**Master Services Agreement**

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**MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICES AGREEMENT** is made effective as of the <<[Agreement\_StartDate]>> (the “**Effective Date**”), by and between **PRICELINE.COM LLC**, a Delaware limited liability company with principal offices at 800 Connecticut Avenue, Connecticut, 06854, USA(“**Priceline**”) and <<[Account\_Name]>>(“**Service Provider**”).

In consideration of the mutual covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows**:**

# – INTERPRETATION

* 1. Definitions. In this Agreement, the following words and expressions shall have the following meanings:
     1. “**Affiliate**” means any legal entity which controls, is controlled by, or is under common control with Service Provider or Priceline, respectively. An entity is deemed to “control” another if it owns directly or indirectly at least 50% of the shares entitled to vote or if it exercises control over the decision making of the entity in some other manner.
     2. “**Agreement**” means this Agreement, including any Statement(s) of Work, change order(s) and amendments hereto which are incorporated by reference herein and made a part hereof as may be modified or amended from time to time in accordance with the terms hereof.
     3. “**Applicable Law**” means, in relation to any person, property or circumstance: (i) all laws and statutes, including regulations, rules, by-laws, ordinances and other statutory instruments enacted thereunder; (ii) all judgments, decrees, rulings and orders of courts, tribunals, commissions and other similar bodies of competent jurisdiction; (iii) all orders, rules, directives, policies and guidelines having force of law issued by any Governmental Authority; and (iv) all terms and conditions of any permits; that are in effect as of the relevant time and are applicable to such person, property or circumstance.
     4. “**Background Property**” means all materials provided, created, owned, licensed, developed, authored or invented by Service Provider (including its employees and contractors) prior to, or independently of, performing the Services and developing the Deliverables, as well as enhancements and/or modifications to the foregoing created in the course of performing Services to the extent they integrally and specifically relate to pre- existing or independently created works or intellectual property.
     5. “**Claims**” means actions, injury, claims, liabilities, loss, damages (including loss or damage to Priceline’s property), demands, penalties, fines, expenses (including legal expenses on a full indemnity basis), costs, obligations and causes of action of every kind and nature whatsoever.
     6. “**Confidential Information**” means all information, documents or data, whether in tangible or intangible form, concerning the business affairs of Priceline, its Affiliates, agents, or assigns, and includes, the terms and conditions set forth in this Agreement, any Personal Information or Work Products, any know-how, client names, marketing and development plans, price lists, pricing policies, financial information, property, intellectual property, methods of operation, trade secrets, formulae, processing systems or other information deemed proprietary and confidential by such party, in each case that Service Provider may obtain or access during the course of providing the Services, provided that Confidential Information shall not include information that:
        1. has been disclosed to the public or published in or otherwise ascertainable from any source available to the public generally, other than a source that has breached an obligation of confidentiality owed to Priceline;
        2. is received from an independent third party who had obtained the information lawfully and was under no obligation of secrecy or confidentiality to Priceline; or
        3. has been requested by any judicial, administrative, governmental or other authority having jurisdiction, where Service Provider has provided Priceline with notice of such request prior to disclosure and afforded Priceline the opportunity to contest such disclosure through all available legal avenues.
     7. “**Deliverables**” means the goods, products, materials, and/or Work Product, if any, specified in a Statement of Work to be provided by Service Provider to Priceline under this Agreement during the course of providing the Services.
     8. “**Governmental Authority**” means any: (i) governmental entity or authority of any nature, including any governmental ministry, agency, branch, department or official and any court, regulatory board or other tribunal; or (ii) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature; having or purporting to exercise jurisdiction or power over any person, property, operation, transaction or other matter or circumstance.
     9. “**Intellectual Property Rights**” means patents (and anything that may be patentable), copyright, trademarks (and associated goodwill), trade secrets, industrial designs, domain names, software, formulas, processes, composition of matter, databases, and inventions, whether or not recognized by law or registered, and includes intellectual property applications, registrations and licenses anywhere in the world.
     10. “**Personal Information**” or “**Personal Data**” means any information relating to an identified or identifiable natural person or any information that can be combined with other information to identify a natural person or other information not covered by the foregoing but that is information protected as personal data under applicable data protection laws.
     11. “**Privacy Laws**” means any and all Applicable Laws, legal requirements and self-regulatory guidelines (including of any applicable foreign jurisdiction) relating to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (both technical and physical), disposal, destruction, disclosure or transfer (including cross-border) of Personal Information, including but not limited to the Federal Trade Commission Act, US- Switzerland Safe Harbor, EU-U.S Privacy Shield Framework, Swiss-U.S. Privacy Shield Framework, California Consumer Privacy Act (CCPA), Payment Card Industry Data Security Standard (PCI-DSS), General Data Protection Regulation 2016/679/EU (GDPR), and any and all Applicable Laws relating to breach notification or marketing in connection with Personal Information.
     12. “**Purchase Order**” means a document issued by Priceline to Service Provider, in writing or electronically, and identified as a Purchase Order that authorizes Service Provider to proceed with fulfillment of all or part of a Statement of Work by delivery of materials or provision of services in quantities and at times and locations specified in such document.
     13. “**Sanctioned Person**” means a natural person, corporate entity or government body listed on, or owned or controlled by, or acting on behalf of, a person listed on, any Sanctions List or who is otherwise the target of Sanctions; or (b) is acting, directly or indirectly, on behalf of a Sanctioned Person.
     14. “**Sanctions**” means any Applicable Laws relating to economic or financial sanctions or trade embargoes or related restrictive measures imposed, administered or enforced from time to time by a Sanctions Authority;
     15. “**Sanctions Authority**” means: (i) the United Nations Security Council; (ii) the United States government; (iii) the European Union; (iv) the United Kingdom; (v) any respective Governmental Authority of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury (“**OFAC**”), the United States Department of State and Department of Commerce, and (v) any other Governmental Authority responsibility for imposing, administering or enforcing Sanctions with jurisdiction over a party hereto.
     16. “**Sanctions List**” means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Denied Persons list maintained by the US Department of Commerce, the Consolidated List of persons, groups and entities subject to EU financial sanctions, or any other list issued or maintained by any Sanctions Authority of persons subject to Sanctions (including investment or related restrictions), each as amended, supplemented or substituted from time to time.
     17. “**Services**” means the services to be provided by Service Provider to Priceline pursuant to this Agreement, as such services are detailed in a Statement of Work, and includes any Deliverables to be provided in connection with such Services.
     18. “**Specifications**” means any written specification or description set forth in a Statement of Work relating to a Deliverable.
     19. “**Statement of Work**” or “**SOW**” shall have the meaning ascribed to such term in Section 2.1(a).

