



‘TECHNOLOGY FOR BOOKING GOLF’

AN OPERATOR’S LICENSE AGREEMENT 2018/19

THIS AGREEMENT ("Agreement") is made on 1st December 2018 (the "**Delivery Date**")

BETWEEN:

- 1 **BACK 9 SOLUTIONS GENERAL TRADING LLC**, a company registered under Number 751207 with its registered address at 301 Al Maktab Building, Al Barsha 1, Dubai, United Arab Emirates (the "**Provider**"); and
 - 2 The "**Operator**";
- (together the "Parties" and any one of them a 'Party').

SIGNER Declaration

On behalf of the **Facility**, I have read, understand and accept the below conditions of the Agreement with the **Provider**.

I fully understand and accept that payments received by the **Operator** for services provided to a Customer are payments that are due, less fees or commissions, to the **Provider** and such payments will be honored in accordance with the conditions stipulated in this agreement. The termination or expiry of this agreement does not waive any outstanding fees due to the **Provider**.

SIGNED BY:

.....
Back 9 Solutions General Trading LLC, Signature

.....
Date

Company Stamp (below):

.....
The **Operator**, Signature

.....
Date

Company Stamp (below):

DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement" means this agreement and its schedules;

"Back9 Account" means the 'Profile', 'Bookings' and 'Statement' provided in the Back9 Concierge application;

"Back9 Rate" means a price agreed by the **Provider** with Partner Clubs and offered to the **Operator**. This Rate that will never be displayed to a customer;

"Back9 Partner Club" means a golf facility contracted by the **Provider** to use Back9 technology in a separate agreement;

"Booking" means a booking for any goods and services made through the Technology;

"Confidential Information" means all information (whether written or oral) concerning the business and affairs of either Party which is obtained or received by the other Party as a result of the discussions leading up to, the entering into or the performance of this Agreement but excludes information which can be established to have been already in the public domain (other than by way of unauthorized disclosures) at the date of its disclosure;

"Delivery Date" means the date on which the Technology is provided, or made available to the **Operator** by the **Provider**;

"Displayed Rates" means the Golf Club's Rates displayed on the Technology for the provision of their Goods and Services;

"Effective Date" means the date first recorded in this agreement;

"Force Majeure" means any circumstances beyond the reasonable control of the Parties including but not limited to, any act of God, strike, lock-out or other form of industrial action and royal demise;

"Goods and Services" means a variety of goods and services including but not limited to the provision of access to or the use of golf course booking systems;

"Group Customers" means any booking including 16 golfers or more, being booked by the **Operator** to purchase Tee Times;

"Individual Customers" means any booking including 15 golfers or less, being booked by the **Operator** to purchase Tee Times;

"Intellectual Property" means any and all intellectual property in or in relation to the Licensed Application (defined below) including (i) copyrights and other rights associated with works of authorship throughout the world, including neighboring rights, moral rights, and mask works, (ii) trade secrets and other confidential information, (iii) patents, patent disclosures and all rights in inventions (whether patentable or not), (iv) trademarks, trade names, Internet domain names, and registrations and applications for the registration thereof together with all of the goodwill associated therewith, (v) all other intellectual and industrial property rights of every kind and nature throughout the world and however designated, whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in effect;

"License" means the license granted by the **Provider** to the **Operator** pursuant to Clause 11;

"Licensed Application" means the software provided or made available to the **Operator** in any form to enable it and such of its Partners and affiliates which are authorized by the **Provider** under this License, to offer and promote the Goods and Services to third parties through the use of mobile computers and other hand-held devices and any upgrades, modifications, trial or beta versions of the same which may be provided or made available to the **Operator** in any form from time to time and any other software or documentation which enables the use of such licensed software, modifications, trial/beta versions and upgrades, and is currently known as the Technology;

"New Release" means any improved modified or corrected version of any of the Technology or any documentation relating to the Technology from time to time issued by the **Provider**;

“Partner Golf Club” means any recognized location contracted to Back9 offering access to goods and services including but not limited to the provision of playing, learning and practicing golf as listed on the Technology;

“Pricing Appendix” means a list of all Partner Golf Clubs offering seasonal rates. These Net Rates will be used to generate a monthly invoice.

