

## WHOLESALE DISTRIBUTOR AGREEMENT FOR USE OF IHG'S GLOBAL BENEFITS PORTAL

### I. PURPOSE

The terms of this Wholesale Distributor Agreement for Use of IHG's Global Benefits Portal (the "**Agreement**"), which Agreement is between you ("**Distributor**") and Six Continents Hotels, Inc., a Delaware corporation with offices at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346-2149 USA ("**IHG**"), together with the documents referred to in the Agreement, govern your access to, and use of, the Global Benefits Portal ("**Portal**"). IHG operates the Portal for the exclusive use of those distributors that IHG has approved and certified for participation, and that have agreed to these terms. Use of the Portal includes accessing, browsing, or registering to use it, and making room reservations through it. IHG may update the Portal from time to time, and may change the content at any time. IHG may revise the terms of this Agreement at any time by notifying all registered Distributors of such changes through the Portal.

### II. DEFINITIONS

Unless defined elsewhere in this Agreement, the following terms have the meanings set forth below, for purposes of this Agreement and Distributor's use of the Portal.

- A. **Customer:** the end user, individual consumer who books a stay in a room at a Participating Hotel, which room was reserved by Distributor through the Portal.
- B. **Package:** a hotel room reservation and at least one other travel product (such as airfare) distributed together for a single price to the Customer, such that the hotel room rate paid by the Distributor is opaque to the Customer.
- C. **Participating Hotel:** an IHG-branded hotel that offers inventory and rates through the Portal, for Distributors to book on behalf of individual Customers.
- D. **Portal Rate(s):** a rate offered through the Portal for rooms at a Participating Hotel, which rate reflects a discount off the Participating Hotel's best flexible rate and, when available, the Participating Hotel's advance purchase rate.
- E. **Rate Categories and Rate Rules:** specific hotel-level rate category rules and policies.

### III. ACCESSING THE PORTAL

To gain access to the Portal, Distributor must first register by completing an online registration form that asks Distributor to provide details about itself. Once IHG has verified the information provided in the registration form, and if IHG decides to grant Distributor access to the Portal, IHG will inform Distributor that its request for access has been approved, and will provide Distributor with login credentials. IHG reserves the right to revoke Distributor's access to the Portal, and cancel its login credentials, at any time and for any reason, in IHG's sole discretion. Distributor is responsible for making all technical arrangements necessary for you to have access to the Portal.

#### **IV. USE OF THE PORTAL**

A. Access to the Portal is permitted subject to Distributor remaining an approved distributor for the use of the Portal, which shall continue, be suspended, or be revoked at IHG's sole discretion. IHG may suspend, withdraw, discontinue or change all or any part of the Portal without notice.

B. Distributor's use of the Portal shall be for the sole purpose of booking Participating Hotel room reservations for Distributor's Customers.

C. All room reservations that Distributor makes through the Portal will require entry of individual Customers' first and last names, addresses, telephone numbers, and other personal information necessary for completing the reservation transaction. Distributor is prohibited from changing the Customer's name on the reservation once the booking is complete.

D. When Distributor reserves a room through the Portal on behalf of a Customer, Distributor shall enter a valid credit card number, which credit card shall be charged by the Participating Hotel at which the reservation is made. All bookings of the advance purchase rate will be charged by the Participating Hotel at the time of booking and, per rate rules, are 100% non-refundable.

E. When Distributor reserves a room through the Portal on behalf of a Customer, Distributor must accept all hotel-level rate category rules and individual hotel-level policies, and must adhere to those rules and policies. It is Distributor's responsibility to ensure that the Customer is also aware of and understands those rate rules and policies.

F. By agreeing to the terms of this Agreement, Distributor represents and warrants that it shall not directly or indirectly offer, distribute, or permit any of the Participating Hotels' inventory or rates, made available through the Portal, to be displayed or otherwise made available through any global distribution system ("GDS"), or to be displayed or made available online through any consumer-facing internet site or other consumer-facing distribution system. This includes, but is not limited to, consumer-facing websites, mobile devices that the end-user customer can access, online travel agents, opaque sites, group buying, loyalty or points redemption programs, flash sales, social commerce, and daily deals sites and applications.

