

TERMS AND CONDITIONS

1. **Title; Licenses**. Hotel hereby represents and warrants that it is the sole owner of, or has acquired all rights of use in and to, all of its copyrights, patents, trade secrets, trademarks, service marks, logos, graphics, content, data, photographs, images and other intellectual property rights, including, but not limited to, any Hotel photographs, graphics or related content displayed on the THOR website, the THOR *Hotel Navigator*, and/or THOR affiliated, consumer-facing travel agency websites that have been submitted previously to THOR or Travelport for multi-media use (the "**Intellectual Property**"). Without conveying any proprietary right, title or interest in and to Hotel's Intellectual Property, Hotel hereby grants to THOR a non-exclusive, non-transferable, world-wide, royalty-free license, effective throughout the Term, to use, display, copy and publish the Intellectual Property of Hotel solely for the purposes of performing THOR's obligations pursuant to the terms of this Agreement.

2. **Limitation of Liability**. EXCEPT FOR SECTIONS 1, 4 AND 7 OF THESE TERMS AND CONDITIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE INCLUDING, WITHOUT LIMITATION, DAMAGES RELATING TO THE LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. **No Additional Warranties**. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

4. **Indemnification**. Each party agrees to indemnify and hold harmless the other, the other's subsidiaries and affiliates, and the respective successors and assigns thereof, from any and all third-party claims, including, but not limited to, damages, costs, demands, actions, suits, or losses, including reasonable attorney fees and court costs, which arise directly or indirectly out of (i) any infringement by the indemnifying party of any right, title and interest in and to its Intellectual Property, as set forth in Section 1 above; or (ii) the negligence or willful misconduct of the indemnifying party in connection with its warranties hereunder (including, but not limited to, Hotel indemnifying THOR for any inaccurate information regarding Rates provided by Hotel to THOR hereunder); or (iii) any claim arising from products and/or services provided or to have been provided by the indemnifying party hereunder. Each party agrees to (1) promptly notify the other in writing of any indemnifiable claim; and (2) give the indemnifying party the opportunity to (a) defend or negotiate a settlement of any such claim at the indemnifying party's expense, and (b) cooperate fully with the indemnifying party, at the indemnifying party's expense, in defending or settling such claim.

5. Payment; Taxes.

(a) Hotel agrees to pay the Participation Fee selected under Section 4.B. of the RFP upon receipt of an invoice from THOR. In the event that Hotel fails to submit payment in full to THOR within 30 days of the date of the invoice, in addition to any other rights or remedies available to THOR, THOR shall assess interest based upon the greater of (i) the rate of 18% per annum; or (ii) the highest rate permitted by applicable law, as well as the cost of any fees and costs incurred by THOR in collecting Hotel's outstanding indebtedness (including attorney fees). If the Hotel agrees to participate in the THOR Hotel Program, which is evidenced by the signature of an authorized representative of the Hotel, as required below (or e-signature if submitting the Contract by electronic means), such signature signifies agreement by the Hotel to the terms of this Agreement, including, but not limited to, these Terms and Conditions, and to pay for participation in the THOR Hotel Program. Hotel shall remain liable for amounts due and owing: (i) in the event the person who signs this Agreement leaves the employ of the Hotel or the ownership or management company of Hotel changes; and (ii) in the event during the term of the Agreement the Hotel closes for renovations. THOR shall have the right to exclude Hotel from the THOR Hotel Program for a period of two (2) years for nonpayment of fees.

(b) Hotel and not THOR shall be solely responsible for any and all taxes and/or other obligations associated with Hotel guests and/or receipt of Rate payments hereunder.

(c) Billing method (i.e., individual invoice, central invoice, etc.) is determined at time of signature.

(d) Fees after Initial Term. THOR reserves the right to increase or decrease the charge for any service provided pursuant to this Agreement upon 30 days' prior written notice to Hotel, which will not be effective prior to the end of the Initial Term.

6. **Termination; Survival**. THOR may terminate this Agreement, with or without cause, upon delivery of three (3) days' notice to Hotel. All obligations of each party that have accrued prior to an expiration or termination of this Agreement or that are of a continuing nature shall survive an expiration or termination of this Agreement.

7. **Confidentiality**. Neither party shall disclose any terms or conditions of this Agreement or any matters relating to the course of dealings between the parties to any unaffiliated third party without mutual written approval of the other party, except (i) as expressly provided in this Agreement; or (ii) as such party may be compelled to do so by law. However, THOR may contact a Hotel or Property to disclose and report on, or review data related to bookings made by THOR Members for the Hotel or Property or to disclose and share information with a Hotel or Property relating to THOR's programs.

8. **Reporting.** Hotel agrees to provide THOR room night production information related to Hotel stays based on reservations made by THOR Members. Such information may be obtained by THOR (i) directly (via a GDS); or (ii) by any third party engaged by THOR to assist in gathering such information.

9. **Entire Agreement; Modifications; Assignment; Governing Law; Relationship of the Parties.** This Agreement, including all attachments hereto, constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces any prior oral or written agreements. This Agreement may be modified only by a written instrument properly executed by each of the parties. This Agreement is personal to Hotel and Hotel may not assign its rights, duties or obligations hereunder to any person or entity. This Agreement and performance hereunder and actions related hereto shall be governed by the internal laws of the State of Colorado. This Agreement does not create a partnership, agency, or joint venture between the parties and neither party is authorized to or shall act toward third parties or the public in any manner, which would indicate any such relationship with the other.

10. **Notices.** All notices to Hotel shall be in writing and sent by first class or overnight mail courier service to the physical address or e-mail to the e-mail address indicated herein, or such other address as Hotel may provide by at least thirty (30) days prior written notice to THOR. All notices to THOR shall be in writing and sent by first class or overnight mail courier service to the physical addresses indicated herein, or such other address as THOR may provide by at least thirty (30) days prior notice to Hotel.

11. **Force Majeure.** Except for Hotel's payment obligations hereunder, neither party will be liable for, or be considered in breach of or default under this Agreement on account of, any delay or failure to perform hereunder as a result of any causes or conditions which are beyond such party's reasonable control and which such party is unable to overcome by the exercise of reasonable diligence.

12. **RFP.** Hotel hereby represents and warrants that it has accurately and truthfully completed the RFP portion of this Agreement. In the event that any of the information provided by Hotel in the RFP changes, Hotel agrees to notify THOR immediately. THOR shall have the right to terminate this Agreement immediately, in whole or in part, if it disapproves of such a change.

13. **Credit Check(s).** During the Term, but no more frequently than two (2) times per calendar year, Hotel authorizes THOR to conduct a credit check of Hotel and to obtain a credit report from one or more independent credit reporting agencies. In connection therewith, Hotel agrees to provide all pertinent information reasonably required to conduct a credit check. Hotel further releases from all liability all persons, companies, credit reporting agencies and corporations supplying such information to THOR hereunder. In the event that any of the information provided by Hotel to THOR changes, Hotel agrees to notify THOR immediately. THOR shall have the right, in its sole discretion, to terminate this Agreement immediately, in whole or in part, if it disapproves of Hotel's credit rating or a change related thereto.

14. **Hotel Closure.** Hotel shall provide THOR with sixty (60) days prior written notice in the event of a Hotel closure for renovations not due to a force majeure event.

15. **Counterparts.** This Agreement may be executed (including by electronic signature) in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document. If executed by one or more parties by electronic signature, each electronic signature shall have the same force and effect as if an original.