

# AMADEUS INSTANT PREFERENCE AGREEMENT

## 1. SCOPE OF AGREEMENT

1.1 This agreement (the "Agreement") is for the provision of the Services by Amadeus to Property in exchange for payment of fees. Capitalized terms used in this Agreement shall have the meanings defined in the Definitions section at the end of this Agreement.

## 2. AMADEUS RIGHTS AND RESPONSIBILITIES

2.1 Provision of Services. Amadeus agrees to provide the Services subject to the terms and conditions of this Agreement and Property accepts the Services.

2.2 Property acknowledges that the provision of the Reports is contingent upon Property's continuous valid subscription to Amadeus Instant Preference during the Term of this Agreement. Amadeus shall have no obligation to provide Reports if Property fails to subscribe or maintain its subscription to Amadeus Instant Preference during the term for the provision of the Reports.

## 3. PROPERTY RIGHTS AND OBLIGATIONS

3.1 Availability and Rates in the Amadeus GDS. Property must either be (i) affiliated with a company that has a Service Provider Contract with Amadeus or its affiliates for the purpose of providing connectivity between its CRS and the Amadeus GDS or (ii) must have an agreement with Amadeus in order to distribute rates and availability to Amadeus Subscribers.

3.2 Property identification. Property agrees to notify Amadeus in writing of any changes to the Property ID. Any failure to so notify Amadeus will absolve Amadeus of any liability under this Agreement for failure to provide the amended Property ID with the Services.

3.3 Fees for Participation. Property agrees to pay the Services Fee.

3.4 Payment. Upon signature of this Agreement, Amadeus will invoice the Property for the Services Fee and Property will pay in accordance with the instructions on the invoice (and in accordance with the terms of this Agreement), including in the specified currency and by the due date for payment. In all events, Property will pay the full amount invoiced. Property is responsible for all wire transfer fees, bank charges and applicable foreign, national, state or local taxes, including without limitation, use tax, sales tax, income tax or any other taxes that may arise from these services.

3.5 If any sum under this Agreement is not paid by the due date, Amadeus shall be entitled to charge the Property interest on any such sum at the rate of three point five (3.5) percentage points above the three (3) month US Dollars LIBOR rate effective on that date. Such interest shall be charged from and including the first value date until the date of payment of the amount due on a 360 day basis.

3.6 Any failure to make timely payment of any sum due under this Agreement shall constitute a material breach of the Agreement.

3.7 Property will receive Reports described in Section C attached to this Agreement.

3.8 Taxes. All amounts owed to Amadeus are exclusive of VAT which shall be chargeable to Property at the current rate if Amadeus is subject to VAT for the supply of goods or services to Property. If VAT is chargeable to Property, Property shall pay such VAT together with the respective fees for the services that have given rise to the obligation to pay VAT.

3.9 The parties agree to use reasonable endeavours to do everything required by the relevant VAT legislation to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in respect of any VAT paid or payable in connection with services under this Agreement.

3.10 Should Property be required under any applicable law to withhold or deduct any portion of the payments due to Amadeus, then the sum payable to Amadeus will be increased by the amount necessary to yield to Amadeus an amount equal to the sum it would have received had no withholdings or deductions been made.

## 4. LIMITATIONS ON USE

4.1 The reports and data provided to or accessed by Property from Amadeus under this Agreement ("Market Data"), including but not limited to the Reports, shall be used by Property exclusively for the marketing and sale of its travel services and the efficient conduct of its travel business. Market Data provided to or accessed by Property from the Services is for the exclusive use of Property and shall not be published, duplicated, released, reproduced, transferred, disclosed, delivered or made available to any other person, firm, corporation entity or individual, in whole or in part, in its original form, rearranged or processed in any form or manner whatsoever.

## 5. TERMINATION AND REMEDIES

5.1 Mutual Right of Termination. Either party may terminate this Agreement if there is a material breach of this Agreement by the other party not cured within thirty (30) days from defaulting party's receipt of written notice of such breach, describing such breach in reasonable detail. The obligations of the parties under this Agreement that by their nature would continue beyond termination or expiration of this Agreement, including, confidentiality, all liabilities and obligations that have accrued prior to termination or expiration, shall survive.

