



Professional Services

Online Terms and Conditions

After receipt of your order we will send you an order acknowledgement email detailing the services you have ordered and confirming prices. Your order constitutes an offer to purchase the Services indicated in the order.

If you do not receive this order acknowledgement within 1 day of placing your order please contact Pacific.TechSupport@travelport.com.

The order acknowledgement email is not an acceptance of your order. Acceptance of your order and formation of the contract which these terms and conditions then apply to, will only take place after Travelport have confirmed to you in writing the fees and applicable Statement of Work that applies to your order and arranged a Commencement Date with you.

Travelport reserves the right to decline any order and/or to supply any services.

BETWEEN:-

- (1) you, the authorised representative who has submitted the order for certain Services on behalf of a Subscriber (the "Customer"); and
- (2) **Southern Cross Distribution Systems Pty Ltd** (ABN 28 007 067 567), a company incorporated under the laws of Australia with its office at Level 28, 680 George Street, Sydney NSW 2000, Australia ("**Travelport**").

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

"Applicable Data Processing Law" means the legislation protecting the fundamental rights and freedoms of persons, and in particular, the right to privacy, with regard to the Processing of Personal Data applicable in any state or territory in which Travelport provides the Services or from which Personal Data is being exported (or both).

"Commencement Date" means the date Travelport notifies to the Customer as being the date of acceptance of the order.

"Customer Systems" means any hardware, networks and network devices, server hardware, storage systems, file systems, print systems and database management

systems which are used by the Customer or a Group Company and including software and computer programs which are used or are intended to be used by a Customer or a Group Company.

"Confidential Information" means information in whatever form relating to the business, customers, products, affairs and finances of the Customer or any Group Company for the time being confidential to the Customer or any Group Company and trade secrets including, without limitation, technical data and know-how relating to the business of the Customer or of any Group Company and including (but not limited to) information that Travelport creates, develops, receives or obtains in connection with this Agreement, whether or not such information (if in anything other than oral form) is marked confidential.

"Data Subject" means an identified or identifiable individual or legal entity; an "identifiable" individual or legal entity is one who can be identified, directly or indirectly, including by reference to an identification

number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity

"Fees" means the fees identified as part of the relevant Statement of Work.

"Group Company" means:

In relation to the Customer, its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time.

In relation to Travelport any company (wherever incorporated) which is for the time being and from time to time a subsidiary or holding company, any other subsidiaries of any such holding company and its ultimate parent company and their respective subsidiaries. Unless the context otherwise requires, the application of the definition of Travelport Group to any company at any time shall apply to the company as it is at that time.

"GST" means GST (or VAT or equivalent tax applicable in a country other than Australia) within the meaning of the GST Act (or the equivalent value added tax legislation applicable in another country other than Australia);

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related imposition Acts of the Commonwealth;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

"Location" means the location or locations specified in a Statement of Work.

"Personal Data" means any information relating to a Data Subject.

"Pre-Contractual Statement" means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the Agreement other than as expressly set out in this Agreement or any documents referred to in it.

to **"Process"** (and variants of it such as **"Processing"**) means to perform an operation or set of operations (e.g. upon Personal Data), whether or not by automatic means, such as accessing, collecting, recording, registering, organising, storing, adapting or altering, retrieving, consulting, using, disclosing (or otherwise making available) by transmission, dissemination or otherwise, aligning or combining, blocking or performing dispersed erasure or destruction.

"Representative" means the parties' respective representatives as identified in the relevant Statement of Work.

"Services" means the services provided by Travelport in a consultancy capacity for the Customer or any Group Company as more particularly described in any Statement of Work.

"Statement of Work" means the statement of work agreed as part of an order.

"Subscriber" means an individual or business which has a current contractual agreement with Travelport entitling them to access the Galileo global distribution system and utilise certain associated Travelport products and services.

"Tax Invoice" has the meaning given to it under the GST Act (or the equivalent form of invoice required under value added tax legislation applicable in another country other than Australia);

"Termination Date" means the date of termination of this Agreement, however arising.

1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.

- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. TERM OF AGREEMENT

- 2.1 The Customer shall engage Travelport and Travelport shall provide the Services on the terms of this Agreement.

