

BEST LOVED HOTELS 2023 PROGRAMME Terms and Conditions (“Terms”)

PARTIES:

1. **HOTELREZ LIMITED** incorporated and registered in England and Wales with company number 05100663 whose registered office is at Unit 4.3 Trentside Business Village, Farndon Road, Newark, NG24 4XB, England (“**HotelREZ**”); and
2. the party whose details are set out in the RFP (“**Client**”).

BACKGROUND

- A. HotelREZ provides directory-based hotel marketing and representation services under the brand “Best Loved Hotels”.
- B. HotelREZ has created, and operates, the Best Loved Hotels 2023 Programme.

AGREED TERMS:

1. Definitions

1.1 In this Agreement, the following definitions and rules of interpretation apply:

“**Agreement**” means the agreement entered between the parties comprising the RFP and these Terms, which are incorporated by reference.

“**BLH Programme**” means the Best Loved Hotels 2023 programme operated by HotelREZ offering the benefits set out in HotelREZ’s advertising literature and, more specifically, the RFP.

“**Commencement Date**” means the date set out in the RFP on which the Agreement will commence or, if none is specified, the date on which the RFP is accepted by HotelREZ.

“**Confidential Information**” means all commercial, technical, financial and other information disclosed by one party to the other which is designated confidential or proprietary or should reasonably be considered to be confidential or proprietary, including the contents of the Agreement, pricing, data, and operating results.

“**Customer Information**” means information relating to your guests or customers.

“**Data**” means any and all data, images, documents and other materials provided by you to HotelREZ under or pursuant to this Agreement, including trade names and marks, logos, images of the Properties, text and documents.

“**Fees**” means the fees for the Membership Benefits set out in the RFP and other fees and charges payable in accordance with this Agreement.

“**HotelREZ Marks**” means the names, logos and slogans used by HotelREZ (including those of its licensors) in connection with the HotelREZ Services, including without limitation, registered and unregistered trademarks and logos, corporate names, trade names, service marks, product names, website names and URLs.

“**Initial Term**” means the initial term set out in the MSA.

“**Intellectual Property Rights**” means all intellectual property rights of any kind existing anywhere in the world whether or not registered and all applications, renewals and extensions of the same, wherever and whenever arising, registered or applied to be registered, including copyright, database rights, design rights, patents, trademarks, service marks, trade names and other rights in goodwill, rights in know-how, trade secrets and other confidential information.

“**Membership Benefits**” means the benefits and services selected in the RFP.

“**Property/ies**” means the hotel(s) or other property/ies in relation to which the Membership Benefits are provided.

“**RFP**” means the RFP completed by you and accepted by HotelREZ, setting out the commercial, and certain other, terms of the Agreement.

“**Term**” means the term of this Agreement set out in the RFP.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Unless the context otherwise requires words in the singular include the plural and words in the plural include the singular; words denoting any gender include all other genders; and any reference to “persons” includes individuals, bodies corporate, companies, partnerships, unincorporated associations, firms, trusts and all other legal entities.
- 1.4 Clause headings are for convenience only and do not affect the interpretation of this Agreement. Any reference to a clause or schedule is to the relevant clause or schedule of this Agreement. The schedules to this Agreement shall for all purposes form part of this Agreement.
- 1.5 References to any English statutory provision or English legal term for any action, remedy, method of judicial proceeding, document, legal status, court, official or any other legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to refer to and include a reference to that which most nearly corresponds to the English statutory provision or English legal term in that jurisdiction.
- 1.6 The terms “includes”, “including”, “in particular” and similar terms shall be construed as being illustrative only and shall not limit the sense of the words preceding those terms.

