

Online Booking, Commission Based Terms and Conditions



Definitions:

- "Welcome" - Welcome Systems Limited
- "the Service" - the support services listed below
- "the Customer"- any party with whom Welcome contracts for the Service
- "the Manual"- the software manual supplied to the Customer with the software

BACKGROUND

The Company delivers and manages a web-based application via the Internet known as "Welcome On-Line" that enables availability of hotel rooms to be verified and reservations to be made via the Customer's website as more particularly described in Schedule 1.

If the Company provides Welcome On-Line to the Customer, it is in accordance with the terms and conditions set out below.

AGREED TERMS

1. INTERPRETATION

In this Agreement including the recitals:

1.1 the following words shall have the following meanings:

"Commencement Date" means the date upon which the Customer is able to commence use of its access to Welcome On-Line;

"Confidential Information" means confidential information as defined in clause 8 below;

"Fees" means fees calculated in accordance with clause 3;

"Intellectual Property Rights" means any copyright, patent, utility model, trade mark, design right, database right, semiconductor topography right, proprietary information right and all other similar proprietary rights as may exist anywhere in the world including any applications for any registrable items of the foregoing;

"Services" means the services set out in clause 2;

"Software" means the software that the Company will supply to the Customer to enable the Customer's website to connect to Welcome On-Line as described in Schedule 1;

"Welcome On-Line" means the application referred to in recital A above;

- 1.2 references to clauses, sub-clauses and Schedules are to clauses, sub-clauses and Schedules in or to this Agreement;
- 1.3 headings are for convenience only and shall be ignored in interpreting this Agreement;
- 1.4 references to any statute or statutory provisions includes any statutory amendment, modification, consideration or re-enactment of the statute or statutory provision from time to time;
- 1.5 except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender includes all genders and words denoting persons include firms and corporations and vice versa.

2. SERVICES

- 2.1 The Customer engages the Company and the Company agrees to provide the Services in accordance with the terms of this Agreement.
- 2.2 Subject to the Customer's payment of the Fees, the Company undertakes to provide the Customer with:
 - 2.2.1 access via the Internet to Welcome On-Line with effect from the Commencement Date;
 - 2.2.2 the hosting and support services set out in Schedule 2 with effect from the Commencement Date;
 - 2.2.3 the Software on a date to be agreed between the parties;
 - 2.2.4 the training described in clause 2.3.
- 2.3 Upon request by the Customer, the Company shall provide training for the Customer's employees in the use of Welcome On-Line on a date(s) to be agreed between the parties, charged at the Company's standard rates from time to time.
- 2.4 The Company shall use all reasonable endeavors to deliver, install and commission the Software by the date agreed with the Customer, however, all dates for delivery, installation or commissioning of the Software are approximate only and cannot be guaranteed. Time for delivery shall not be of the essence.
- 2.5 The Customer agrees to co-ordinate its operations with the Company's installation schedule and accepts liability for any additional charges incurred as a result of any delays necessitating additional site time which are due to circumstances within the Customer's direct control.

3. FEES AND PAYMENT

- 3.1 In consideration of the provision of the Services, the Customer shall pay the Company a commission of 3% plus VAT of the total room rate on each room booking made through Welcome On-Line (“the Fee”).
- 3.2 The Customer shall pay the Company a minimum monthly fee. This fee is not in addition to, but includes, any commission fees (3.1). If this fee remains unpaid after 30 days from the date of invoice, the Company reserves the right to suspend the Services.
- 3.3 The Company is not liable for any cancelled bookings or non-arrivals. No commission refunds will be offered in such instances.
- 3.4 The Company will invoice the Customer monthly in arrears for the Fee due in respect of bookings taken that month and a report on the number of bookings and relevant room rates will accompany each invoice.
- 3.5 All invoices are due and payable within 30 days of the date of invoice.
- 3.6 The Company may, at its option, without prejudice to any other rights and remedies including the right to suspend the Services immediately on notice, charge the Customer interest on any payment which has not been made within 30 days of the date of invoice from the due date until payment, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

4. WARRANTIES

- 4.1 The Company warrants that it has the right to provide the Services and that the Services will be provided with reasonable skill and care.
- 4.2 No warranty is made regarding the results of usage of the Services or that the Services will operate uninterrupted or error free.
- 4.3 The Company shall have no liability to the Customer in respect of the Customer’s inability to access the Services or the inability of potential customers of the Customer to make bookings via Welcome On-Line or errors in the functioning of Welcome On-Line which are attributable to errors in or made by or failures in the performance of the Customer’s or such potential customer’s computer equipment, internet access or computer operators or a failure of the Customer to comply with its obligations under clause 6.
- 4.4 In respect of any breach of the warranty at clause 4.1, the Company shall have no liability or obligations other than to provide the support services set out in Schedule 2.