- 2.2 This Agreement shall commence on the Commencement Date and shall continue unless and until terminated:

2.2.1 as provided by the terms of this Agreement; or

2.2.2 by either party giving to the other not less than 30 days' prior written notice.

- 2.3 If this Agreement is terminated any Statement of Work then in force shall automatically terminate and, without prejudice to either party's accrued rights, Travelport shall have no further obligations under any such Statement of Work. The Customer shall remain liable for all work performed by Travelport up to the date of termination.

3. STATEMENTS OF WORK

- 3.1 The Customer and any Group Company shall be entitled at any time during the term of this Agreement to agree a Statement of Work with Travelport for the provision Services.

- 3.2 The terms and conditions relating to any Statement of Work shall incorporate this Agreement, together with any special terms contained in the relevant Statement of Work.

- 3.3 The parties acknowledge and agree that upon signature of a Statement of Work by an authorised representative of each party, the Statement of Work shall be incorporated into, and shall form part of, this Agreement.

4. TRAVELPORT RESPONSIBILITIES

- 4.1 During the Agreement, Travelport shall provide the Services with all due care, skill

and ability as per each relevant Statement of Work.

- 4.2 If Travelport is unable to provide the Services for any reason it shall advise the Customer of that fact as soon as reasonably practicable.

- 4.3 Travelport may appoint a suitably qualified and skilled subcontractor to perform the Services on its behalf.

- 4.4 All dates supplied by Travelport for the provision of Services shall be treated as approximate only. Travelport shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

- 4.5 Travelport shall use reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the Customer may require.

- 4.6 Provided the same have been notified to Travelport in advance and in writing, Travelport shall comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the premises where the Services are provided.

- 4.7 Unless expressly agreed otherwise in a Statement of Work, Travelport cannot and does not guarantee that the Services will result in problem resolution.

5. CUSTOMER RESPONSIBILITIES

- 5.1 The Customer shall provide Travelport with full, safe and uninterrupted access, including remote access, to the Customer's premises, systems, facilities, and software as may reasonably be required for the purposes of performing the Services. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by Travelport's representatives.

- 5.2 The Customer shall:

5.2.1 co-operate with Travelport in performing the Services and provide any assistance or information as may reasonably be required by Travelport;

- 5.2.2 keep full back-up copies of all of its data; and
- 5.2.3 comply with all of its third party software licenses and shall indemnify Travelport against all liabilities, costs, expenses, damages and losses suffered or incurred by Travelport arising out of or in connection with the Customer's breach of such licenses.

6. FEES

- 6.1 In consideration of the provision of the Services, the Customer shall pay the Fees in accordance with this Clause 6.
- 6.2 Travelport shall issue invoices to the Customer on a monthly basis, and the Customer shall pay each invoice within thirty (30) days from date of receipt unless the invoice is subject to a bona fide dispute between the parties (in which case the Customer shall only be required to pay any undisputed sums under the invoice and the parties shall seek to reach settlement of the disputed items by reference to the respective party Representatives).
- 6.3 All invoices shall be sent to the address for invoicing set out in each Statement of Work, or such other address as the Customer may notify to Travelport in writing from time to time.
- 6.4 For the purpose of this Agreement all charges and expenses shall be in local currency and are shown exclusive of GST (which shall be payable in addition subject to receipt of a valid Tax Invoice).
- 6.5 Unless otherwise stated in a Statement of Work, the fees are not inclusive of all travel, subsistence and other incidental expenses incurred by Travelport in respect of the provision of the Services. Where this Agreement provides that expenses shall be payable, the Customer shall reimburse to Travelport all reasonable expenses properly incurred by it in the performance of the Services to the agreed limits, where applicable, provided such expense is authorised by the Customer in writing in advance.
- 6.6 Travelport reserves the right to vary the fees where:

6.6.1 the Customer requests a change is made to the terms of a Statement of Work;

6.6.2 due to the content or format of the Customer Systems, Travelport is unable to perform the Services in the manner agreed with the Customer in a Statement of Work; or

6.6.3 any part of the information provided by the Customer in a Statement of Work is inaccurate or false.