2. GENERAL

- 2.1 In these Terms, all references to “Client”, “you” or “your” shall be deemed to be a reference to the Client and, where appropriate, it shall also be deemed to include the hotels, hotel chain or consortium on whose behalf you have so applied or which are intended to benefit under the BLH Programme.
- 2.2 Upon acceptance of the RFP by HotelREZ, a legally binding contract shall come into effect between you and HotelREZ. HotelREZ shall be deemed to have accepted the RFP upon notifying you that the RFP has been accepted.
- 2.3 You agree to procure that any hotel, group, chain or organization which is intended to benefit from the BLH Programme or on whose behalf you enter into this Agreement shall undertake to be bound by the terms of this Agreement as if it were a party. You further agree to procure that any such undertaking shall be assigned to HotelREZ on demand.
- 2.4 As this is a dynamic program, HotelREZ reserves the right to vary the terms of this Agreement and the BLH Programme at any time by giving you notice in writing.

3. RIGHTS AND OBLIGATIONS OF THE PARTIES

- 3.1 In consideration of payment of the Fees by you to HotelREZ, HotelREZ shall provide the Programme Benefits to you in accordance with the terms of this Agreement.
- 3.2 You shall not:
 - 3.2.1 except as expressly permitted by the Agreement, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Programme Benefits available to any other party; or
 - 3.2.2 attempt to obtain, or assist third parties in obtaining, access to the Programme Benefits other than in accordance with this Agreement; or
 - 3.2.3 modify, remove or obscure, or attempt to modify, remove or obscure any copyright or trade mark notice, or other content ownership or identification notice, warning or restrictions of HotelREZ or its suppliers or licensors on any interface, software, document or other medium whatsoever.
- 3.3 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Programme Benefits and, in the event of any such unauthorised access or use, promptly notify HotelREZ.

- 3.4 You shall:
- 3.4.1 comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 3.4.2 carry out its responsibilities set out in this Agreement in a timely and efficient manner and ensure that any person for which it is responsible under this Agreement uses the Programme Benefits in accordance with the terms and conditions of this Agreement;
 - 3.4.3 obtain and shall maintain all necessary licences, consents, and permissions necessary for HotelREZ to perform its obligations under this Agreement; 3.4.4 where relevant, ensure that its network and systems comply with the relevant specifications provided by HotelREZ from time to time; and
 - 3.4.4 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to HotelREZ's systems, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

4 DATA and CONFIDENTIALITY

- 4.1 You will promptly upon request provide all data, logos images (high resolution if requested) and information ("Data") required by HotelREZ.
- 4.2 You will be wholly responsible for ensuring the accuracy and completeness of the Data. HotelREZ shall have no liability whatsoever for any incorrect, inaccurate or incomplete Data or for any liability, loss, damage, expense, cost or claim suffered or incurred by you arising directly or indirectly from such incorrect or incomplete Data, and shall indemnify HotelREZ for all costs, losses, liabilities and expenses incurred by HotelREZ arising directly or indirectly out of your failure to do so.
- 4.3 HotelREZ reserves the right to edit and make such changes to such Data as it sees fit (acting reasonably).
- 4.4 You licence and authorize HotelREZ to use, retain and store any and all Data provided to it under or pursuant to this Agreement for: (a) creating and/or managing the BLH Programme for itself or for any associated person, network, partner or any other member of the BLH Programme; (b) marketing and/or providing information under or in relation to the BLH Program to any person; and (c) operating the BLH Programme, including (without limitation) invoicing, making reservations or other transactions, data analysis or otherwise; and (d) any other purpose it shall see fit (acting reasonably).
- 4.5 Personal data (as defined in the GDPR and other relevant legislation) shall be deal with in accordance with the **data protection addendum** which shall be incorporated into this Agreement.
- 4.6 Each Party shall use, retain or disclose Customer Information solely for the purposes of this Agreement or as required by law. Notwithstanding the foregoing, HotelREZ shall be permitted to use the Customer Information for any purpose for which the customer has given its consent.