“Presentment Currency” means the currency chosen by the **Operator** and displayed to the user when displaying their goods and services that can be purchased;

“Technical Support” means the provision of technical support in accordance with Clause 12 in respect of the Licensed Application.

BACKGROUND

The **Provider** has agreed to grant the **Operator** a non-exclusive licence to use the licensed technology (as defined below) herein referred to as the Technology, to book their Customers upon the terms and conditions contained in this agreement;

IT IS HEREBY AGREED as follows:

1. OPERATOR RATES

- a. The **Operator** Rate is offered to businesses who meet the criteria as set by the **Provider**.
- b. A separate Pricing Appendix will display the seasonal Net Rates offered by the **Provider** to the **Operator**.
- c. The **Operator** Rate is a non-negotiable Rate provided by the **Provider** and booked through the Technology.
- d. Under no circumstances are the net **Operator** Rates to be published in any form.
- e. Any advertising material produced by the **Operator** will only display full Recommended Retail Rates.
- f. All Rates published on the Technology are INCLUSIVE OF VAT and are subject to any further taxes that may be introduced by the government.
- g. Cart hire and range balls are included in the **Operator** Rates provided.
- h. Club hire, shoe rental and any other additional services are not included in the Rate offered.
- i. The **Provider** and Golf Club reserve the right to offer special ‘local and visitor’ promotions at their own discretion. The purchase of these ‘Specials’ by the **Operator** and subsequent re-sale is strictly not permitted under the terms of this agreement.

2. BOOKING SYSTEM

- a. The Technology will require a ‘Primary’ account from each **Operator**. This account can be used to create sub-accounts as is necessary which can be accessed by authorized users.
- b. The **Operator** will be responsible for creating and deleting any sub-accounts.
- c. The **Provider** will make all bookings using the information provided by the **Operator**.
- d. The **Provider** will issue the **Operator** with a confirmed booking, a digital and email receipt showing Customer names, date, tee-time and any other relevant information.
- e. The **Provider** will not be liable for any bookings made by the **Operator** at Partner Golf Clubs

3. CONDITIONS OF PLAY

- a. All Back9 Partner Golf Clubs require that golfers hold an official handicap of 28 or less for men and 36 or less for ladies and can maintain a reasonable pace of play.
- b. All golfers must adhere to the Golf Clubs dress code, which requires proper golfing attire at all times, please note that beach wear or denim jeans are not permitted on the golf course.
- c. All Golf Courses require golfers to wear soft spikes or rubber soled golf shoes.
- d. All golfers are liable for the loss or damage to rental clubs procured from the Facility.
- e. All golfers under the age of eighteen (18) are not permitted to drive a golf cart.
- f. Any damage to the golf cart or third party property is the driver's responsibility.
- g. A maximum of 2 carts will be issued per Tee Time at each Partner Golf Club.
- h. The Golf Club reserves the right to add additional golfers to groups when required.
- i. Complimentary use of the Practice Facility is available to all golfers one hour prior to your tee time
- j. Under no circumstances are spectators to either walk the golf course or ride in the golf carts.
- k. A Partner Golf Club reserves the right to change a Tee Time to a 'Shotgun' or vice versa, if Club operations require.
- l. A Partner Golf Club cannot accept any responsibility for a golfer's late arrival for their tee time.

4. VISITING GOLF PROFESSIONALS POLICY

- a. A Professional Rate will be provided at all Back9 Golf Clubs in the Pricing Appendix. This Rate is available to card-carrying PGA members and registered trainees of recognized PGA's, or to members of the various recognized playing tours.
- b. A professional will be asked by a Back9 Partner Club to produce a current membership or registration card to verify PGA status.
- c. Any PGA member failing to adopt this obligatory procedure will either be denied access to the course or establishment in question or will be required to pay a green fee.
- d. Should a PGA Professional bring 7 or more paying golfers, then a courtesy green fee may be extended provided that the Professional has made advance written contact with the respective Back9 Golf Club.
- e. Only one Professional Rate at each Back9 Partner Club may be granted to a visiting Professional over a one-month period.
- f. No tuition may be given at any Back9 Partner Club without the prior approval of the respective Director of Golf.