6.7 Travelport shall be under no obligation to agree any change to a Statement of Work requested by the Customer.

6.8 If the Customer fails to pay any amount payable by it to Travelport under this agreement, Travelport shall be entitled to:

6.8.1 charge the Customer interest on the overdue amount (excluding any payments that are subject to a bona fide dispute between the parties) from the due date up to the date of actual payment, after as well as before judgment, at the rate of three (3) per cent per annum above the base rate for the time being of the Commonwealth Bank of Australia and such interest shall accrue on a daily basis and shall be payable by the Customer on demand; and/or

6.8.2 suspend the performance of all Services until payment has been made in full.

7. WARRANTIES

7.1 Each of the Customer and Travelport warrants, represents and undertakes to the other that:

7.1.1 it has the authority and capacity to enter into this Agreement and to perform its obligations under this Agreement, and it is entitled to grant the rights and licences which it grants under this Agreement; and

7.1.2 once executed, this Agreement will constitute its legal, valid and binding obligations.

7.2 The Customer warrants, represents and undertakes to Travelport that:-

7.2.1 it has obtained and will maintain all permissions, licences and consents required for its receipt and Travelport's supply of the Services; and

7.2.2 use by Travelport of the Customer data or any items in accordance with this Agreement shall not infringe any Intellectual Property Rights of a third party;

7.3 Travelport expressly disclaims all implied conditions and warranties of any kind not expressly stated in this Agreement, including, but not limited to the implied warranties of satisfactory quality and fitness for a particular purpose.

8. CONFIDENTIAL INFORMATION

8.1 The parties acknowledge that in the course of the Agreement they may have access to the Confidential Information of the other. The parties have therefore agreed to accept the restrictions in this Clause 8.

8.2 Neither party shall (except, with regard to Travelport in the proper course of its duties) either during the Agreement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

8.2.1 any use or disclosure authorised by the disclosing party or required by law; or

8.2.2 any information which is already in, or comes into, the public domain otherwise than through the receiving party's unauthorised disclosure.

8.3 At any stage during the Agreement, Travelport will promptly on request return all and any Customer property in its possession to the Customer.

9. DATA PROTECTION

9.1 Travelport shall:

9.1.1 comply with its obligations under Applicable Data Processing Law in the Processing of Customer Personal Data;

9.1.2 implement and maintain technical and organisational measures intended to protect the Customer Personal Data from unauthorised use or access; and

9.1.3 restrict the disclosure of Customer Personal Data to those of its employees who may be required to assist it in complying with its obligations under this Agreement.

10. INTELLECTUAL PROPERTY

10.1 The Customer warrants to Travelport that:

10.1.1 it has all necessary rights and entitlements to permit Travelport to use any of the Customer Systems and any of the Intellectual Property Rights and data therein;

10.1.2 it is unaware of any restriction of any use by any third party of any of the Customer Systems or Intellectual Property Rights therein; and

10.1.3 the use of the Customer Systems or the Intellectual Property Rights in the Customer Systems by the Customer will not infringe the rights of any third party.

10.2 The Customer agrees to indemnify Travelport and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Travelport, or for which Travelport may become liable, with respect to any intellectual property infringement claim or other claim relating to the Customer Systems supplied by the Customer to Travelport during the course of providing the Services.

10.3 The Customer licences Travelport to use any of the Customer Systems and any of the Intellectual Property Rights and data therein as required for the purposes of providing the Services.

10.4 The parties agree that Travelport shall own all the Intellectual Property Rights in all documentation, software, know-how or other works created or supplied by Travelport

(whether alone or jointly) in the course of providing the Services

("Deliverables"). The Customer shall only have rights in the Deliverables to the extent they are expressly granted in a Statement of Work. The Customer shall do or procure to be done all such further acts and things and sign and procure the signature of all such other documents as Travelport may from time to time require for the purpose of giving Travelport the full benefit of the provisions of this Clause 10.4.

11 LIMITATION OF LIABILITY

11.1 Notwithstanding any other provision of this Agreement and, in particular, the limitations in Clauses 11.2 and 11.3, nothing in this Agreement shall exclude or limit either party's liability under or in connection with this Agreement for:-

11.1.1 fraud or fraudulent misrepresentation;

11.1.2 death or personal injury resulting from the negligence of that party;

11.1.3 for any other matter in respect of which liability cannot by applicable law be limited or excluded; and

11.1.4 any claim under any indemnity.