4.5 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

5. LIMITATION OF LIABILITY

5.1 The Company does not exclude or limit its liability to the Customer for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

5.2 Subject to clause 5.1 in no event will the Company be liable to the Customer for any direct, indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever or howsoever caused which arise out of or in connection with this Agreement, or for loss or profit, loss of business, loss of data, or depletion of good will.

5.3 Subject to clause 5.1, the Company's aggregate liability under this Agreement to the Customer for all losses, damages, costs, claims, and expenses, howsoever arising, shall not exceed an amount equal to the actual amount of commission received from the customer in the preceding 6 months.

6. CUSTOMER'S OBLIGATIONS

6.1 In order to receive the Services, the Customer agrees that it shall make available the equipment and perform the obligations set out in Schedule 3.

7. DURATION AND TERMINATION

7.1 This Agreement shall come into effect on the date of signature and, subject to clauses 7.3 to 7.6, shall continue in force until the expiry of 12 months from the Commencement Date ("the initial term").

7.2 At least 4 weeks' prior to the end of the initial term and any agreed 12 month extension thereto, the Company will offer the Customer the option of:

7.2.1 renewing the Agreement for a further 12 month period on the same terms; or

7.2.2 renewing the Agreement for a further 12 month period on the basis of the payment of a one-off fee to be negotiated between the parties together with an annual hosting and support charge to be advised by the Company at that time; or

7.2.3 not renewing the Agreement and the Customer shall advise the Company of its choice of option within 14 days of receipt of the Company's offer.

- 7.3 The Company may immediately terminate this Agreement or suspend any Services hereunder if the Customer has used or permitted the use of the Services otherwise than in accordance with this Agreement.
- 7.4 The Company may immediately terminate this Agreement or suspend the Services in the event that the Customer does not pay any Fees due to the Company when due.
- 7.5 The Customer shall be entitled to terminate this Agreement at any time without notice if the Company is prohibited, under the laws of England and Wales or otherwise, from providing the Services.
- 7.6 Without prejudice to any other right to which it may be entitled, either party may give notice in writing to the other terminating this Agreement with immediate effect if:
- 7.6.1 the other party commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach;
- 7.6.2 an order is made or a resolution is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitled the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt.
- 7.7 Upon expiry or termination of this Agreement for any reason the Customer's rights to use Welcome On-Line, the Software and the Services shall immediately cease.
- 7.8 On request, and in any event on expiry or termination of this Agreement for whatever reason, in the absence of written consent of the other, each party shall deliver up all Confidential Information and (to the extent not so comprised therein) all correspondence, documents, software and other property belonging or relating to the other, and neither party shall, without the written consent of the other, make or retain copies of any of the same.
- 7.9 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other. Clauses 5, 8, and 9 shall, for the avoidance of doubt, survive the expiration or sooner termination of this Agreement and shall remain in force and effect.

8. CONFIDENTIALITY

- 8.1 Each party undertakes to keep and treat as confidential and not to disclose to any third party any information relating to the business or trade secrets of the other, nor to make use of such information for any purpose whatsoever except for the purposes of this Agreement provided that the foregoing obligation shall not extend to information which is:
- 8.1.1 published or otherwise generally available to the public, other than by breach of this Agreement;
 - 8.1.2 rightfully in the possession of both parties and was rightfully in their possession prior to the negotiations leading to the Agreement;
 - 8.1.3 received by one party from a third party without any obligations of confidentiality.
- 8.2 Each party undertakes to procure that its employees, contractors and agents comply with the undertaking at clause 8.1 above.

