

Extantware, Inc
Services Agreement

Extantware, Inc. provides tour and transportation software comprising online booking software, inventory management software, customer relationship management software, sales and distribution software, user interfaces and related technology as updated from time to time to its customers. By logging into Dashboard herein, this Services Agreement ("Agreement") is entered into by and between Extantware, Inc, Inc. ("Extantware"), a Hawaii corporation with principal business address at 4348 Waialae Avenue, Suite 227, Honolulu, Hawaii, 96816 and you.

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

"Confidential Information" means any information of a party disclosed to the other party in the course of this Agreement, which is identified as, or should be reasonably understood to be, confidential to the disclosing party, including, but not limited to know-how, trade secrets, technical processes and formulas, proprietary software, source codes, product designs, sales, cost and other unpublished financial information, product and business plans, projections, and Customer and marketing data. "Confidential Information" shall not include information which: (i) is known or becomes known to the recipient directly or indirectly from a third-party source other than one having an obligation of confidentiality to the providing party; (ii) is or becomes publicly available or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the recipient; or (iii) is or was independently developed by the recipient without use of or reference to the providing party's Confidential Information, as shown by evidence in the recipient's possession.

"Content" means all of Customer's information, text, pictures, and other content provided by Customer or partner, sub-agents or vendors of Customer that are provided access to the Software by Customer.

"Data" means all non-public data and information related to travel reservations and other consumer transactions that Customer provides to Extantware directly or indirectly through its use of the Service.

"Effective Date" means the latest date of execution of this Agreement by the parties as set forth at the end of this Agreement.

"Intellectual Property Rights" means all rights in and to trade secrets, patents, copyrights, trademarks, know-how and similar rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to any of the foregoing.

"Services" means the Extantware, Inc. service modules listed on Schedule A (collectively, the "Software").

2. **Development, Hosting and Maintenance.**

2.1 Access. Upon payment of the Access Fee defined in Schedule A, if any, and execution of this Agreement, Extantware will allocate to Customer a designated account on the Service (the "Subscriber Account") for development, design and maintenance and processing of the Content and the Data. Except with the advanced written consent of Extantware, access shall be limited to those users identified and authorized by Customer to have access to the Subscriber Account listed on Schedule A to this Agreement (the "Designated Users"), as amended from time to time by mutual agreement of Extantware and the Customer.

2.2 **Maintenance and Support.**

(a) Maintenance Releases. If Extantware makes generally commercially available new releases, updates or upgrades to the Software, Extantware shall incorporate such release, update or upgrade into the Software hosted on Extantware's web server for access by Customer as part of the Service within a reasonable time after commercial availability.

(b) Customer Support. Extantware shall provide a n interface staffed by support personnel who shall be available Monday through Friday (9:00 a.m. to 5:00 p.m. Pacific Standard Time), excluding Extantware holidays, to report problems and answer questions by Designated Users concerning the use of the Service at hourly rates defined in Schedule A. Emergency Service that is available only as a remedy for Software downtime/lack of availability that Customer was not previously notified of by Extantware will be available outside of standard telephone support hours. Any contact made by Customer to Extantware's support service representatives during non-standard support hours for reasons that prove not to be related to system unavailability or failure will be subject to invoicing by Extantware at then hourly rates plus thirty percent (30%).

(c) Error Correction. During the term of this Agreement, Extantware will use all reasonable efforts to correct all verifiable and reproducible errors in the Software. The definition of 'error' is solely the discretion of Extantware. Within a reasonable period of time after verifying that such error is present, Extantware will initiate work in a diligent manner toward development and implementation of an error correction.

2.3 Restrictions. Customer may not (i) lease, loan, rent, resell, sublicense or distribute the Services to any third party, or (ii) use the Service to create, edit or display materials or process the Content and/or the Data other than content related to the products and services of Customer's business.

2.4 Service Level. Extantware will use all commercially reasonable efforts to provide continuous uptime 24 hours/day, 365 days/year with the exception of scheduled maintenance. Customer shall be informed of downtime associated with scheduled maintenance. In the event of unscheduled downtime, Extantware will use commercially reasonable efforts to resolve the issue as soon as possible.