5 FEES

- 5.1 The Fees are set out in the RFP and shall be payable in full and without deduction within 14 days of the date of invoice for such Fees.
- 5.2 HotelREZ shall be entitled to invoice you the Fees at the times set out in the RFP provided that if no times are set out in the RFP, HotelREZ shall be entitled to invoice you the Fees at the times notified to you.
- 5.3 If you fail to pay HotelREZ any sum due pursuant to this Agreement, HotelREZ shall be entitled to charge interest on such sum from the due date for payment at an interest rate of 6% per annum accruing on a daily basis until the date on which payment is made in full, whether before or after any judgment.
- 5.4 Notwithstanding any other provision, and without prejudice to any other rights under this Agreement, HotelREZ shall have the right to suspend all or any of the Programme Benefits in the event that payment of any invoice is not made by you when due. In the case of suspension of all or any of the Programme Benefits, provided that you make payment arrangements which are satisfactory to HotelREZ, HotelREZ may, in its absolute discretion,

reinstate all or any of the Programme Benefits and/or charge you a fee of an amount equal to the cost to HotelREZ of reinstating the Programme Benefits.

- 5.5 All pricing and fees under this Agreement are exclusive of taxes. You will pay any value added tax, sales or use tax, goods and services tax, federal, state, county, local or other governmental taxes, fees or duties now or hereafter imposed the Programme Benefits and other services provided under this Agreement. You shall fully and effectively indemnify HotelREZ for any and all such taxes, fees and duties, and all costs, charges, expenses and liabilities relating thereto suffered or incurred by HotelREZ.
- 5.6 All payments by you shall be made without set off, deduction or withholding except as required by law. If any such set off deduction or withholding is required by law, such sum shall be increased by such additional amount as will ensure that after such deduction, withholding or charge to taxation, as the case may be, HotelREZ will receive the same amount as it would have received in the absence of any such set off, deduction, withholding or charge to taxation. Nothing contained herein shall make you liable for any tax on the net profits of HotelREZ.
- 5.7 HotelREZ shall be entitled to increase its Fees at any time and without limit to the extent of any increase in the fees of its suppliers.

6 TERM

- 6.1 This Agreement shall commence on the Commencement Date and shall continue for the Term.
- 6.2 This Agreement may be terminated immediately by either Party by giving written notice to the other Party, if in respect of the other Party, a voluntary arrangement is approved, or an administration order is made, or a receiver or administrative receiver is appointed over any of its assets or an undertaking or a resolution or a petition or order for a winding up or bankruptcy is passed or presented or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to p.5 present a winding-up petition or make a winding up order, or if any event analogous to any of the above occurs in any jurisdiction outside England and Wales or if it stops or threatens to stop payment of its obligations generally or ceases or threatens to cease to carry on its business or a substantial part of its business.
- 6.3 This Agreement may be terminated immediately by HotelREZ by giving written notice to you at any time:
- 6.3.1 if any fees or charges payable hereunder remain unpaid for 30 days or more after the due date for payment; or
- 6.3.2 if all or substantially all of the shares in HotelREZ, or all or substantially all of its assets, are acquired by any other party.
- 6.4 This Agreement may be terminated immediately by either Party by giving written notice to the other Party if:
- 6.4.1 at any time the other Party commits a material breach of any of its obligations under this Agreement (other than any breach which, if capable of remedy, is remedied within 30 (thirty) days after service of written notice on that other Party requiring such breach to be remedied); or
- 6.4.2 any of the events or circumstances referred to in Clause 11 has occurred and continued for a continuous period of more than 3 months.
- 6.5 Any termination of this Agreement shall be without prejudice to any rights that have accrued before such termination (including, without limitation, any fees and payments accrued due to HotelREZ which shall remain payable) and following any such termination:
- 6.5.1 HotelREZ will terminate immediately all of the Programme Benefits provided to you (or, as the case may be, in relation to any individual Property);
- 6.5.2 you shall cease using the HotelREZ Marks and branding, and shall destroy (or deliver up to HotelREZ if so requested within 14 days of the termination date) any and all documents or materials bearing the HotelREZ Marks and/or branding;
- 6.5.3 you shall not be entitled to receive any refund or rebate from HotelREZ for any fees and payments made by you in respect of any date after the date of termination.