5. FEES & COMMISSIONS

- a. The **Provider** will offer a seasonal 'Back9 Rate' for all Partner Clubs. This Rate should always be lower than the Rate displayed to the Customer.
- b. If a 'Back9 Rate' is not lower than a Partner Club's daily Rate, the **Provider** will offer the best available Rate using a pre-agreed commission model.
- c. The Pricing Appendix on the last page of this contract will consider the Back9 Rates and the fees or commissions for all bookings made using the Technology.
- d. An addendum to this contract will consider the fees or commissions for any additional goods and services sold through the Technology.
- e. If a Customer cancels a booking inside 48 hours and the **Provider** cannot collect the value of the booking from the Customers credit card, The **Facility** will be liable for the full value of the booking.

- f. If a Customer cancels a booking inside of 48 hours and when authorized by a Back9 Partner Club, the **Provider** can refund a Customer in full with 'credit' which can be spent at any Back9 Partner Golf Club around the world.

6. PAYMENT POLICY

- a. The **Operator** will be invoiced by the **Provider** for all pending and completed bookings each month.
- b. Payment of all Net Rates are required 30 days prior to a Customer's date of play.
- c. If a booking is made within 30 days, payment of the Net Rate will be extended to the next monthly billing cycle.
- d. Payment of all fees due to the **Provider** must be Net Rates and must **exclude** any bank charges
- e. A Direct Deposit arrangement can be entered into with bank details below. Failure to make full payment will incur a late fee of 1.5% interest on the total amount owed for bookings.
- f. Payments by the **Operator** can also be made with a company check.
- g. Failure to pay the **Provider** account balance in a full or timely manner may result in suspension of the **Operator's** Technology.

Group Bookings (16 golfers or more);

- a. 100-day prior confirmation with 25% of total green fee payment
- b. 70-day prior confirmation with 50% of total green fee payment
- c. 30-day prior confirmation with 100% of total green fee payment

*NOTE: Reinstating any cancelled bookings will be subject to the availability of Tee Times at a partner golf club

Back 9 Solutions Bank Details:

First Abu Dhabi Bank
P. O. Box 6316,
Abu Dhabi,
United Arab Emirates

Account Name: Back 9 Solutions General Trading LLC
Account Number: 1891323839043017
IBAN: AE450351891323839043017
Swift Code: NBADAEAXXX

7. CANCELLATIONS, REFUNDS & 'NO SHOWS'

In the event of cancellations after the bookings have been confirmed, the following charges are payable to the Provider;

Individual Bookings (15 golfers or less);

- a. Cancellations made more than 48 hours in advance will not be charged.
- b. Cancellations made within 48 hours or 'No Shows' will be charged at 100% of the contracted Rate unless the Partner Golf Club agrees to waive all fees.
- c. Cancellations made within 48 hours or 'No Shows' will be charged at 100% of the contracted Rate unless the Partner Golf Club agrees to waive all fees.

Groups (16 players or more);

- a. 30 days in advance of the scheduled date of tee times will receive a full refund of any deposit paid.
- b. 15 to 29 days in advance of the scheduled date of tee times will receive 25% of deposit refunded.
- c. Within 14 days in advance of the scheduled date of tee times will forfeit 100% of any deposit paid.
- d. Reduction in group numbers will be accepted as per the following terms;
 - I. No more than 50% of the originally agreed figure - 90 days from date of booking.
 - II. No more than 25% of the originally agreed figure - 60 days from date of booking.
 - III. No more than 10% of the originally agreed figure - 31 days from date of booking

The Operator should ensure that Customers are fully aware of these policies at the time of booking. The **Operator** is liable for such charges in the event of cancellations or 'No Shows.'