The singular of any term includes the plural and vice versa, and the use of any term is generally applicable to any gender and, where applicable, a corporation and the word “or” is not exclusive and the word “including” is not limiting whether or not non limiting language is used with reference thereto.

* 1. General Rules of Interpretation**.** 
     1. In this Agreement, grammatical changes shall be made to words where the context requires or permits, including changes from plural to the singular and vice versa.
     2. The division of this Agreement into articles and sections and the insertion of headings herein is for the convenience of reference only and shall not affect and shall not be construed as affecting the interpretation hereof.
     3. The recitals set forth above and any schedules, appendices and exhibits attached hereto are hereby incorporated in this Agreement by reference.
     4. Any reference herein to statutes shall include, unless a contrary intention is expressed, any such statute and all regulations made thereunder, each as varied, amended, modified, supplemented, re-enacted or replaced from time to time.
     5. In this Agreement, the words “including”, “include” and “includes” (and similar phraseology) shall be read and understood to be exemplary and non-exhaustive, and for greater certainty, shall be read and understood to be followed by the words “without limitation”.
     6. Reference in this Agreement to a “business day” shall be construed as a reference to any day except Saturday, Sunday, and local, provincial and federal statutory holidays recognized in the State of Connecticut.
     7. This Agreement shall be considered for all purposes to have been drafted and prepared through the joint efforts of the parties hereto and shall not, in any case, be construed against any party as a result of its involvement in the negotiation, drafting or execution hereof, and no presumption or burden of proof shall favor or disfavor any party by virtue of the authorship of any of the provisions of this Agreement.
  2. Incorporation of Schedules and Interpretive Precedence.
     1. The following schedules (each individually the “**Schedule**” and collectively the “**Schedules**”) are attached hereto and form part of this Agreement:

|  |  |  |
| --- | --- | --- |
| Schedule “A” | - | Form of Statement of Work |
| Schedule “B” | - | Data Privacy and Onward Transfer Agreement |

* + 1. The main body of this Agreement and the Schedules, as well as any supplements or amendments hereto are intended to be correlative, complementary and mutually explanatory of one another. The Agreement shall be read as a whole. However, in the event of a conflict, inconsistency or ambiguity between the terms of any Schedule or any supplements or amendments thereto, and the terms of the main body of this Agreement or any supplements or amendments thereto, the terms of the main body of this Agreement or any supplements or amendments thereto are of general application and shall prevail unless expressly stated otherwise in a specific Service Schedule, supplement or amendment thereto.

# – SCOPE OF SERVICES

* 1. Statement of Work.
     1. The Services to be provided by Service Provider to Priceline under this Agreement shall be described in one or more Statements of Work, duly signed by each party, describing the specific activities, milestones, delivery dates, service levels, personnel, payment terms, Specifications and any other information related to the Services and, if applicable, Deliverables to be provided by Service Provider to Priceline (each a “**Statement of Work**”). A form of Statement of Work is attached to this Agreement as Schedule “A”.
     2. Statements of Work may be entered into by the parties to this Agreement and may also be entered into by and between the Affiliates of either party under this Agreement. Where Affiliates of either party enter into a Statement of Work, then except as otherwise set forth in such a Statement of Work, each such Statement of Work shall incorporate the terms of this Agreement and references to “Priceline” and Service Provider in this Agreement shall (for the purposes of such Statement of Work) be interpreted in such Statement of Work as references to the contracting Priceline Affiliate and the contracting Service Provider Affiliate in such Statement of Work, respectively. Each Priceline Affiliate and Service Provider Affiliate entering into a Statement of Work under this Agreement (rather than Priceline and Service Provider parties executing this Agreement) shall be solely responsible for the performance of its respective obligations under the Statement of Work.
     3. Each Statement of Work must be approved in writing by Service Provider and Priceline, or where Affiliates of either party enter into a Statement of Work in accordance with Section 2.1(b), such Statement of Work must be approved in writing by the applicable Affiliates.
  2. Project Contact. Each party shall, in each Statement of Work, designate a project contact (the “**Project Contact**”) to be the primary point of contact for matters relating to such Statement of Work including, without limitation, reports, invoices and payments. Either party may change its Project Contact by giving notice to the other party of the new Project Contact and the date upon which such change will become effective.
  3. Changes **to Statement of Work**. Either party may initiate changes to a Statement of Work by presenting a change order proposal to the other party outlining: (i) the scope of the change to the Services; (ii) the amount of the adjustment in the Fees, if applicable; and (iii) the extent of the effect on the time for performance of the Services, if any. If the parties reach an agreement on all aspects of the change order proposal, the proposal will be signed by the parties (electronic approval by email will be sufficient). Once signed, the change order proposal will form part of, and be deemed incorporated into, the applicable Statement of Work. Neither party shall incur any obligations with respect to any change order proposal, until such proposal is signed by both parties (electronic approval by email will be sufficient).
  4. Services. Service Provider shall perform the Services for Priceline in accordance with the terms and conditions set forth in this Agreement. No Statement of Work shall be legally binding unless and until it is executed by a duly authorized representative of each party. Service Provider shall have no obligation to perform any Services until such time as the relevant Statement of Work has been executed by either party. Purchase Orders issued by or on behalf of Priceline and/or a Priceline Affiliate, as applicable, shall be subject to the terms and conditions of the applicable SOW and this Agreement. Any terms or conditions contained in any Purchase Order submitted by or on behalf of Priceline and/or Priceline Affiliate to Service Provider and/or a Service Provider Affiliate do not form part of this Agreement or any Statement of Work and are of no force or effect.
  5. Service Levels.
     1. All relevant service levels (“**Service Levels**”) will be set out in the applicable Statement of Work, and Service Provider shall provide the Services in accordance with the Service Levels in the applicable Statement of Work.
     2. In the event Service Provider fails to meet a Service Level, Service Provider shall promptly: (i) investigate, assemble, and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a root cause analysis of the problem(s); (ii) advise Priceline, as and to the extent requested by Priceline, of the status of remedial efforts being undertaken with respect to such problem; (iii) take preventive measures so that the problem does not recur; (iv) demonstrate to Priceline’s reasonable satisfaction that causes of the problem have been or will be corrected; and (v) provide Priceline with any Service Level credits as may be set forth in and in accordance with any applicable Statement of Work.
     3. With respect to any Service or obligation which does not have an associated Service Level, the Service Level shall perform such Service or obligation with a level of accuracy, quality, completeness, timeliness, responsiveness and cost efficiency that meets or exceeds the documented level of performance by leading providers of similar services, and in any event shall use prompt and diligent efforts in a professional and workmanlike manner and using qualified individuals.