G. Distributor shall not allow anyone other than authorized employees within Distributor's organization to make room reservations through the Portal. Distributor shall not share its login credentials with any person or entity other than Distributor's authorized employees.

H. Distributor shall not make any false, misleading, or deceptive claims that it offers special discounted rates on a Participating Hotel's inventory (or on all Participating Hotels' inventory), or advertise that it has the lowest price available, substantial discounts, online-exclusive rates, exclusive savings, or comparable statements for a Participating Hotel's (or all Participating Hotels') inventory.

I. If Distributor breaches any term of this Agreement, or if IHG finds that Distributor is responsible for a Portal Rate appearing online, outside the Portal, IHG

shall have the right to immediately terminate this Agreement with Distributor, revoke Distributor's login credentials, and deny Distributor and its employees access to the Portal.

#### **J. Portal Rates**

1. Portal Rates offered will be net, non-commissionable, and be offered at a discount off of Participating Hotel's best flexible rate and, when available, Participating Hotel's advance purchase rate, at the time of booking. No commission shall be due or payable by IHG or any Participating Hotel in connection with the booking or consumption of rooms hereunder.
2. Portal Rates are to be used solely for individual leisure travel (fewer than 10 rooms per night). Portal Rates shall not be used for business travel, meetings, conferences, or groups.
3. Blackouts, restrictions, special event policies, and minimum stays may apply. Guarantee and cancellation policies vary by Participating Hotel.
4. Reservations must not be placed by any party other than Distributor or its authorized employees.
5. It is Distributor's responsibility to inform the Customer of Participating Hotel's cancellation policy and other policies and rate rules.
6. IHG® Rewards Club will not award IHG® Rewards Club points for Participating Hotel stays booked through the Portal.

#### **V. CONFIDENTIALITY**

"Confidential Information" means the Portal Rates provided by Participating Hotels. Distributor shall maintain this Confidential Information in the strictest confidence and shall limit access to such Confidential Information to those of its employees, officers, and agents with a need to know such Confidential Information for the performance of obligations hereunder. Confidential Information may be disclosed in response to a subpoena or other legal process, to the extent the subpoena or legal process compels disclosure of such Confidential Information and IHG is informed of such disclosure. Furthermore, the Confidential Information may be disclosed in a dispute resolution matter between you and a Participating Hotel regarding matters arising from this Agreement. Neither Distributor nor IHG will make or issue any public statement or announcement regarding the existence or content of this Agreement without the prior written consent of the other.

#### **VI. INTELLECTUAL PROPERTY RIGHTS**

A. **License Grants.** During the Term, IHG grants you a limited, non-exclusive, worldwide, royalty-free, revocable right and license to display any trade names, trademarks, service marks, domain names and other visual representations thereof, including logos, designs, symbols, word marks, images, colors and color combinations, trade dress, characters and other publicity rights, or other indicia of ownership owned or used by such IHG ("**IHG Marks**") solely for the purpose of identifying IHG and the IHG hotels in your promotional materials. Notwithstanding anything to the contrary contained herein, prior to using any IHG Mark you shall

submit any materials, in electronic format or otherwise, to IHG for its prior written approval. You shall use the IHG Marks at all times in accordance with the guidelines and any other trademark usage guidelines that IHG may communicate from time to time.

**B. Ownership.** IHG owns all right, title, and interest, including without limitation all copyrights, patents, trademarks, trade secrets and other intellectual property rights, in and to the IHG Marks. Any use of any of the foregoing inures to the benefit of IHG and IHG retains all right, title, and interest therein.

**C. Marketing.**

1. Distributor shall not purchase an advertising or sponsorship position triggered by the IHG Marks, or any word or phrase confusingly similar to the IHG Marks, in connection with paid online search or with respect to any top-level domain. In addition, Distributor shall use commercially reasonable methods to prevent the IHG Marks from being displayed when a user types such IHG Marks in as part of a search. This includes the Distributor providing to Google a negative keyword list consisting of the IHG Marks, and using Yahoo! Bing's program that permits presentation of a list of terms to exclude from Distributor's list of keywords, and any other option offered by an online marketing vendor that would permit Distributor to present a negative keyword list containing the IHG Marks.