7 WARRANTY and LIABILITY

The provisions of this clause 7 shall apply to the extent that HotelREZ provides you with booking services.

- 7.1 HotelREZ gives no warranty that the BLH Programme and related systems and software (including without limitation any marketing services or products) shall operate continuously or in an error-free manner throughout the Term.
- 7.2 HotelREZ reserves the right to suspend the operation of Best Loved Hotels Programme, the Programme Benefits and/or any other services at any time.
- 7.3 The Best Loved Hotels Programme, the Programme Benefits and other services shall be provided with reasonable skill and care.
- 7.4 All warranties and conditions implied by law shall be excluded to the maximum extent permitted by law.
- 7.5 The aggregate maximum liability of HotelREZ under or in relation to this Agreement, whether in contract, tort (including negligence) or otherwise shall not exceed the annual fees and charges paid to HotelREZ for the year in which the first event giving rise to liability occurred.
- 7.6 In no circumstances shall HotelREZ Limited be liable for any loss of profit, goodwill, reputation, revenue, anticipated savings or contracts, or for any indirect or consequential loss.
- 7.7 Nothing in this Agreement shall restrict or exclude the liability of HotelREZ for death or personal injury caused by its negligence, or for fraud.

8 Assignment

- 8.1 The rights and obligations of each of the Parties under this Agreement continue for the benefit of, and will be binding on, their respective successors and assigns.
- 8.2 You may not assign or novate this Agreement to any third party or sub-licence or sub-contract any of its rights under this Agreement to any third party without the prior written consent of HotelREZ.

9 General Provisions

- 9.1 No person who is not a party to this Agreement shall have any right to enforce this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 9.2 This Agreement sets out the entire agreement of the Parties, and supersedes any and all prior oral or written agreements or understandings between the Parties, as to the subject matter of this Agreement.
- 9.3 HotelREZ shall be entitled in its absolute discretion to vary the terms of this Agreement from time to time by setting out such varied terms on your member portal at least 7 days before such variations shall come into effect. You shall be responsible for checking its member portal on a daily basis for such purpose. Save as set out in the preceding sentence, no variation of this Agreement will be valid unless it is in writing and signed by each of the Parties.
- 9.4 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law will impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy. No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law will preclude any other or further exercise of such right, power or remedy or of any other right, power or remedy. The rights, powers and remedies of the parties provided by this Agreement are cumulative and are not exclusive of any rights, powers and remedies provided by law.
- 9.5 In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to such effect are received by either of the Parties from any relevant competent authority, such provision shall to that extent be deemed not to be part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 9.6 The Parties are independent contractors and nothing contained in this Agreement constitutes a partnership, agency, joint venture, employee-employer or franchisor-franchisee relationship between the Parties.

9.7 Neither Party is authorised to make (nor will it make) any warranties, representations or undertakings to any third party on behalf of the other Party.

10 Notices

10.1 Any notice in connection with this Agreement (a "Notice") shall be:

10.1.1 in writing in English; and

10.1.2 delivered by hand, fax, or by courier using an internationally recognised courier company.

10.2 Notices shall be sent to the addresses and/or fax numbers set out in the Agreement, or to such other person or address as the parties may notify to each other in writing from time to time.

10.3 A Notice shall be effective upon receipt and shall be deemed to have been received:

10.3.1 at the time of delivery, if delivered by hand or courier;

10.3.2 at the time of transmission in legible form, if delivered by fax.

11 Force Majeure

Save in relation to the obligation to make payment, neither Party will be liable for any failure to fulfil its obligations under this Agreement due to causes beyond its reasonable control, including acts or omissions of government or military authority or activity, acts of God, telecommunications and/or connectivity failures (including any Internet failures and any interruptions or failures in services of Internet Service Providers, GDS distribution systems or connectivity providers to such systems), transportation delays, earthquakes, fires, floods, labour disturbances, riots or wars.

12 Applicable Law and Jurisdiction

12.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

12.2 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.