# – FEES AND ACCEPTANCE

* 1. Fees. The parties shall agree on the specific fees payable by Priceline to Service Provider for performance of the Services and delivery of any Deliverables that shall be provided by Service Provider to Priceline in each Statement of Work (the “**Fees**”). For greater certainty and the avoidance of doubt, other than as specifically agreed to in writing by the parties in each Statement of Work, Service Provider has no right to any licensing fee, royalty or other form of compensation whatsoever related to this Agreement, Service Provider’s performance hereunder, or the delivery of any Deliverables to Priceline.
  2. Reimbursement for Expenses. If specifically set forth in the Statement of Work, Priceline shall reimburse Service Provider for all reasonable out-of-pocket expenses of Service Provider incurred in connection with its performance of the Services including travel expenses, if pre-approved in writing by the Priceline. Notwithstanding the foregoing, expenses incurred by Service Provider in the performance of the Services shall only be reimbursed to Service Provider upon submission of supporting documentation (i.e. original or photocopied receipts) in a form acceptable to Priceline.
  3. Invoicing. Service Provider shall, either once per month or at such other period provided for in the applicable Statement of Work, deliver an invoice to Priceline, setting forth the Fees for delivery of the Services and/or Deliverables and for the reimbursement of expenses (each, an “**Invoice**”). Each Invoice shall contain: (i) a general description of the Services provided; (ii) Deliverables delivered; (iii) if the Services are delivered on a time and materials rate basis, the hours billed for such Services; and (iv) if reimbursement of expenses is being requested by Service Provider, supporting documentation in respect of such expenses.
  4. Payment. Subject to Section 3.4 of this Agreement, Priceline shall pay to Service Provider the full amount set forth in each Invoice within forty-five (45) days from the date on which Priceline receives such Invoice. Where payment of an Invoice is more than sixty (60) days over its due date, the amount of such Invoice shall bear interest (simple interest, not compounded) at a rate of one half percent (0.5%) per month or proportionate fraction thereof or the maximum amount permitted by law, whichever is less.
  5. Taxes.
     1. Unless otherwise provided in the applicable Statement of Work, all amounts are payable in USD funds and include all costs including, without limitation, all applicable tariffs, duties and taxes. Any applicable sales/excise taxes shall be shown as a separate item on each Invoice. Any sales/excise tax calculated as payable by Priceline for the Services and Deliverables shall not be based upon any amount attributable to sales/excise tax paid by Service Provider in performing the Services and/or supplying the Deliverables.
     2. Notwithstanding the foregoing, Priceline may withhold any amount otherwise payable to Service Provider under this Agreement where such withholding is required by Applicable Laws. Such amounts shall be deemed paid to Service Provider. Without limiting the generality of the foregoing, unless Service Provider provides Priceline with an appropriate certificate exempting Priceline from remitting any applicable prescribed withholding tax, Priceline will retain and remit the prescribed percentage withholding tax from the portion of the fees allocated to the value of services being performed by a non-resident of the United States. Service Provider shall indemnify and save harmless Priceline from and against all withholding taxes, penalties and interest payable pursuant to Applicable Law that relate to the performance of any services performed in the United States by a non-resident of the United States. This indemnity shall survive the expiration or termination of this Agreement, regardless of cause.
  6. Fee Dispute. If Priceline disputes the amount of a given Invoice in good faith, it shall promptly notify Service Provider of such dispute in writing (but in any event no later than forty-five (45) days after receipt of the invoice) and attempt to resolve such dispute promptly and amicably.
  7. Acceptance.
     1. Unless otherwise set out in the applicable Statement of Work, all Deliverables are subject to inspection and acceptance by Priceline on delivery. Priceline shall have thirty (30) business days from the formal submission of the Deliverable to Priceline to test and review any Deliverable. Priceline may reject any Deliverable if such Deliverable does not conform to the Specification or to any representation made by Service Provider concerning the performance of the Deliverable.
     2. Service Provider will have a reasonable period of time, not to exceed fifteen (15) business days, in which to correct any such non-conformity, failing which Priceline may, at its option, terminate the applicable Statement of Work (or the Agreement as a whole if Priceline, in its sole discretion, deems this appropriate) for cause and in such case Service Provider shall refund any and all sums paid to the Services Provider for Services related to the Deliverable to the date of termination.
     3. When payment for the Deliverables is on a ‘fixed fee basis’, Priceline’s acceptance of each of the Deliverables provided by Service Provider to Priceline shall occur following Priceline’s receipt of each Deliverable and upon Priceline’s verification, in its reasonable discretion, that each such Deliverable conforms in all respects to its corresponding Specifications. Priceline’s acceptance of a Deliverable shall be deemed to have occurred if Priceline does not notify Service Provider to the contrary in writing within sixty (60) days from the date the Deliverable was delivered to Priceline, which notice shall specify in reasonable detail any deficiencies and nonconformities in the Deliverable known to Priceline through reasonable inspection following Priceline’s receipt of each Deliverable.
     4. When payment for the Services is on a ‘time and materials basis’, Priceline’s acceptance of the Services provided by Service Provider to Priceline will be deemed to occur upon delivery of the relevant portion of the Services to Priceline.