2. Distributor shall not target, solicit, or otherwise make use of any data made available to it as a result of this Agreement, to offer business related to hotels not in IHG's system to IHG-brand loyal customers (i.e., customers expressing a preference for an IHG brand).

3. In the event Distributor has access to any hotel rating criteria for a Participating Hotel, Distributor agrees to use such ratings in marketing Participating Hotels unless such ratings are based on economic incentives of Distributor or any third party. Distributor agrees to market the Participating Hotel inventory in a non-discriminatory manner, which means that Distributor agrees to market and promote the Participating Hotel inventory in a way that is at least as favorable as Distributor's marketing/promotion of IHG's competitive set. For the purposes of this Section, (i) such marketing and promoting may include (without limitation), display of the Participating Hotel inventory via brochures; consumer-facing internet websites; or any other media that is intended for the general public; and (ii) IHG's competitive set are: Hyatt brands, Hilton brands, Starwood brands, Marriott brands, Carlson brands, Best Western, Accor brands, Wyndham brands and Choice brands (as may be amended/updated from time to time, as notified by IHG).

## **VII. OPERATION OF THE PORTAL BY A THIRD PARTY**

Distributor understands and acknowledges that DerbySoft (Shanghai) Ltd. ("DerbySoft"), a third party, and not IHG, operates and hosts the Portal. Distributor further understands and acknowledges that DerbySoft is responsible for maintaining the Portal, including the security of information and data submitted through the Portal. IHG will not be liable for any breach of the Portal's security, or for any damages arising out of such a breach. In addition, IHG

does not guarantee that the Portal, or any content on it, will always be complete, accurate, and available, or that use of the Portal will be uninterrupted. IHG will not be liable to Distributor if for any reason the Portal is unavailable at any time or for any period.

## **VIII. INDEMNIFICATION AND LIMITATION OF LIABILITY**

A. **Indemnification.** Distributor shall indemnify, defend and hold IHG, and its parents, subsidiaries, and affiliates, and their officers, directors, employees, agents, successors, and assigns harmless from and against (including, without limitation, all settlements, judgments, fines, damages, legal fees, court costs, expert fees, etc.) all third party claims, demands, penalties or judicial or administrative proceedings arising from: (i) any product or service provided by Distributor or its parents, subsidiaries, licensees, or affiliates, and their respective officers, directors, employees, agents, successors, and assigns; (ii) any failure to perform or any breach of this Agreement; or (iii) any injury or damage whether to person or property, sustained by any person as a result of the alleged acts or omissions of Distributor.

B. Distributor acknowledges that IHG operates a Best Price Guarantee in relation to the sale of the hotel inventory (“BPG”). Under the BPG, every hotel reservation booked through an IHG website is guaranteed to have the lowest room price (room rate) or, total room cost (including all taxes and fees) publicly available on the internet. In the event that a consumer claims that it has been able to procure a lower publicly available room rate or total room cost (a “BPG claim”), IHG performs a verification process in respect of such BPG claim received to determine whether the claim is genuine and compliant with the BPG’s terms and conditions (such verified BPG claim, a “Verified BPG claim”). In the event of a Verified BPG claim, IHG will compensate the cost to the relevant hotel of honoring the Verified BPG claim in accordance with the BPG terms and conditions, which will include: (i) the cost of providing the first night of the stay for free rather than at the applicable rate; and (ii) the cost of providing any additional nights of the stay at the lower average nightly room rate (the “BPG Compensation”). In addition, where IHG has reasonable grounds to suspect a breach of this Agreement, it may make appropriate investigations. Such investigations require test bookings to be made with hotels. In respect of any breach by Distributor of this Agreement (which may or may not result in a Verified BPG claim), Distributor shall pay to IHG by way of liquidated damages, within 30 days of receipt of a demand for payment from IHG, the following:

- (i) a fixed administration cost at the prevailing rate (currently USD38), as notified to Distributor from time to time, in respect of administration costs incurred by IHG in performing the verification/investigation process and identifying the source of breach of this Agreement;
- (ii) the cost of any non-cancellable test booking made by IHG in performing the verification/investigation process and identifying the source of the breach of this Agreement; and
- (iii) in the case of a Verified BPG claim, an amount equal to the BPG Compensation.