~~8. An addendum to this Agreement will consider the transaction fees for any services sold on additional technology platforms provided by the Provider.~~

~~9.~~

~~10.8.~~ **LICENCE**

- a. The **Provider** now grants to the **Operator** a non-exclusive, non-transferable, non-sublicensable, royalty-free licence to use the Licensed Application based on the terms and conditions contained in this Agreement.
- b. The Licence shall not be deemed to extend to any programs or materials of the **Provider** other than the Licensed Application unless specifically agreed to in writing by the **Provider**.
- c. The **Provider** shall own any data which is processed on, utilizing or resulting from the use of the Licensed Application or any part thereof. The Operator will be granted a licence to commercially exploit the data, either alone or in conjunction with any third party on terms to be specifically agreed with the **Provider**. Nothing in this Agreement shall be interpreted in a manner which restricts or limits the **Provider's** right to use, protect, enforce and commercially exploit the aforesaid data in any manner.

~~11.9.~~ **DELIVERY, INSTALLATION AND SYSTEM REQUIREMENTS**

- a. Delivery of the Licensed Application to the **Operator** shall be deemed complete on the Delivery Date.
- b. The Licensed Application may be utilized only through compatible computers, mobile computers or handheld devices, the Internet, and any necessary minimum specifications which may be prescribed from time to time by the Provider ("Software Requirements").
- c. The Software Requirements for select mobile computers and handheld devices are as follows:
 - i. Apple iOS devices running the latest iOS release;
 - ii. Android OS devices running the latest Android OS release;
 - iii. Language: English, Arabic, Italian, German, Spanish, French.
- d. The current version of the Licensed Application software may be upgraded, patched, fixed or modified from time to time to add support for any existing or new functions and services. The Software Requirements may consequently vary, and any such changes will be notified to the **Operator** by the **Provider**.
- e. If the **Operator** receives an update, fix, or patch to the Licensed Application, the **Operator** accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in the accompanying license information. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this

Agreement. If the Licensed Application is replaced by an update, the **Operator** agrees to promptly discontinue its use of the replaced Licensed Application.

12.10. RISK

- a. Risk in the Technology as provided or made available to the **Operator** shall pass to the **Operator** on the Delivery Date.
- b. If any part of the Licensed Application is thereafter lost, destroyed or damaged, the Provider will, at the request of the **Operator**, provide or make available to the **Operator** a substitute, repaired or fixed copy of the Technology at the **Operator's** expense.

13.11. OPERATOR'S OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- a. The **Operator** agrees to comply with its obligations contained in this Agreement.
- b. The **Operator** agrees and warrants that it will comply with any end user terms which are stipulated by the **Provider** in connection with the Licensed Application. The **Operator** also agrees and warrants that it will procure similar obligations from any and all users who are provided access to the Licensed Application by it or on its behalf.
- c. The **Operator** acknowledges that the Licensed Application has not been prepared to meet the **Operator's** individual requirements unless specifically agreed to in writing by the Parties. The **Provider** will not be liable for any failure of the Licensed Application to provide any functionality not previously agreed by the Parties in writing.
- d. The **Operator** undertakes not to;
 - I. use, copy, modify or distribute the Licensed Application or any part thereof except as expressly permitted by the **Provider**;
 - II. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Licensed Application or any part thereof, except as expressly permitted by law without the possibility of contractual waiver;
 - III. use any of the Licensed Application's components, files, modules, audio-visual content, or related licensed materials or any parts thereof separately from the Licensed Application; or
 - IV. sublicense, rent, or lease the Licensed Application or any part thereof.
- e. The **Operator** hereby represents and warrants to the **Provider** that the **Operator** has not been induced to enter into this Agreement by any representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and the **Operator** hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this Agreement.
- f. Subject to the exceptions set out below and the limitations upon its liability below the **Provider** warrants that:
 - I. its title to and property in the Licensed Application is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this Agreement;
 - II. any media upon which the Licensed Application are stored will for a period of two (2) business days from the Delivery Date be free from defects in materials design and workmanship; and