# – OWNERSHIP

* 1. Ownership of Work Product. All Deliverables, including any documentation, reports, designs, ideas, inventions, improvements, computer programs (object code and source code), copyrights, trademarks, business process, proposals or other intellectual property including any products, algorithms, formulas, literary works, processes or machines related thereto, techniques, programs, services, present and future developments, strategies, business processes, and other programs developed for Priceline under this Agreement, and all Intellectual Property Rights therein (the “**Work Product**”), shall belong to Priceline and Service Provider shall provide Priceline with all source code and proper documentation (in accordance with Priceline’s reasonable coding standards) related thereto. At the expiration or termination of this Agreement, Service Provider shall return to Priceline all Work Product and all related documents, reports, brochures, flash drives or other storage data, media and manuals provided by Priceline in connection with this Agreement.
  2. Background Property. Service Provider shall retain ownership to any Background Property, provided that to the extent that any such Background Property is incorporated into or required to enjoy the full benefit of any Work Product provided to Priceline, Service Provider hereby grants to Priceline a non-exclusive, fully-paid, royalty-free, world-wide, irrevocable and perpetual license (together with a right to sublicense or otherwise authorize third party use) to use, execute, reproduce, display, perform and modify such background technology, software, processes or documents (and authorize others to do any of the foregoing on Priceline’s behalf), to the extent reasonably necessary to maintain, repair, use, enjoy and/or exploit such Work Product.
  3. Assignment of Intellectual Property. For greater certainty, all Work Product shall become the sole property of Priceline, whether or not any steps are taken to obtain or perfect any Intellectual Property Rights of Priceline. Service Provider shall furnish all assistance and execute all documents that may be required to obtain intellectual property protection for such Work Product in the United States of America and elsewhere, and to vest title thereto in Priceline or its nominee. To the extent that Service Provider is deemed the owner of any Work Product or any Intellectual Property Rights in any such Work Product, Service Provider hereby irrevocably assigns all its right, title and interest in and to such Work Product to Priceline without further consideration. Without limiting the foregoing: (a) Service Provider shall ensure that each individual providing Services on behalf of Service Provider has waived any moral rights in relation to any Work Product and shall provide Priceline with satisfactory proof thereof upon request by Priceline; or (b) if Service Provider is an individual person, then Service Provider hereby waives any moral rights in relation to any Work Product.