3. **Content.**

3.1 Input and Removal of Content. Customer shall supply all Content for the use of the Services and shall be responsible for providing and/or entering such Content. If Extantware becomes aware that any Content may be obscene, defamatory or fraudulent, violate any law or regulation or infringe any third-party Intellectual Property Rights, Extantware shall promptly notify the Customer. In the event either party desires to remove any such Content, the parties shall attempt in good faith to resolve such issue. In the event the parties are unable to resolve such issue, Extantware reserves the right to remove any such Content from the Customer's site and/or terminate this Agreement upon three (3) days' notice.

3.2 Customer's Representations. Customer represents and warrants to Extantware that (a) Customer is the owner or valid licensee of the Content, and has secured all necessary licenses, consents, authorizations and waivers for the use of the Content, including without limitation, all text, pictures, audio, video, logos and copy contained in all Content and there are no conflicting claim(s) with respect to Customer's rights thereto; (b) the use of the Content as contemplated herein shall not infringe the Intellectual Property Rights of any party, or constitute defamation, invasion of privacy, or the violation of any right of publicity or any other right of any party; (c) Customer has and will comply with all legislation, rules and regulations regarding the Content; and (d) Customer shall not use the facilities and capabilities of the Service to conduct any activity or solicit the performance of any illegal activity or other activity which infringes the right of Extantware.

4. Ownership Rights.

4.1 By Extantware. As between Extantware and the Customer, Extantware has sole ownership of all right, title and interest in and to (i) the Software and all related documentation provided by Extantware as part of the Service, including all copyrights therein, (ii) all trademarks, service marks, and trade names associated with the Software and Service and (iii) all Extantware supplied material developed for use in connection with this Agreement or for use in connection with the Content or the Service generally.

4.2 By Customer. As between Extantware and the Customer, Customer has sole ownership of rights in any pre-existing copyrightable material or trademarks, service marks and trade names included in the Data or Content, except for those marks specifically identified as belonging to Extantware or a third party.

5. Use of Services.

You agree not to:

- (a) Allow access to or use of the Extantware software by anyone other than you and your representatives
- (b) Build or provide information to build a competitive product or service using similar ideas, features or functions of the Extantware software.
- (c) Reverse engineer, disassemble or attempt to derive the source code from the Extantware software.
- (d) Upload viruses, worms, trojans or other harmful software
- (e) Access or use the Extantware software in any way intended to avoid incurring charges.

You understand and agree:

- (a) That Extantware may need to access your database from time for maintenance and support.
- (b) That Customer is responsible for all fees and taxes or duties and fines in relation to the services.

6. Customer Responsibilities

Customer is responsible for:

- (a) the development and maintenance of Customer's Content and ensuring your Content is accurate and up to date.
- (b) configuring and using the Extantware software;
- (c) compliance with any applicable laws and Extantware policies

7. Security.

Extantware uses firewalls and other technology generally used in the trade to prevent unauthorized third-party access to its computer systems and software storing Customer's data as well as available encryption technology generally used in the trade to prevent unauthorized third-party access. Notwithstanding the foregoing, Extantware is not liable to Customer in the event that its use of firewalls and other technology generally used in the

trade fails to prevent unauthorized third-party access to Customer's data or its website generally or its use of encryption technology generally used in the trade fails to prevent unauthorized third-party access.

8. Fees and Payment.

8.1 Access and Maintenance Fees. Upon execution of this Agreement, Customer shall pay to Extantware the initial Access and or Development Fee(s) in the amount set forth on Schedule A, if any. Custom Software Development if any, is defined on Schedule B.

8.2 Transaction Fees. Fees according to those set forth in Schedule A will be due to Extantware for orders made by internal or external sales, or by retail consumers or partners, using the Software or Services, as detailed in Exhibit A. Transaction fees will be billed for the month during which the sale occurred, regardless of delivery date or receipt of revenue, at the end of each such month. Extantware will invoice you for those charges on a monthly basis.

8.3 Other Fees. For all service, maintenance, consulting or training which Customer requests, and Extantware in its sole discretion provides, Customer shall pay Extantware at its then-current billing rates therefor, with applicable minimum charges for labor, materials and travel expenses. All such payments shall be due within thirty (30) days of the invoice date.