- III. it will perform the Technical Support and any other agreed services with reasonable care and skill.
- g. The **Provider** shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described below.
 - h. Without prejudice to the foregoing the **Provider** does not warrant that the use or operation of the Licensed Application will be uninterrupted or error free.
 - i. The Licensed Application is provided on an 'as is, as available' basis without warranty of any kind, either express or implied, including but not limited to, any implied warranties of fitness for a particular purpose, quality, suitability, truth, accuracy or completeness, title, or non-infringement other than those which are implied by and incapable of exclusion, restriction or modification under applicable law in the applicable jurisdiction.
 - j. The **Operator** expressly agrees that use of the Licensed Application, is at its discretion and at its own risk. No oral or written information or advice given by the **Provider** or its employees or affiliates will create or imply a warranty or in any way increase the scope of the **Provider's** liability.
 - k. The **Provider** makes no representations or warranties whatsoever about any third-party website, content or application which the **Operator** its partners, affiliates, subsidiaries, employees, assigns or end customers may access through the Licensed Application. The **Operator** acknowledges that any third-party website, content, or application is completely independent and that the **Provider** has no control over such third-party website, content or application. The **Operator** agrees and acknowledges that the **Provider** is not responsible to it or its partners, affiliates, subsidiaries, employees, assigns or end customers for any transmission problems of downloaded or otherwise used content of this Licensed Application or any form of website or usage downtime. The **Operator** agrees and acknowledges that it and its partners, affiliates, subsidiaries, employees, assigns or end customers will be solely responsible for any damage to their equipment, computer systems or loss of data that results from the download or use of material or data relating to the Licensed Application.
 - l. Subject to the foregoing all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the provision by the **Provider** of the Technical Support and any other agreed services are hereby excluded.

14.12. ONLINE TECHNICAL SUPPORT

- a. With effect from the Delivery Date and for the duration of this Agreement the **Provider** will provide Technical Support in relation to the Licensed Application. Technical Support shall comprise use of the Licensed Application, forthcoming modifications, updates, fixes and patches for the same and the diagnosis of faults in the Licensed Application. Technical Support may be carried out by way of information and advice by telephone, electronic means (including e-mail), remotely or by attendance on site as determined by the **Provider** in its absolute discretion.
- b. The creation and despatch to the **Operator** from time to time of a new release of the Licensed Application or any documentation relating to the Licensed Application shall be at the **Provider's** sole discretion.
- c. The **Operator** shall supply in writing to the **Provider** a detailed description of any fault requiring Technical Support and the circumstances in which it arose forthwith upon becoming aware of the same. When notifying a defect or error, the **Operator** must (so far as it is able) provide the **Provider** with a documented example of such defect or error.
- d. Technical Support shall not include the diagnosis and rectification of any fault resulting from;
 - e. the improper use operation or neglect of the Licensed Application;
 - f. the modification of the Licensed Application or its merger (in whole or in part) with any other software;

- g. the use of the Licensed Application on equipment other than the equipment prescribed by the **Provider**;
- h. the failure by the **Operator** to implement recommendations in respect of or solutions to faults previously advised by the **Provider**;
- i. any repair adjustment alteration or modification of the Licensed Application by any person other than the **Provider** without the **Provider's** prior written consent;
- j. any breach by the **Operator** of any of its obligations under any maintenance agreement in respect of the equipment prescribed by the **Provider**;
- k. the **Operator's** failure to install and use upon the equipment prescribed by the **Provider** in substitution for the previous release any releases, modifications, patches or fixes of the Licensed Application on receipt of the same; or
- l. the use of the Licensed Applications for any purpose for which they were not designed.
- m. The **Provider** may upon request by the **Operator** agree to provide additional Technical Support notwithstanding that the fault results from any of the circumstances described above, at a charge based on the **Provider's** current Rate Card. Such charges shall be payable by the **Operator** (together with any applicable taxes thereon) within 30 days of receipt of an invoice. Details of the Rate Card will be provided to the **Operator** on request.