# – CONFIDENTIAL INFORMATION AND DATA SECURITY

* 1. Confidentiality. At all times before and after the termination of this Agreement, the Confidential Information shall remain the property of Priceline and Service Provider shall maintain the confidentiality of the Confidential Information. Service Provider agrees that, without the prior written consent of Priceline, it will not disclose to any third party any of the Confidential Information, that it will not make any commercial use whatsoever of the Confidential Information and that the Confidential Information shall be used solely for Service Provider’s performance of the Services. Service Provider shall restrict disclosure of the Confidential Information to its personnel, employees, or contractors and those of its Affiliates who “need to know” such Confidential Information in furtherance of this Agreement and who have undertaken a written obligation of confidentiality, nondisclosure, and limitation of use with respect thereto or as required by law or pursuant to a court order; provided, however, Service Provider may disclose such Confidential Information to its professional advisors having a bona fide reason to know and who are subject to an obligation of confidentiality similar to the confidentiality obligations herein.
  2. Access to Confidential Information. Unless otherwise set out in a Statement of Work, Priceline’s Confidential Information may only be accessed, possessed, stored or maintained within Priceline’s system, infrastructure and environment (the “**Priceline’s System**”), and may not be accessed, possessed, stored or maintained by Service Provider within its own system, infrastructure or environment. Notwithstanding the foregoing, the parties acknowledge that there may be occasions where access to Confidential Information may be required by Service Provider from outside of Priceline’s System in order to provide the Services. Unless otherwise agreed by the parties hereto in writing, Service Provider shall not access, send or transmit any Confidential Information outside of Priceline’s System, with the exception of incidental or temporary access, transmissions or disclosure related to the Services, provided such access, transmissions or disclosure are incidental or temporary and are subject to the safeguards provided herein, and no Confidential Information is stored outside of Priceline’s System.
  3. Security of Confidential Information. Service Provider will protect the security and confidentiality of the Confidential Information to at least the same standard as Service Provider protects its own most sensitive confidential information and, without limiting any other provision in this Agreement with regard to the security of information, Service Provider shall have in place appropriate security measures, reasonable policies, procedures and safeguards, in accordance with then-current industry standards and evolving security needs, to: (a) protect the confidentiality and security of the Confidential Information; (b) protect against any reasonably anticipated threats or hazards to the security or integrity of the Confidential Information; (c) protect against unauthorized access to or use of the Confidential Information; and (d) ensure the proper disposal of Confidential Information. Appropriate security measures shall include, without limitation, establishing a security policy for its computer network, preventing unauthorized access to its computer systems, implementing administrative security controls, installing firewalls in its computer network, protecting its computer resources from insider abuse, having appropriate administrative procedures to ensure that computer system access is given to only authorized users and is promptly withdrawn from terminated employees or other persons who are no longer authorized, establishing a single point of contact for responses to security incidents, monitoring the effectiveness of its computer network security and, if agreed an in an applicable statement of work, adhering to current payment card industry security requirements. Priceline shall have the right to review such security measures from time to time and notify Service Provider of any suggested changes. Service Provider shall appoint an independent third party, on at least an annual basis, to evaluate their network and systems and shall, on request, share the results of such evaluations with Priceline, upon written request. For the avoidance of doubt, references to Priceline in this ARTICLE 5 shall include Priceline’s Affiliates.
  4. Use of Priceline’s Name. Without the prior written consent of Priceline, which Priceline may in its sole and unfettered discretion withhold, Service Provider shall not: (i) use Priceline’s name or logo on any website or other marketing materials of Service Provider indicating that Priceline or any of its Affiliates are a client of Service Provider; or (ii) publish any case studies relating to Priceline or any of its projects involving Priceline.
  5. Return of Confidential Information. Upon Priceline’s written request and in any event, upon any termination of this Agreement, Service Provider shall promptly return to Priceline all Confidential Information and related documents and all copies thereof wherever located without notice or demand, or, if so requested in writing by Priceline, Service Provider shall destroy all tangible and intangible embodiments of the Confidential Information (in every form and medium) and certify such return or destruction in writing.
  6. Compliance with Privacy Laws. To the extent that Service Provider, its personnel or contractors collects, uses or discloses Personal Information in the performance of its obligations under this Agreement or any Statement of Work, Service Provider shall maintain the confidentiality of such Personal Information, and at all times ensure compliance with, and shall ensure that its personnel and contractors comply with, all Privacy Laws as well as the provisions of Schedule “B” attached hereto.
  7. Security Incidents.
     1. If Service Provider becomes aware of or reasonably suspects that there has been any unauthorized or improper access to, use or disclosure of any of the Confidential Information (a “**Security** **Incident**”), Service Provider will notify Priceline and, subject to any contrary written instructions from Priceline, take all reasonable steps to mitigate the Security Incident. For greater certainty, Service Provider will provide notice to Priceline immediately, but in no event later than twenty-four (24) hours, after becoming aware of any such Security Incident.
     2. Service Provider shall cooperate with Priceline in investigating and prosecuting any Security Incident that affects or threatens the security of Priceline or the Confidential Information. Subject to the terms of the Agreement, Service Provider shall indemnify Priceline for any and all third party damages, losses, fees or costs incurred as a result of such Security Incident arising due to a breach of this Agreement by Service Provider and remedy any harm caused by such incident. Service Provider’s obligations in the event of a security breach concerning personally identifiable data, or Personal Data, are more fully set forth in Schedule “B” to this Agreement, and are expressly incorporated herein.
  8. Remedies. Service Provider acknowledges that, in the event of any breach of this ARTICLE 5 by Service Provider (or, if applicable, any of Service Provider’s employees, agents or subcontractors), such breach shall cause Priceline irreparable damage and that Priceline will not have an adequate remedy solely in monetary damages. Accordingly, in addition to any other legal or equitable remedies available to Priceline, Priceline shall be entitled to a temporary restraining order without notice and, thereafter, to injunctive relief against such breach.
  9. Survival. The obligations of each party under this ARTICLE 5 shall survive the termination of this Agreement until such time as Priceline agrees to release Service Provider from such obligations.

# – REPRESENTATIONS AND WARRANTIES

* 1. Mutual Representations and Warranties. Each of the parties hereto represents and warrants to the other party, as follows:
     1. such party is duly organized, validly existing and in good standing under the laws of its jurisdiction of creation, and has all requisite corporate power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted, and is duly qualified to do business in all jurisdictions in which qualification is necessary in order to transact its business and perform its obligations set out in this Agreement;
     2. such party has all necessary power and authority to enter into this Agreement, including each Schedule and to perform its obligations hereunder, and the execution and delivery of this Agreement and each Schedule and the consummation of this transactions contemplated hereby have been duly authorized by all necessary actions on its part;
     3. this Agreement has been duly executed and delivered by such party and is valid and binding on such party, enforceable in accordance with its terms, except as enforcement thereof may be limited by or with respect to: (a) applicable insolvency, moratorium, bankruptcy, fraudulent conveyance and other similar laws of general application relating to or affecting the rights and remedies of creditors; (b) application of equitable principles (whether enforcement is sought in proceedings in equity or at law); and (c) the fact that the remedy of specific enforcement of or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought;
     4. the execution, delivery and performance of this Agreement by such party and the consummation of the transactions contemplated herein do not and will not, with notice or lapse of time or both, contravene the constating documents of such party (including any certificate of incorporation, by-laws, or charter, as applicable) and do not and will not, with notice or lapse of time or both, conflict with or result in a breach or violation of: (a) any indenture, agreement, instrument, judgment, decree, order or ruling to which such party is a party or is otherwise subject that would materially adversely affect such party’s ability to perform its obligations under this Agreement; or (b) any Applicable Law; and
     5. this Agreement and each Schedule constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.
  2. Service Provider Representations and Warranties. Service Provider represents and warrants to Priceline, and acknowledges that Priceline is being induced to enter into this Agreement in reliance on such representations and warranties, that:
     1. the Services will be performed by in a professional and workmanlike manner in accordance with generally applicable industry standards and to the standard that professional services of such character in the industry would be reasonably expect;
     2. Service Provider shall implement processes and procedures consistent with applicable industry practices that are designed to ensure that the Deliverables, at the time of delivery to Priceline, are free of any known virus, malicious code or trojan horses designed to disable or permit the Deliverables to be remotely disabled or render any function of the Deliverables unusable or that could in any way potentially harm the business undertakings of Priceline;
     3. each Deliverable developed on a ‘fixed price basis’ shall, from final acceptance or such other date set out in the Statement of Work, materially conform to its applicable Specifications for the warranty period in respect of such Deliverable set out in the applicable Statement of Work;
     4. Service Provider shall pay promptly all amounts due for labor, parts, materials, tools, supplies, equipment, products and services used in connection with the performance of any of the Services and shall not permit any lien or charge pertaining to the Services to attach to any Deliverables whatsoever;
     5. none of the Services shall constitute an infringement or induce an infringement of any third party intellectual property rights nor shall the Work Product contain or incorporate any third party rights, unless Service Provider has identified such third party rights to Priceline and Priceline has provided express consent prior to the creation of any Work Product which incorporate third party rights; and
     6. Service Provider will not invoke in the Work Product any clock, timer, counter or other limiting or disabling code, design or routine that would cause the Work Product to be erased, made inoperable or would disable or otherwise shut down all or any portion of the Work Product, excluding code that tracks software license compliance or authorization, including passwords.