9. Warranty Disclaimer and Indemnification.

9.1 Disclaimer of Other Warranties. EXTANTWARE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR THE FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE THEREOF. WITHOUT LIMITING THE FOREGOING, EXTANTWARE DOES NOT WARRANT THAT THE SERVICE IS OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED OR MEETS OR WILL MEET CUSTOMER'S REQUIREMENTS. EXTANTWARE MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR NONINFRINGEMENT, AND NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

9.2 Disclaimer of Actions Caused by and/or Under the Control of Third Parties. EXTANTWARE DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM CUSTOMER'S INTERNET HOSTS AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS CAUSED BY THESE THIRD PARTIES CAN PRODUCE SITUATIONS IN WHICH CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF) MAY BE IMPAIRED OR DISRUPTED. ALTHOUGH EXTANTWARE WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, EXTANTWARE CANNOT GUARANTEE THAT THEY WILL NOT OCCUR. ACCORDINGLY, EXTANTWARE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. IF CUSTOMER REQUESTS EXTANTWARE TO RESEARCH SUCH AN EVENT THAT IS DETERMINED TO BE OUTSIDE CONTROL OF EXTANTWARE, SERVICES FEES MAY APPLY.

9.3 Extantware Indemnification of Customer. Extantware will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses and expenses (collectively, "Losses") which result from any claim, suit, action, or proceeding (each, an "Action") brought against

Customer alleging that the Services and Customer's use thereof infringes any copyright, trademark or other proprietary right (including trade secrets) of any third party; provided that Customer (i) notifies Extantware promptly in writing of any such action, (ii) gives Extantware sole control of the defense and/or settlement of such action, and (iii) gives Extantware all reasonable information and assistance.

9.4 Customer Indemnification of Extantware.

Customer will indemnify, defend and hold Extantware, its affiliates, contractors and employees harmless from and against any and all claims or losses resulting from or arising out of any Action brought by or against Extantware, its affiliates or customers for any and all claims arising out of Customer's use of the services. Extantware will (i) notify Customer promptly in writing of any such action, (ii) give Customer sole control of the defense and/or settlement of such action and (iii) give Customer all reasonable information and assistance (at Customer's expense excluding time spent by Extantware's employees or consultants or attorneys).

10. Confidentiality.

10.1 Confidentiality. The parties acknowledge that by reason of their relationship to each other hereunder, each will have access to certain Confidential Information of the other party which value would be impaired if such information were disclosed to third parties. Each party agrees that it will not use any such Confidential Information disclosed to it by the other party, nor disclose such Confidential Information to any third party, unless expressly authorized or contemplated under this Agreement, and will take every reasonable precaution to protect the confidentiality of such information, with no less restrictive precautions than it takes to protect its own Confidential Information of like importance. If Confidential Information is required to be disclosed in response to an order by a court or other government body, or if otherwise required to be disclosed by law, or if necessary to establish the rights of either party under this Agreement, the receiving party shall use commercially reasonable efforts to provide the disclosing party with advance notice of such required disclosure to give the disclosing party sufficient time to seek a protective order or other protective measures, if any are available, for such Confidential Information. The obligations of the parties hereunder with respect to Confidential Information shall continue in full force and effect for a period of five (5) years after the expiration or termination of this Agreement.

10.2 Remedy. If either party breaches any of its obligations with respect to this Section 7, or if such a breach is likely to occur, the other party shall be entitled to seek equitable relief, including specific performance or an injunction, in addition to any other rights or remedies, including money damages, provided by law.

11. Term and Termination.

11.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in full force for (2) years thereafter, unless otherwise terminated earlier under the provisions of this Section 8. This Agreement shall automatically renew for additional one (1) year periods, unless either party notifies the other party in writing of its intent to terminate this Agreement at least thirty (30) days prior to the end of the then-current term.

11.2 Termination for Default. Either party shall have the right to terminate this Agreement in the event of any uncured material default in, or material breach of any of the terms and conditions of this Agreement by the other party (including but not limited to, payment obligations), which default or breach continues unremedied for a period in excess of thirty (30) days

after notice of default. Extantware may suspend your account and/or terminate this Agreement in the event Customer fails to make any payment hereunder when due and such failure remains uncured after fifteen (15) days written notice thereof.