15.13. PROPRIETARY RIGHTS

- a. The Intellectual Property in or in relation to or resulting from the Licensed Application of whatever nature whether now known or later devised are and shall remain the exclusive property of the **Provider** and reserves the right to grant licences to use the Licensed Application to third parties.
- b. The **Operator** will notify the **Provider** immediately if the **Operator** becomes aware of any unauthorised use of the whole or any part of the Licensed Application by any third party.

16.14. LIMITATION OF LIABILITY

- a. The following provisions set out the **Provider's** entire liability (including any liability for the acts and omissions of its employees, agents, partners, affiliates, assigns and sub-contractors) to the **Operator** in respect of:
 - I. any breach of its contractual obligations arising under this agreement; and
 - II. any representation statement or tortious act or omission including negligence (but excluding any of the same made fraudulently) on the part of the **Provider** or its employees, agents, partners, affiliates, assigns or sub-contractors arising under or in connection with this Agreement ("Event of Default"); and
- b. Subject to the limits set out in clause below the **Provider** shall accept liability to the **Operator** in respect of damage to the tangible property of the **Operator** resulting from the negligence of the **Provider** or its employees, agents or sub-contractors.
- c. The **Provider** will have no financial liability in respect to any Event of Default.
- d. The **Operator** agrees and acknowledges that the **Provider** will not be liable in any manner and under any circumstances for any content or data which is created, stored or published in connection with or resulting from the Licensed Application;
- e. The **Provider** will not be liable to the **Operator** in respect of any Event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the **Operator** as a result of an

action brought by a third party) even if such loss was reasonably foreseeable or the **Provider** had been advised of the possibility of the **Operator** incurring the same.

- f. The **Operator** hereby agrees to afford the **Provider** not less than thirty (30) business days (following notification thereof by the **Operator**) in which to remedy any Event of Default hereunder.
- g. The **Provider** shall have no liability to the **Operator** in respect of any Event of Default unless the **Operator** shall have served notice of the same upon the **Provider** within thirty (30) business days of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- h. The **Provider** shall have no liability to the **Operator** in respect of a cancellation of or a no show in relation to a booking.
- i. Nothing in this clause shall confer any right or remedy upon the **Operator** to which it would not otherwise be legally entitled.

17.15. INDEMNIFICATION

- a. The **Operator** will indemnify and hold harmless the **Provider**, its affiliates, partners and subsidiaries and all their officers, employees, agents, partners and shareholders from any claims, liabilities, losses, costs or damages, including legal fees and costs, arising out of the breach of any of its obligations, representations and warranties under this Agreement.
- b. The **Provider** will not be responsible for any losses arising from any financial loss or theft due to unauthorized or fraudulent transactions related to use of or access to the Licensed Application.

18.16. CONFIDENTIAL INFORMATION

- a. The **Operator** shall not during the Term or any time thereafter make use of, for the **Operator's** own purposes or those of any third party or disclose to any third party, any Confidential Information.
- b. The obligations contained in sub-clause 16.a shall continue to apply without limitation in time following the expiration or termination of this Agreement, but they shall cease to apply to any information or knowledge that may subsequently come into the public domain by way of authorized disclosure.
- c. The **Operator** shall promptly notify the **Provider** if it becomes aware of any breach of confidence by any third party to whom the **Operator** divulges all or any part of the Confidential Information and shall give the **Provider** all reasonable assistance in connection with any proceedings which the **Provider** may institute against such third party for breach of confidence.

19.17. SECURITY AND CONTROL

- a. The **Operator** shall during the continuance of the License:
 - I. effect and maintain adequate security measures to safeguard the Licensed Application from access or use by any unauthorized third party; and
 - II. maintain a full and accurate record of the **Operator** copying and disclosure of the Licensed Application and shall produce such record to the **Provider** on request from time to time.