9. DATA PROTECTION AND INTELLECTUAL PROPERTY

- 9.1 Each Party undertakes to comply with its obligations under the Data Protection Act 1998.
- 9.2 All Intellectual Property Rights in and title to Welcome On-Line, the Software and the Services (save to the extent incorporating any third party item or item provided by the Customer) shall remain with the Company and/or its licensors and no interest or ownership therein is conveyed to the Customer under this Agreement other than as expressly set out herein. No right to modify or adapt the Services or create derivative works therefrom is granted to the Customer other than in the Customer's normal use of the Services as provided herein. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain any code for Welcome On-Line or any software comprised within the Services other than the object code for the Software.
- 9.3 In consideration of the Fee, the Company grants to the Customer a non-exclusive, non-transferable licence to use the Software on the Customer's equipment subject to these terms and conditions.
- 9.4 The Customer shall treat the Software as strictly confidential and shall not divulge the whole or any part thereof to any third party
- 9.5 Except to the extent and in the circumstances expressly required to be permitted by law, the Customer shall not alter, modify, adapt or translate the whole or any part of the Software in any way whatsoever nor permit the whole or any part of the Software to be combined with or to become incorporated in any other programs

nor decompile, disassemble or reverse engineer the Software or any part thereof nor attempt to do any of such things without the prior written consent of the Company. To the extent that local law grants to the Customer the right to decompile the Software in order to obtain information necessary to render the Software interoperable with other computer programs used by the Customer, the Company hereby undertakes to make that information readily available to the Customer and the Customer agrees to make such requests of the Company before attempting to decompile the Software. The Company shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that the Customer receives the appropriate information, the Customer must first give the Company sufficient details of the Customer's objectives and the other software concerned.

- 9.6 The Customer may only make copies of the Software for operational security and back-up purposes but shall make no other copies thereof. Such copies and the media on which they are stored shall be the property of the Company and the Customer shall ensure that all such copies bear the same proprietary notices as the original. The provisions of this licence shall apply to all such copies as they apply to the Software.

10. FORCE MAJEURE

- 10.1 The obligations of each party under this Agreement shall be suspended during the period and to the extent that that party is delayed, prevented or hindered from complying with them by any cause beyond its reasonable control.
- 10.2 If the period for which a party's performance is delayed, prevented or hindered pursuant to clause 10.1 continues for more than 60 days either party may terminate this Agreement on 30 days' notice.

11. ENTIRE AGREEMENT

- 11.1 This Agreement constitutes the entire arrangement and understanding between the parties and supersedes and extinguishes all prior agreements, negotiations and discussions between the parties relating to the subject matter of this Agreement. Each party acknowledges that in entering into and performing this Agreement it does not do so on the basis of, and does not rely on any statement or representation (unless made fraudulently) or warranty or understanding other than as expressly contained in this Agreement at the date hereof or subsequently included within this Agreement pursuant to clause 12.

12. AMENDMENTS

12.1 Save as expressly provided in this Agreement, no variation to the rights and obligations of the parties pursuant to this Agreement shall be effective unless in writing and signed by an authorised representative of both parties.

13. ASSIGNMENT

13.1 The Customer shall not without the prior written consent of the Company assign, sub-licence, transfer, charge, deal with or sub-contract any right or obligation it has under this Agreement.

13.2 The Company may sub-contract its obligations under this Agreement provided that any act or omission of any subcontractor shall be deemed to be an act or omission of the Company.

14. WAIVER

14.1 Unless otherwise agreed in writing, the waiver by either party of a breach or default of any of the provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions and, save as expressly stated in this Agreement, the failure or delay of a party to exercise or enforce any remedy, right, power or privilege under this Agreement shall not be deemed to be a waiver of any breach or default by the other party.

15. SEVERABILITY

15.1 If any part of this Agreement shall be found by any Court or administrative body of competent jurisdiction to be invalid, unlawful or unenforceable, in whole or in part, but would be valid, lawful or enforceable if such whole or part provision were deleted, the remaining provisions and/or the remainder of the provision in question shall continue to apply as if such whole or part provision had been deleted.

15.2 The parties shall, in the circumstances referred to in clause 15.1, attempt in good faith to substitute for any invalid, unlawful or unenforceable provision as valid, lawful and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid, lawful or unenforceable provision.

16. NOTICES

16.1 Any notice, approval or consent to be given by either party to the other under this Agreement shall be in writing and may be delivered by hand to the other party or sent by first class recorded delivery letter, by facsimile transmission or by email to such address, fax number or email address which may have been notified by that party.

16.2 Any such notice, approval or consent shall be deemed to have been received if delivered personally at the time of delivery, if sent by post at the expiration of 48 hours after being placed in the post; if by facsimile or email at the time of transmission.