5.2 Amadeus Rights of Termination and Remedies. Amadeus may terminate this Agreement for any reason with thirty (30) days' prior written notice to Property.

5.3 If Property terminates this Agreement for Amadeus' material breach as provided in Clause 5.1, or if Amadeus terminates this Agreement in accordance with Clause 5.2, Property will be entitled to, as its sole and exclusive remedy against Amadeus and its representatives in connection with a material breach, a refund equal to the Prorated Services Fee, subject to Amadeus' prior receipt of payment of the invoice from the Property.

5.4 If Property does not comply with Clause 3, Amadeus may, at its option and with written notice, immediately suspend the provision of the Services to Property or prohibit Property from appearing in a hotel List Display or a hotel Availability Display. If Amadeus terminates this Agreement due to noncompliance with the Agreement, including Clause 3, Amadeus will not refund the Services Fee.

## 6. CONFIDENTIAL INFORMATION

6.1 Any and all intellectual and other proprietary rights to Services and any materials provided as part of the Services constitutes Amadeus' or its licensors proprietary property. Amadeus or its licensors retains all right, title and interest in such property including

any and all development performed by Amadeus or its affiliated entities.

6.2 The content and terms of this Agreement are Confidential Information and shall not be disclosed by any Party hereto, or affiliate thereof, to any other entity except with the prior written consent of the applicable Party. The Receiving Party shall use its commercially reasonable efforts, and no less effort than used by the Receiving Party to protect its own Confidential Information, to not disclose copy or in any other way duplicate the Confidential Information of the Disclosing Party in whole or in part without the prior written consent of the Disclosing Party. "Confidential Information" does not include information that is (a) already in the public domain, (b) disclosed by any other third party not under an obligation of confidentiality, and (c) independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information. Upon termination of this Agreement, each Receiving Party shall without delay return all the Confidential Information to the Disclosing Party. The obligations of the Parties under this Article will apply during the term of this Agreement and shall survive its termination for a time of three (3) years.

6.3 Notwithstanding anything to the contrary set forth in this Agreement, Customer hereby authorizes Amadeus to publicly disclose that Customer is a customer of Amadeus (e.g. in customer lists, commercial proposals, sales presentations, conferences, press releases, etc.), high-level details of the services provided to Customer and use Customer's brands and logos in connection with such disclosures. In addition, Customer consents to Amadeus' right to use Customer's name, logo, service mark and/or trademark, as updated from time to time, in Amadeus products and services. Amadeus acknowledges and agrees that all proprietary, intellectual property and any other rights in and to Customer's name, logo, service mark and/or trademark are the sole and exclusive property of Customer.

## 7. REPRESENTATION AND WARRANTIES

7.1 Each party represents and warrants that it has the legal power and authority to enter into this Agreement and to perform all of its obligations hereunder.

7.2 Amadeus disclaims and Property hereby waives (i) all warranties expressed or implied including but not limited to any warranty of merchantability, accuracy of data, non-infringement or fitness for intended use of any data or services furnished hereunder and except as explicitly set out herein and (ii) any liability in tort, strict liability or otherwise with respect to the data or services furnished hereunder.

7.3 Property acknowledges that the Reports are provided at no additional charge to Instant Preference. In consequence, no refund shall be due by Amadeus for non-delivery of the Reports.

## 8. EXCLUSION OF WARRANTIES/LIMITATION OF LIABILITY AND DAMAGES

8.1 To the extent that either party has any direct liability under this agreement or under any theory of liability to the other party and/or its representatives, that party's cumulative liability for damages to the other and/or its representatives will be limited to six months average monthly charge paid by the Property under this Agreement.

8.2 Neither party will be liable to the other party and/or its representatives under any theory of liability or any form of action (including negligence) for any incidental, special, punitive, exemplary or consequential damages under any circumstances, including but not limited to lost profits, revenue or savings, or the loss of use of any data, even if the other party had been advised of, knew, or should have known, of the possibility thereof.