11.3 Termination for Change in Control. If Customer experiences a Change in Control, defined as a change in ownership of Customer company of greater than 20%, and/or in an event when new partial, majority, or complete ownership of Customer, whether by merger, investment, or acquisition, results in involvement of another party to the license that places Extantware in a disadvantage if the existing terms are maintained, Extantware has the right to terminate this Agreement with six (6) months notice given to Customer, along with delivery of all Customer Content in a readable format. Extantware may opt to continue service with the existing terms of this Agreement, and this approval will not be unreasonably withheld.

11.4 Survival. Upon expiration or termination of this Agreement for any reason, the provisions of Sections 1, 4, 6, 7, 8.2, 8.4, 9 and 11 shall survive and all other provisions shall terminate. Notwithstanding the foregoing, termination or expiration of this Agreement shall not release either party from any obligation theretofore accrued.

12. LIMITATION ON LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL EXTANTWARE BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF AGGREGATE PAYMENTS MADE BY CUSTOMER HEREUNDER IN THE PRECEDING TWELVE (12) MONTHS, EVEN IF EXTANTWARE SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART UPON THESE LIMITATIONS, AND FURTHER AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13. Professional Services. Upon mutual agreement by the parties, Extantware shall provide professional services (the "Professional Services") for Customer at Extantware's then-current rates. Customer shall be invoiced monthly for such Professional Services and payment shall be due within thirty (30) days of the invoice date. Professional Services includes but it not limited to Software Development Services and Business Analysis. Extantware has the right to deny any requests for Professional Services. Customer understands that Extantware retains exclusive intellectual property ownership of any Software Development Services, and will retain the sole and exclusive right to, and retains control or direct the manner or means by which the Professional Services are performed and may subcontract or assign any or all of its obligations and rights under this Agreement. Any such subcontract or assignment is subject to Customer's consent, which consent shall not be unreasonably withheld or delayed.

14. Miscellaneous.

14.1 Modification: Waiver. This Agreement may not be altered, amended or modified in any way except by a writing signed by both parties. The failure of a party to enforce any provision of this Agreement shall not be construed to be a waiver

of the right of such party to thereafter enforce that provision or any other provision or right.

14.2 Severability. In the event that any provision of this Agreement is determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect without said provision.

14.3 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. If mediation, then arbitration fail, then this Agreement, the rights and obligations of the parties hereto, and any claims or disputes thereto, shall be governed by and construed in accordance with the laws of Hawaii without reference to conflict of law principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction and venue of the Hawaii state courts Honolulu, and the parties consent to the personal and exclusive jurisdictions of these courts.

14.4 Attorneys' Fees. The prevailing party in any legal action arising out of or relating to this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs, in addition to any award of damages or other relief, if any, awarded to the prevailing party.

14.5 Entire Agreement. The parties hereto acknowledge that this Agreement, including all Schedules to the Agreement, sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and supersedes all prior discussions, agreements and writings in respect hereto.

14.6 Marketing. Notwithstanding Section 5 and Section 8 above, Customer agrees that Extantware may refer to Customer by trade name and trademark, and may briefly describe Customer's business in Extantware's marketing materials and web site. Customer hereby grants Extantware a license to use Customer's trade names and trademarks solely in connection with the rights granted to Extantware pursuant to this Section 11.6.

14.7 Compliance With Laws. In performing this Agreement, each party shall comply with all applicable laws and government regulations at all times, including but not limited to any applicable laws and regulations of the United States and other jurisdictions relating to export or re-export of technology, consumer protection, information access and privacy.

14.8 No Partnership or Joint Venture. Extantware and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Extantware and Customer. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

14.9 Assignment. Customer may not assign or transfer, whether voluntarily, by operation of law, or otherwise, any rights or delegate any duties under this Agreement without the prior written consent of Extantware. Any assignment or transfer of this Agreement made in contravention hereof shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

14.10 Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not

affect in any way the meaning or interpretation of this Agreement.

14.11 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be sent by facsimile, e-mail, prepaid registered or certified mail, return receipt requested, internationally recognized courier or personal delivery, addressed to the other party at the above address or at such other address for which such party gives notice hereunder.

14.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14.13 Force Majeure. Extantware shall not be liable for failure to perform or delay in performing any obligation under this Agreement if such failure or delay is due to fire, flood, earthquake, strike, war (declared or undeclared), embargo, blockade, legal prohibition, governmental action, riot, insurrection, damage, destruction, power outage, telephone outage, internet access provider failure, or any other similar cause beyond the control of Extantware.