No Breach or Default. In no event will We be liable or responsible to You, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, to the extent such failure or delay is caused by any circumstances beyond Our reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, catastrophic or unusual internet delays, denial of service attacks and other "hacker" activity, passage of Law or any action taken by a governmental or public authority, including imposition of export or import restrictions, quotas or other restrictions or prohibitions or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

SECTION 16. MISCELLANEOUS.

Section 16.01 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, between the parties.

Section 16.02 Notices. All notices, requests, consents, claims, demands and waivers under this Agreement must be in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.02):

If to Inn8ly: Inn8ly
 11268 Caledonia Way
 Nevada City, California
 95959
 Facsimile: 415-908-1152

If to You, at the address provided in the On-Boarding Form.

Notices sent in accordance with this Section 15.02 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile with confirmation of transmission), if sent during the addressee's normal business hours, and otherwise on the next business day; (d) on the fourth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid and (e) on the day after transmission if sent electronically by e-mail.

Section 16.03 Assignment. You shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether

voluntarily, involuntarily, by operation of law or otherwise, without Our prior written consent, which shall not be unreasonably withheld.

Section 16.04 Amendment and Modification; Waiver. This Agreement may be amended or modified by Us upon notice to You which may be given by e-mail; provided, however, that no such modification shall increase the Fees we charge to You during the Initial Term. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

Section 16.05 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 16.06 Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of California, as such laws are applied to agreements entered into and to be performed entirely within California between California residents without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California.

Section 16.07 Submission to Jurisdiction and Venue. Each party agrees that Sacramento County is an appropriate venue for the resolution of any suit or action or any proceeding for preliminary equitable relief. Each party irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in Sacramento County, California, for any matter arising out of or relating to this Agreement, provided that in actions seeking to enforce any order or any judgment of such federal or state courts located in California, such personal jurisdiction shall be nonexclusive.

Section 16.08 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

SECTION 17. ADDITIONAL DEFINED TERMS.

"Documentation" means any manuals, instructions or other documents or materials that We provide or make available to You in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"Harmful Code" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent You or any Website Visitor from accessing or using the Services or Our systems as intended by this Agreement.

"Intellectual Property Rights" means any and all patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of

protection, in any part of the world whether granted, applied for, or which come into existence following the Effective Date of this agreement.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Losses" means any and all losses, damages, or other liabilities, including any interest, awards, penalties, fines, costs or expenses of whatever kind, as well as reasonable attorneys' fees.

"On-Boarding Form" means the Inn8ly questionnaire for preparing a customer website found on www.Inn8ly.com.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

"Process" and **"Processing"** means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy.

"Provider Materials" means the html code, java script, images and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Us or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Our systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data or other content derived from Our monitoring of Your access to or use of the Services, but do not include Third Party Materials or Customer Provided Material or You Data.

"Provider Personnel" means all individuals involved in the performance of Services as employees, agents or independent contractors of Inn8ly or any Subcontractor.

"Representatives" means, with respect to a party, that party's and its Affiliates' employees, officers, directors, consultants and legal advisors.

"Third Party Materials" means materials and information, in any form or medium, including any open-source or other software, specifications, documents, data, content, images, video, products, equipment or components of or relating to the Services that are not proprietary to Us.

"Your Systems" means Your information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by You or through the use of third-party services.

"Website Visitor" means any individual or entity who visits the Website.

"Website Data" means information, data and other content, in any form or medium, that is input, linked collected, or otherwise received, on or through Your Website from a Website Visitor.