The parties acknowledge and agree that the amounts payable to IHG pursuant to this Section represent a genuine pre-estimate of IHG's loss.

C. **General Limitation.** IHG's liability for damages or other losses arising out of or related to Distributor's use of the Portal, for all claims, actions, and causes of action of every kind and nature that arise or accrue, regardless of the type of action that imposes liability, whether in contract, equity, negligence, intentional conduct, tort, or otherwise, shall be limited to and shall not exceed, in the aggregate, the monetary value based on the Portal Rates, for Distributor's bookings made through the Portal during the previous calendar month.

D. **WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, THE MEASURE OF DAMAGES OR OTHER LOSSES PAYABLE BY EITHER PARTY WILL NOT INCLUDE, AND NEITHER PARTY WILL BE LIABLE FOR, ANY AMOUNTS FOR LOSS OF INCOME, PROFIT, OR SAVINGS, BUSINESS INTERRUPTION, LOSS OF DATA, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. ALL SUCH DAMAGES ARE EXPRESSLY WAIVED AND DISCLAIMED.

E. **Franchised Hotels Limitation.** In no event shall IHG be liable to Distributor for any actions or omissions on the part of any franchisee-operated Participating Hotel, including, but not limited to, any indemnification obligations, inasmuch as such franchisee-operated Participating Hotels are independently owned and operated and are in control of their own daily operations.

## IX. VIRUSES

IHG does not guarantee that the Portal will be secure or free from bugs or viruses. Distributor is responsible for configuring its information technology, computer programs, and platform in order to access the Portal. Distributor should use its own virus protection software. Distributor must not misuse the Portal by knowingly introducing viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful. Distributor must not attempt to gain unauthorized access to the Portal, the server on which the Portal is stored, or any server, computer, or database connected to the Portal or IHG.

## X. GENERAL

A. **No Partnership.** You will not be a partner or joint venture partner of IHG or any of its hotels. You have the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all obligations under these terms and conditions.

B. **Waiver.** No waiver of any breach of any provision of these terms and conditions will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.

C. **Force Majeure.** Neither party shall be liable for failure to perform its obligations under this Agreement if prevented by an event, condition or circumstance,

beyond the reasonable control of the party affected, that prevents the performance of such party's obligations as set out in this Agreement including, but not limited to: (i) explosion and fire; (ii) flood, earthquake, storm, or other natural calamity or act of God; (iii) strike or other employment dispute; (iv) war, insurrection or riot; and (v) acts of, or failure to act by, any governmental authority.

D. **Entire Agreement.** This Agreement supersedes all prior written or verbal commitments, representations and warranties between the parties and constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be amended or supplemented except by a written agreement of the parties specifically identified as such and signed by a representative of each party.

E. **Governing Law.** These terms and conditions and any and all claims and disputes arising out of or in connection with your use of the Portal will be governed by and construed in accordance with the laws of the State of Georgia, United States, without application of the principles of conflicts of laws thereof.

F. **Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned, pledged, delegated, or otherwise transferred, in whole or in part, by Distributor, without IHG's prior written consent, which may be withheld in IHG's sole discretion.

G. **Relationship of Parties.** Neither this Agreement nor the cooperation of the parties contemplated hereunder shall be deemed or construed to create any partnership or joint venture between the parties.

H. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable, or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement shall be in full force and effect.

I. **Survival.** The obligations of the parties under this Agreement that by their nature would continue beyond expiration, termination or cancellation of this Agreement shall survive any such expiration, termination or cancellation.