8.3 Clauses 8.1 and 8.2 shall not apply to the following types of loss and damage: death and personal injury caused by a party's and/or its representative's negligence, payments owed under this

agreement, any fraudulent or intentional misrepresentation by a party and breaches of confidentiality.

## 9. FORCE MAJEURE

9.1 Either party shall be excused from performing hereunder (except for the payment of money) to the extent that it is prevented from performing as a result of any act or event which occurs and is beyond its reasonable control, including, without limitation, acts of God, war, terrorism, or any action of a governmental entity; provided that the party experiencing the force majeure provides the other with prompt written notice thereof and uses all reasonable efforts to remove or avoid such causes.

## 10. GOVERNING LAW/SUBMISSION TO JURISDICTION

10.1 This Agreement and any difference or dispute arising out of it or related to it shall be governed, construed and interpreted in accordance with the laws of England. Any dispute arising out of or in connection with this Agreement shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce. The place of arbitration shall be London, England. The language shall be English. The procedure shall be that of the Rules of Arbitration of the International Chamber of Commerce Court of Arbitration. The parties agree to exclude any right of application or appeal to any Court in connection with any question of law arising out of the award.

## 11. NOTICES

11.1 Notices will be given in writing by fax, personal delivery, electronic mail, certified or registered or overnight or other courier or delivery service, addressed, in the case of Property, to its address indicated in Section A of this Agreement. In the case of Amadeus, notices will be delivered to Amadeus IT Group S.A, Calle Salvador de Madariaga 1, 28027 Madrid, Spain (with a copy to Amadeus Legal at the same address). All notices will be deemed given and received (a) upon receipt if personally delivered or sent by certified or registered mail and (b) when delivery is confirmed if sent by electronic mail, fax or overnight or other courier or delivery service.

## 12. COMPLETE AGREEMENT and AMENDMENT/WAIVER

12.1 This Agreement is the complete and exclusive statement of the agreement between the parties concerning the Services and it supersedes or merges all prior and simultaneous proposals, term sheets, understandings and all other agreements, oral and written, between the parties relating to the Services. All other agreements between the parties are not integrated into this Agreement and remain in full force and effect.

12.2 Any amendment to this Agreement must be in writing and executed by the parties, except as herein provided. Amadeus may update the terms of this Agreement with thirty (30) days' prior written notice to Property. If the Property does not notify Amadeus before expiration of the thirty (30) day period advising that it chooses not to accept such updated terms, the Property will be deemed to have accepted the same. If the Property chooses not to accept the updated terms, Amadeus may terminate this Agreement with written notice. No term or condition of this Agreement is waived, and no breach is excused, unless such waiver or excuse is in writing and is executed by the party against whom such waiver or excuse is claimed.

## 13. DISCLAIMER OF AGENCY

13.1 This Agreement will not be construed as creating an agency, partnership, fiduciary relationship, or any other manner of legal association between the parties, and the relationship of the parties under this Agreement will be and at all times remain one of independent contractors. Each party agrees that it is an independent contractor and not an employee of the other. In accordance with such

status, no employee or agent of either party will hold himself or herself out or claim to be an officer, agent or employee of the other party.

#### 14. INDEMNITIES

14.1 Property will indemnify, defend and hold Amadeus and its representatives harmless from and against all actual or threatened claims (including reasonable legal fees and costs, as incurred) arising out of or related to Amadeus or its representatives' use in accordance with this Agreement of any data, policies, rates, product descriptions or availability information provided by or on behalf of Property.

#### 15. ASSIGNMENT

15.1 Property may not assign this Agreement, or any right or obligation under it, by operation of law or otherwise without Amadeus's prior written consent. If there is an assignment, the assignee will assume all of the obligations under this Agreement and the assignor will remain liable for all of assignee's continuing performance. Property must give Amadeus at least thirty (30) days' prior notice of any proposed assignment.