17. RIGHTS OF THIRD PARTIES

17.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

18. GOVERNING LAW AND JURISDICTION

18.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SIGNED by _____)
for and on behalf _____)
of the Company in the presence of: _____)

SIGNED by [_____])
for and on behalf of the Customer _____)
in the presence of: _____)

Schedule 1
Welcome On-Line

Description of functions available to Customer via use of Welcome On-Line

Potential customers of the Customer's website can access Welcome On-Line via the Customer's website to determine room availability and to make reservations

The Customer's computer will be updated with details of bookings made via its website together with either advance payments or credit card details (depending on solution chosen by the Customer)

Welcome On-Line can automatically generate an email confirmation of the booking to the Customer and the customer

Description of software provided to Customer via use of Welcome On-Line

The software consists of:

- scripts to create a "book now" button on the Customer's website and the link from this button to Welcome On-Line
- a program which runs on the Customer's computer and periodically updates information about availability on Welcome On-Line
- a program which runs on the Customer's computer and periodically updates the Customer's computer with details of any bookings made via Welcome On-Line together with advance payments or credit card details (depending on solution chosen by Customer) in respect of such bookings

Schedule 2

Hosting and Support

1. The Company shall use its reasonable endeavors to ensure that during the term of this Agreement:
 - 1.1 Welcome On-Line is accessible by the Customer; and
 - 1.2 the Customer's access to and use of Welcome On-Line functions effectively, subject to routine maintenance, repairs, configurations or upgrades of the same.

2. The Company agrees to provide telephone [and email] support for Welcome On-Line during normal working hours which shall be [9a.m. to 5p.m.] Monday to Friday excluding UK public holidays ("Normal Working Hours"). On the Customer noticing a problem or on a problem being brought to its attention, the Company undertakes, as soon as reasonably practicable, to provide information to the Customer on the identification of the problem, the steps being taken to correct the problem, the likely time estimated to correct the problem (if possible), and the Company will confirm to the Customer once such problem has been corrected.

3. The Customer acknowledges that the Services do not cover:
 - problems arising out of any alterations or additions to the Software, however slight, other than those made or authorised by the Company;
 - problems arising out of any alterations in or additions to or the failure of the Customer's hardware, website or operating system environment;
 - any defects arising out of any interface with any other software operating on the Customer's system not supplied by the Company.

Schedule 3

Customer's Obligations

1. The Customer shall make available:

- a web-enabled device (PC, tablet, laptop, epos terminal) with the following minimum specification:
 - CPU Intel Celeron M 440 (1.86GHz)/ Intel Core2 Duo T7400 (2.16GHz)
 - Memory 4GB DDR2-533/ PC-4200, 2 slots
 - HDD Type A: 160 GB or over, SATA x 1 (Max. 2 Drives)
 - Type B: 250GB or over, SATA x 1 (Max. 2 Drives)
 - OS Windows 7 or better
- The device should not be used for any other internet tasks which may interfere with the regular Welcome On-Line traffic
- The above device must have a reliable, constant internet connection able to upload and download without packet loss. A firewall and virus protection needs to be installed on such computer and it is the responsibility of the Customer to ensure that this is kept up-to-date
- if the Customer wishes to receive advance deposit payments via Welcome On-line, the Customer must have an on-line merchant account with either World Pay or Barclays in order to process on-line payments; alternatively, the Customer can use the 'Welcome Secure' module for the capture of credit card details (Welcome Secure does not process payments)

2. The Customer acknowledges that:

- it will make the device referred to in 1 above and sufficiently qualified personnel of the Customer available to the Company at the time agreed by the parties during the Company's normal working hours for the installation and commissioning of the Software and will prepare the computer in advance in accordance with any instructions given by the Company
- except in the case of customers of the Customer with credit facilities with the Customer or the Customer utilising the Welcome Secure credit card storage facility, full payment or a deposit needs to be taken with each booking. Any deposit refunds need to be made manually by the Customer - they cannot be made through Welcome On-Line
- the Customer's personnel must be trained in the use of the Customer's access to Welcome On-Line and must monitor that the Customer's access to and responses from

Welcome On-Line is functioning correctly and report all suspected errors to the Company as soon as the Customer's personnel are aware of such errors

- once a room booking is downloaded from Welcome On-Line to the Customer's computer then the Customer's personnel are responsible for any further correspondence or other communication with the person making the booking.