# – LEGAL COMPLIANCE

* 1. Laws, Rules and Priceline Policies. Service Provider shall, and shall cause its personnel to, at all times under this Agreement:
     1. perform the Services and operate its business in compliance with all Applicable Laws and ensure that its contracts with its sub-contractors contain provisions that require compliance with all Applicable Laws, including: (i) all Privacy Laws; and (ii) laws relating to anti-slavery and human trafficking applying in the jurisdictions in which that it has a place of business (“**Fair Working Practices**”);
     2. put in place and maintain its own policies and procedures to ensure its compliance with Fair Working Practices; and
     3. in the event that Service Provider or Service Provider personnel are given access to any of Priceline’s information technology or premises: (i) it, and all of its personnel, will abide at all time by Priceline’s Information Security Policies, Standards and Procedures, and Code of Conduct, as provided by Priceline; and (iii) it shall provide names of such Service Provider personnel to Priceline, such that the personnel’s basic information may be loaded into Priceline’s System to support internal controls and actions in respect of onboarding and offboarding.
  2. Anti-Bribery. Service Provider shall, and shall cause its personnel to, at all times under this Agreement:
     1. comply with all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act 1977, the U.K. Bribery Act 2010, the UK Anti-Terrorism Crime and Security Act 2001, and similar laws enacted by the OECD, (Organization for Economic Cooperation and Development) and OECD (Organization for Economic Cooperation & Development) Conventions on combating bribery of officials in international transactions and any other Applicable Laws relating to anti-bribery, anti-tax evasion/facilitation of tax evasion and anti-corruption applying in the countries in which it carries out the Services (the “**Anti-Bribery Requirements**”);
     2. not directly or indirectly offer, promise or give to any governmental official or political party’s official, representative or candidate, or seek, accept or get promised for itself of for another party, any gift, payment, reward, consideration or benefit of any kind which would or could be construed as bribery or an illegal or corrupt practice under Anti-Bribery Laws;
     3. have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the U.K. Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act, to ensure compliance with the Anti-Bribery Requirements;
     4. promptly report to Priceline any request or demand for any undue financial or other advantage of any kind received by Service Provider in connection with the performance of this Agreement; and
     5. immediately notify Priceline in writing if a foreign public official becomes an officer or employee of Service Provider or acquires a direct or indirect interest in Service Provider, and Service Provider warrants that it has no foreign public officials as direct or indirect owners, officers, or employees at the date of this Agreement.
  3. Sanctioned Persons. Service Provider represents and warrants that as of the Effective Date, neither it nor any of its Affiliates or personnel is a Sanctioned Person.
  4. Compliance by Affiliates of Service Provider. Service Provider shall ensure that any Affiliate of Service Provider or any other person(s) associated with Service Provider who is performing Services in connection with this Agreement does so only on the basis of a written agreement which imposes on and secures from such person(s) terms equivalent in respect of legal compliance to those imposed on Service Provider under this ARTICLE 7. Service Provider shall be responsible for the observance and performance by such persons of the provisions of this ARTICLE 7, and shall be directly liable to Priceline for any breach thereof by such persons.

# – INDEMNIFICATION AND LIMITATION OF LIABILITY

* 1. Service Provider Indemnities.
     1. Without limiting Priceline’s rights and remedies hereunder, under Applicable Law or in equity, Service Provider shall be liable to Priceline in respect of, and indemnify, defend, and hold Priceline and its Affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns (collectively, for the purpose of this ARTICLE 8 (“Priceline”) harmless from and against any and all Claims which may be brought against or suffered by Priceline or which Priceline may sustain, pay or incur by reason of any matter or thing arising out of or in any way attributable to any breach of this Agreement by Service Provider (including any party for which Service Provider is at law responsible) or negligent acts, tortious acts, or strict liability offences in connection with, related to or arising out of the performance, purported performance or non-performance of this Agreement or Services hereunder by Service Provider including any relating to or resulting from: (a) deficient or defective Services; (b) injury to or death of any person; (c) damage or destruction to property; and (d) imperfections in Deliverables furnished by Service Provider.
     2. Service Provider shall be responsible for and assume liability for and hereby agrees to release, indemnify and hold harmless Priceline from and against all third party Claims incurred by or sustained by Priceline to the extent such Claim arises out of the performance or non-performance of this Agreement or Services by Service Provider. For greater certainty and the avoidance of doubt, the foregoing shall include, any Claim or allegation that any Deliverables provided by Service Provider pursuant to this Agreement or that the use thereof by Priceline infringes upon any Intellectual Property Rights of any third party.
     3. Priceline shall have the right at its option to participate in the defense of any Claim against Priceline for which Priceline is entitled to indemnification by Service Provider hereunder without relieving Service Provider of its obligations in respect of the defense of such Claim and costs thereof.
  2. Priceline Indemnities. Priceline hereby agrees to indemnify and save harmless Service Provider and its directors, officers, employees and agents from and against all Claims which may be made or brought against any of them or which any of them may suffer or incur as a result of, in respect of or arising out of the breach of this Agreement by Priceline (including any party for which Priceline is at law responsible) or negligent acts, tortious acts, or strict liability offences in connection with, related to or arising out of the performance, purported performance or non-performance of this Agreement by Priceline.
  3. Consequential Damages. Except in connection with a breach of ARTICLE 5, neither Party shall be liable to the other for loss of product, production, revenue, profits (actual or anticipated), use, business opportunity, indirect, punitive, special and consequential loss, increased overhead, business interruption losses of any similar kind arising out of or in connection with this Agreement.
  4. Notice of Claim and Cooperation. If either party becomes aware of any incident likely to give rise to a Claim under an indemnity set out in this ARTICLE 8, it shall promptly notify the other party and both parties shall co-operate fully in investigating the incident as soon as possible.