#### 16. MISCELLANEOUS

16.1 This Agreement will not be deemed to create any partnership or joint venture between the parties. If any provision is determined invalid or illegal under applicable law, such provision will be deemed restated to reflect as nearly as possible the intentions of the parties and will not affect any other provision. This Agreement has been reviewed and negotiated by the parties with the opportunity to be assisted by counsel. In interpreting this Agreement, no weight shall be placed upon which party (or its counsel) drafted the provision or language being interpreted.

16.2 This Agreement is drawn up in the English language. In the event of any translations of this Agreement or in the event of any discrepancy between different versions of this Agreement, the English language version shall prevail and be binding.

#### DEFINITIONS

"Amadeus GDS" means the Amadeus reservations and distribution system with the ability to perform comprehensive information searches, communications, reservations, distribution and related functions on a worldwide basis.

"Amadeus Subscribers" means any airline office, travel agent or other seller of travel-related services that contracts with Amadeus, an Amadeus national marketing company, or a distribution system to use the Amadeus GDS to obtain information, make reservations and issue documents involving travel related services.

"Availability Display" means the list of properties that satisfy the Amadeus Subscriber's criteria for information regarding hotels that have rooms that could be booked.

"CRS" means a central reservation system owned or operated by or on behalf of a Property.

"Confidential Information" means any information disclosed to the receiving party (in writing, verbally, electronically or in any other form) that is marked or identified as (or provided under circumstances reasonably indicating that it is) confidential or proprietary. The terms of this Agreement will be deemed Confidential Information.

"Effective Date of Termination" means the first date that fulfills any required notice period after notice has been properly given as provided in Section B, Clause 11.

"Instant Preference" means the non-random ordering of properties in the List Display or Availability Display whereby the Property receives a greater than random probability of appearing above another non Instant Preference property.

"Instant Preference Fee" means the flat fee stated in Section A to be paid for participation in the Instant Preference program.

"List Display" means the list of properties that satisfy the Amadeus Subscriber's criteria for information regarding hotels that are located in a specific location regardless of the availability of rooms at each hotel.

"Market" means the city or urban area where Property is located

"Property or Properties" means hotel properties recipient of the Services pursuant to the terms of this Agreement.

"Property ID" means the unique alpha-numeric code used to identify a specific Property within the Amadeus GDS.

"Prorated Services Fee" means an amount equal to the Services Fee times the percentage of time left on the Agreement before its End Date as specified in Section A.

"Reports" means any or all of the reports described in Section C of this Agreement.

"Reports Fee" means the fees applicable for any Reports subscribed to by Property.

"Services" means Instant Preference, together with any Reports subscribed to by Property.

"Services Fee" means the "Instant Preference Fee" together with any applicable Reports Fee.

"Term" means the term of this Agreement as detailed in the Order Form.

## SECTION C: SERVICES

### 1. ADDITIONAL TERMS AND CONDITIONS FOR INSTANT PREFERENCE

1.1 Property hereby agrees to its participation in the Amadeus Instant Preference program whereby participating properties receive Instant Preference on displays available to Amadeus Subscribers in exchange for payment of fees.

1.2 Provision of Instant Preference. Amadeus agrees to provide Properties with Instant Preference within a List Display or Availability Display available to Amadeus Subscribers.

1.3 Application of Instant Preference. Amadeus reserves the right to determine on which List Displays and Availability Displays it will provide Properties with Instant Preference.

### 2. ADDITIONAL TERMS AND CONDITIONS FOR THE REPORTS INCLUDED IN THE INSTANT PREFERENCE SUBSCRIPTION

#### 2.1 Reports description

2.1.1 Property Performance Report: this report displays Property key performance indicators (number of bookings, room nights and revenues) against the Market. This report also provides with a comparison versus results of the previous year.

2.1.2 Top 10 Rates Report: this report displays the top 10 booking rates of Property, against the Market and the country where Property is located.

2.1.3 Look To Book Ratio Report: This report provides Property with conversions ratios resulting from a view of the travel agents searches and booking behaviors for Property and against the Market.

#### 2.2 Delivery of the Reports

2.2.1 The Reports are delivered on a quarterly basis to Property in the form of a PDF file. The Reports are sent to the email address indicated on the Order Form.