11.2 Neither party will be liable to the other for any loss (whether direct or indirect in each case) of: revenue or profits, anticipated savings, goodwill or injury to reputation, business opportunity, or corruption to data in each case arising out of or connection with this Agreement including, without limitation, as a result of breach of contract, negligence or any other tort, under statute or otherwise, and regardless of whether the defendant party knew or had reason to know of the possibility of the loss, injury or damage in question.

11.4 Subject to Clauses 10.2 (which shall not be limited), 11.1 and 11.2, each party's aggregate liability to the other in respect of all Losses arising out of, or in connection with, this Agreement (including as a result of breach of contract, negligence or any other tort, under statute or otherwise) shall not exceed the greater OR lower of \$25,000. The Customer acknowledges that as a result of Travelport's provision of the Services or the

evaluation of the provision of Services, the Customer may experience interruption to its access to Customer Systems. Travelport shall have no liability to the Customer or any Group Company for such interruption or any claims in connection with the physical operation of the Customer's Systems or the existence, loss or corruption of any data resulting from the provision of the Services. Travelport shall have no liability for the validity or otherwise of third party suppliers' warranties or guarantees in respect their hardware or software.

11.5 The Customer is aware of the inherent risks of injury and property damage involved with technical support services, including, without limitation, risks due to destruction or damage to hardware, media or data. Travelport shall not be liable for inaccurate or incomplete technical support, including any issues that may be the result of negligence and the Customer shall assume any and all risks of injury and property damage that may occur.

12. TERMINATION

12.1 Notwithstanding the provisions of Clause 2.2, either party may terminate the Agreement with immediate effect with no liability to make any further payment to the other (other than in respect of amounts accrued before the Termination Date) if at any time the other (the "non-defaulting party"):

12.1.1 commits any material breach of this Agreement; or

12.1.2 ceases trading, or becomes apparently insolvent, or has a trustee in sequestration appointed, combines with its creditors, or has a liquidator, receiver or administrator appointed (or an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given over all or any of its assets) over all or any of its assets other than for the purposes of a solvent amalgamation or reconstruction, or undergoes any analogous act or proceeding under foreign law to any of those mentioned in this Clause 12.1.2 or if has reasonable cause to suspect that any of the events in this Clause 12.1.2 is likely to happen; or

12.1.3 commits any fraud or dishonesty or acts in any manner which in brings Travelport or the non-defaulting party into disrepute.

13. STATUS

13.1 The relationship of Travelport to the Customer will be that of independent contractor and nothing in this Agreement shall render Travelport an employee, worker, agent or partner of the Customer and Travelport shall not hold himself out as such.

14. NOTICES

14.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being, or by sending it by fax to the fax number notified by the relevant party to the other party. Any such notice shall be deemed to have been received:

14.1.1 if delivered personally, at the time of delivery;

14.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and

14.1.3 in the case of fax, at the time of transmission.

14.2 In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party.

15. NON-SOLICITATION

15.1 The parties agree that they will in no circumstances during the term of this Agreement and for a period of six (6) months after its expiry or termination for any reason, solicit or hire as an employee or consultant an employee of the other party who is involved with the performance of this Agreement without the prior written consent

of the other party.

16. ENTIRE AGREEMENT

Each party on behalf of itself (and, in the case of the Customer, as agent for any Group Companies) acknowledges and agrees with the other party (the Customer acting on behalf of itself and as agent for each Group Company) that:

16.1.1 this Agreement together with any documents referred to in it constitutes the entire agreement and understanding between Travelport and the Customer and any Group Customer and supersedes any previous arrangement, understanding or agreement between them relating to the agreement (which shall be deemed to have been terminated by mutual consent);

16.1.2 in entering into this Agreement neither party nor any Group Company has relied on any Pre-Contractual Statement; and

16.1.3 each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this Agreement shall, however, limit or exclude any liability for fraud.

17. VARIATION

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

18. COUNTERPARTS AND PUBLICITY

18.1 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

18.2 The Customer shall not disclose the terms of this Agreement (other than to its legal advisors) without the prior written consent of Travelport.

19. GOVERNING LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-

contractual disputes or claims) shall be governed by the law of New South Wales governs this agreement and each party submits to the exclusive jurisdiction of the New South Wales courts.

END