## Limitation of Liability.

* + 1. Subject to Section 8.5(b), the maximum aggregate liability of either party for any direct loss or damages resulting from this Agreement shall be the amount paid by Priceline to Service Provider under this Agreement preceding the event giving rise to the loss or damage.
    2. The exclusions and limitations of liability set out in this Agreement shall not apply in the case of: (i) any breach of ARTICLE 5, (ii) any Claim by a third party contemplated under Section 8.1(b); (iii) any Claim brought in connection with gross negligence and/or willful misconduct; (iv) third-party Intellectual Property claims, (v) the injury to or death of any person or damage or destruction to property.

# – TERM AND TERMINATION

Term. This Agreement shall be effective from the Effective Date and shall remain in full force and effect for an initial term of <<[Term]>> years, unless terminated in accordance with Sections 9.2 or 9.3. <<if [Apttus\_\_Auto\_Renewal\_\_c = true]>><<doc [DAR.ClauseId] -build>><<else>>NO.<</if>>

## Termination for Cause.

* + 1. In the event either party is in a material breach of, or fails to perform a material obligation under, this Agreement or a Statement of Work, the other party may, by notice, require the breach to be cured or the obligation to be performed. If, within fifteen (15) days of the receipt of such notice, the defaulting party fails to undertake a reasonable course of action to cure such breach, or fails to perform such obligation, the non-defaulting party may upon notice, in addition to any other rights or remedies it may have at law or in equity, terminate this Agreement.
    2. This Agreement along with all Statements of Work then in effect may be terminated immediately, upon written notice to Service Provider from Priceline, in the event that Service Provider becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise or is wound up, ceases to carry on business or a secured party takes possession of any of the property or assets of Service Provider.
  1. Termination for Convenience. Notwithstanding anything else in this Agreement, Priceline may terminate: (a) any one or more Statements of Work; or (b) this Agreement in its entirety along with all Statements of Work then in effect, in its sole discretion at any time and without cause by providing at least thirty (30) days’ prior written notice of termination to Service Provider.
  2. Effect of Termination. Upon expiration or termination of this Agreement for any reason, Service Provider shall promptly deliver to Priceline all Priceline property and work in progress completed as of the effective date of expiration or termination. Further, in the event of expiration or termination of this Agreement for any reason, Service Provider agrees to reasonably cooperate with Priceline in order to transition the Services to Priceline or a third party designated by Priceline. Such transition assistance will be provided for up to ninety (90) days after the date of expiration or termination at Service Provider’s then-standard rates. For greater certainty, the transition assistance will include knowledge transfer services to allow Priceline to carry out or transition the Services to a third party as contemplated herein including, without limitation, ensuring that identified personnel are available to provide Services to Priceline during the transition period.
  3. Survival. The terms and conditions set forth in ARTICLE 3, ARTICLE 4, ARTICLE 5, ARTICLE 7 and ARTICLE 8 and any other provisions set forth herein which by their nature are intended to survive termination of this Agreement, shall survive any termination of this Agreement.

# – INSURANCE

* 1. Insurance Requirements. In addition to any other insurance requirements set out in a Statement of Work, Service Provider shall provide, pay for and maintain the following minimum insurance (or such other amount as approved by Priceline in writing) covering the Services and all Service Provider’s other activities pursuant to the Agreement:
     1. Commercial General Liability insurance (including products and completed operations coverage) with a minimum limit of $10,000,000 per occurrence covering all amounts that Priceline becomes legally obligated to pay as damages arising from personal injury (including death) and property damage;
     2. Professional Liability (Errors and Omissions) insurance with a minimum limit of $10,000,000 per occurrence; and
     3. Cybersecurity insurance with a minimum limit of $10,000,000per occurrence.
  2. Proof of Insurance. Upon execution of this Agreement, and as requested by Priceline from time to time, Service Provider shall furnish to Priceline a duly authorized certificate of insurance from Service Provider’s insurer certifying that the coverage required by this Agreement is in effect and will make best efforts to provide not less than thirty (30) days’ written notice to Priceline before any such coverage is cancelled.

# – PERSONNEL

* 1. Personnel. To the extent that any Service Provider personnel are identified by Priceline in writing, it is the Service and not the personnel that are subject to this Agreement and any derivative Statement of Work. If Service Provider personnel cease to perform the Services hereunder, Service Provider shall allocate substitute personnel with the appropriate skills and experience to be able to perform the relevant Services.
  2. Personnel Reassignment. Priceline may from time to time request that Service Provider replace one or more of Service Provider’s personnel performing the Services on Service Provider’s behalf and Service Provider shall within a reasonable period of time from the date Priceline makes such request, identify another individual to perform such Services on Service Provider’s behalf at no cost to Priceline.
  3. Background Checks. Service Provider shall ensure that all Service Provider personnel providing Services pursuant to this Agreement shall have undergone background checks (where such background checks are permitted under Applicable Law). Upon the request of Priceline, Service Provider shall provide an attestation confirming that all Service Provider personnel involved in the provision of Service have passed background checks. If in connection with the performance of the Service, Service Provider personnel are granted access to Personal Information, Service Provider shall ensure that such personnel access and use such Personal Information data solely to the extent required to fulfil their responsibilities in delivering the Services pursuant to this Agreement and at all times in accordance with the terms of this Agreement.
  4. Non-solicitation. Each party recognizes that the other party’s employees, independent contractors, and other agents, and such individuals’ loyalty and service, constitute a valuable asset. Accordingly, to the extent permitted by law, each party hereby agrees not to: (a) make any offer of employment to; (b) hire or enter into a consulting relationship with; or (c) otherwise solicit for hire, or encourage any person who is employed by or retained as an independent contractor of the other party or its Affiliates within one (1) year of such person’s engagement in the delivery of Services or the performance of this Agreement, as applicable. In any event if either party seeks to hire any employee, independent contractor or agent engaged by the other party at any time, the party seeking to make an approach shall first not do so, to the extent permitted by law, without first obtaining the consent of the party currently engaging the person.