20.18. TERM, RENEWAL AND TERMINATION

- a. This Agreement is valid for a period of 12 months from the Effective Date, and shall be deemed automatically renewed for an equal term unless either Party notifies the other party in writing of its intention not to renew 30 days prior to the expiry date.
- b. The **Provider** may, at its sole discretion, terminate the Licence forthwith on giving notice in writing to the **Operator** if:
 - I. the **Operator** commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the **Provider** so to do, to remedy the breach (such request to contain a warning of the **Provider's** intention to terminate);
 - II. the **Operator** permanently discontinues the use of the Licensed Application; or
 - III. the **Operator** shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the **Operator** shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business.

21.19. CONSEQUENCES OF TERMINATION

- a. Immediately upon the termination, expiry or non-renewal of the Licence the **Operator** will act upon the directions and option of the **Provider** and return, erase, destroy or procure the return, erasure or destruction of the Licenced Application.
- b. Termination of this Agreement will not relieve the Parties of any liability or obligation that accrued prior to such expiration or termination.

22.20. NOTICES

Any notice given under this Agreement shall be in writing and shall be delivered to the relevant party or sent by recorded delivery or fax to the address or fax number of that party as specified in this clause or to such other address or number as may be notified from time to time by that party for this purpose, and shall be effective notwithstanding any change of address not notified.

For the **PROVIDER**:

Back 9 Solutions General Trading
301 Al Maktab Building,
Al Barsha 1, Street 13
P O Box 125797
Dubai, UAE
Tel: +9714 2348885

For the attention of: Mr. Ross Bain

With a copy to be sent to:

therightslawyers
p.o. box 502175
building 8, suite 420

dubai media city
dubai
united arab emirates
fax: +9714 390 8045

For the attention of: Mr. Mark Hill

Unless proved otherwise, a notice shall be deemed to have been received:

- a. if sent by letter, forty-eight (48) hours after the date of posting; or
- b. if delivered by hand or sent by fax during the hours of 9.00 am to 6.00 pm (UAE time) on any day that is not a Friday, Saturday or public holiday, when provided to authorized personnel at the relevant address or transmitted (as applicable), and otherwise on the next working day; or
- c. issued through a Notary Office in the United Arab Emirates.

23.21. **FORCE MAJEURE**

Neither Party shall be liable for delay in performing or failure to perform its obligations under this Agreement if the delay or failure was beyond that Party's reasonable control including, without limitation, any Force Majeure provided the Party suffering the delay immediately notifies the other Party in writing of the reasons for, and likely duration of, the delay, the performance of that Party's obligations shall be suspended during the period that the circumstances persist and it shall be granted an extension of time for performance equal to the period of delay. This clause shall however cease to apply once such reasons have ceased to have effect on the performance of this Agreement.

24.22. **GENERAL PROVISIONS**

- a. *Agreement:* This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.
- b. *Severability:* Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.
- c. *No Waiver:* No consent or waiver, express or implied, by either Party to a breach or default by the other Party in the performance of such Party's obligations under this Agreement, regardless of the failure to notify the other Party of such breach or default, shall be deemed or construed to be a consent to or waiver of any other such breach or default by such other Party of the same or any other of such Party's obligations under this Agreement.
- d. *Assignment:* The Licensee shall not assign any rights and interests hereunder without the prior written consent of the other Party. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, legal representatives, successors, and permitted assigns.
- e. *Relationship of Parties:* The parties are independent contractors and this Agreement shall not establish any relationship of Partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall make any claims, representations or warranties on behalf of the other party or have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

- f. Law: This Agreement shall be governed by and construed in accordance with the laws in force in the Emirate of Dubai, United Arab Emirates
- g. Disputes: Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be subject to the non-exclusive jurisdiction of the Courts of the Dubai International Financial Centre. The Parties irrevocably submit to the jurisdiction of the DIFC Courts and waive any objection they may have to disputes arising out of or in connection with this Agreement being heard in the Courts of Dubai International Financial Centre on the grounds that it is an inconvenient forum (forum non conveniens).
- h. Counterparts: This Agreement may be executed in two parts, either which when executed by both parties shall be considered an original. Copies executed and exchanged by fax shall be considered originals for all purposes.