# – MISCELLANEOUS

* 1. Independent Contractor. Service Provider shall be deemed, for all purposes set out under this Agreement, to be an independent contractor and not an agent, representative or employee of Priceline. Accordingly, Priceline will not be responsible for the provision of any workers’ compensation or any withholdings on account of income tax. Service Provider agrees to comply with all obligations incumbent upon it pursuant to Applicable Laws with respect to taxes and employment in its fulfillment of its obligations hereunder.
  2. Governing Law and Jurisdiction. The rights and obligations of the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut, without regard to its conflict of laws, rules or provisions.
  3. Headings. The headings and captions set forth herein are for convenience of reference only and shall not affect the construction or interpretation hereof.
  4. Notices. Except for invoices and related payment documents (which shall be mailed and/or emailed to Priceline as specified by Priceline), all notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery or on the day sent by facsimile transmission if a true and correct copy is sent the same day by first class mail, postage prepaid, or by dispatch by an internationally recognized express courier service, and in each case addressed as follows:

If to Priceline: priceline.com LLC

800 Connecticut Avenue

Norwalk, Connecticut 06854

Attention: <<[Full\_Name]>> with a copy to General Counsel

If to Service Provider: <<[Account\_Name]>>,

<<[Street]>>,

<<[City]>>,

<<[State]>>,

<<[Postal\_Code]>>

Attn:

* 1. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties and their respective Affiliates and subsidiaries with respect to the subject matter hereof and supersedes any prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants not specifically referred to, attached hereto, or contained herein.
  2. Performance by Affiliates. Each party may discharge any obligations and exercise any right hereunder through one or more of its Affiliates. Each party hereby guarantees the performance by its Affiliates of such party’s obligations under this Agreement, and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a party’s Affiliate of any of such party’s obligations under this Agreement shall be deemed a breach by such party, and the other party may proceed directly against such party without any obligation to first proceed against such party’s Affiliate.
  3. Amendments. This Agreement may be amended only by a written instrument signed by the parties hereto.
  4. Successors and Assigns. This Agreement shall not be assignable by either party without the prior written consent of the other party. Notwithstanding anything contained herein to the contrary, Priceline may, without the consent of Service Provider, assign this Agreement and/or any Statement of Work: (i) to an Affiliate of Priceline; (ii) in connection with any merger or change in control with a party of equivalent or better credit worthiness; (iii) to an assignee of all or substantially all of Priceline’s assets; or (iv) in connection with a corporate re-organization. Any purported assignment in contravention of this Section shall be null and void.
  5. Force Majeure. Neither party shall be deemed in default hereunder or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of this Agreement due to any causes beyond its reasonable control, which causes include but are not limited to acts of God or the public enemy; riots and insurrections, epidemics, pandemics, war, accidents, fire, strikes and other labor difficulties, embargoes, judicial action, lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, utilities, components or machinery, acts of civil or military authorities (each, a “**Force Majeure Event**”). The party subject to a Force Majeure Event shall immediately notify the other party of the occurrence of such event and take all reasonable steps and best efforts to restore its ability to perform and to perform its obligations under this Agreement. In no event shall Priceline be liable for any charges accruing during that period of time in which there is an interruption of service under this section. If either party is prevented from performance of its obligations under this Agreement due to a Force Majeure Event for a period greater than 15 days (or such other period as mutually agreed by the parties), then either party shall have the right to terminate this Agreement on thirty (30) days’ written notice to the other party.
  6. Business Continuity and Disaster Recovery. In addition to any specific disaster recovery, contingency or business continuity services identified in this Agreement, Service Provider shall have in place a documented contingency plan setting out the emergency back-up procedures which Service Provider will implement where necessary with a view to preventing any delay, interruption or disruption to the Services or any part thereof or any non-availability of the Services. Service Provider shall make copies of these plans available to Priceline from time to time upon Priceline’s request at no cost to Priceline.
  7. No Third-Party Beneficiaries. Except where stated otherwise, no provision of this Agreement is intended or shall be construed to confer upon or give to any person or entity other than the signatories to this Agreement, any rights, remedies or other benefits under or by reason of this Agreement.
  8. Further Assurances. The parties hereto shall from time to time execute and deliver all such other and further deeds, documents, instruments and assurances as may be necessary or required to carry into force and effect the purpose and intent of this Agreement.
  9. Waiver. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term.
  10. Severability. In the event that any provision of this Agreement is found to be invalid, void or unenforceable, the parties agree that unless such provision materially affects the intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall not affect the validity of this Agreement nor the remaining provisions herein.
  11. Counterparts. This Agreement may be executed in two or more counterparts and delivered by facsimile or other electronic means, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date of last signature below.

SIGNATURE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **PRICELINE.COM LLC** | |  | **<<[Account\_Name]>>** | |
| Per: | \sign2\ |  | Per: | \sign1\ |
|  | Name: \FullName2\  Title: \Title2\  Date: \DateSigned2\ |  |  | Name: \FullName1\  Title: \Title1\  Date: \DateSigned1\ |

# Clause - External Doc

<<if [APTS\_Include\_SOW\_\_c = true]>><<doc [Clause.ClauseId] -build>><<else>>No<</if>>

DA – EXTERNAL DOC

<<if [APTS\_Include\_DPA\_\_c = true]>><<doc [DA.ClauseId] -build>><<else>>No<</if>>