



Discussion Points for Consideration to Support Tour Operator Contract Renegotiations and Mock Tour Operator Contract August 2020

The Caribbean Hotel and Tourism Association's Board of Directors recently overwhelmingly adopted a position supporting and encouraging hotels in the region to negotiate terms with Tour Operators (TO) which would require full payment for confirmed reservations inclusive of any meal plan and paid transfers, if applicable, in advance or upon arrival or prior to departure of the guest at the property.

This position was adopted with the support of both the region's hotels and a number of National Hotel and Tourism Associations with the view that Caribbean hoteliers are likely to be in a better position to affect more favorable terms to TO contracts if they work together and are consistent in their position.

Members of CHTA's Task Force on Tour Operator Contracts and Reimbursement Policies, which includes hoteliers with extensive experience in dealing with contractual matters with Tour Operators, have developed the following points for consideration by hoteliers in their discussions with TO aimed at negotiating future contracts, in particular terms for payment.

While these points are not applicable to all TO, nor the circumstances of all hotels, some which may have similar or better terms, they do address concerns which have been raised with several areas of current and proposed contracts, in particular, with several large Operators whose Agreements and actions have disadvantaged Caribbean hotels.

In addition to these Discussion Points to support hotelier's in their contract negotiations, the Task Force has also developed a mock TO contract which highlights areas of a typical Agreement where points of renegotiation should be considered. The mock TO contract can be found following the Discussion Points.

DISCUSSION POINTS

Discussion Area: Tour Operator Credit and Prepayment Argument

Tour Operator Position: We need to have credit from your hotel. By example, during the pandemic we could not get money back in some situations where we had prepaid hoteliers, so our Directors have stated that we will not entertain prepayment.

Hotelier Position: We cannot give credit to any TO going forward. The actions by several major TO's have had a detrimental impact on our hotel as they have withheld reimbursement for services rendered having had our money prepaid to them by guests well in advance of the delivery of services, using our funds for their own cashflow. Many months later, some still have not reimbursed us.

Next level of Argument: Many Hotel Associations and a growing number of hotels in the Caribbean support a position against providing TO credit beyond the time of arrival or departure on property by the guest. We have no problem with the TO retaining this revenue up to the point of arrival or departure, as payments are typically made to them by the customer months in advance of travel.



Next level of Argument: The Caribbean Hotel and Tourism Association further advises that, for the benefit of the entire Caribbean hospitality industry, credit no longer should be given to any Tour Operators, particularly given the hardship which current inequitable policies have placed upon hotels.

Next level of our argument: Governments are beginning to put pressure on us not to give credit to TO because delayed or non-honoured reimbursements and tour operator closures have resulted in lost Government revenues because hotels have not received funds to pay their monthly taxes and National Insurance dues. This is beginning to cause additional concern by Governments as they see the ramifications on Government revenue resulting from the practices of some TO, particularly when additional financial resources are provided by Governments to support TO revenue generation through marketing and promotional support and in some instances reductions in airline-related fees.

So, the extended argument is that the actions by some TO of delaying or defaulting on their financial obligations to hotels has much broader ramifications on hotels and Governments which may ultimately result in broader detrimental impacts to Tour Operators as well.

Note: This will hopefully strengthen your negotiating position in support of securing payment prior to or upon arrival or departure of the guest. Some TO's have already begun to work with hoteliers and destinations on a new arrangement indicating that they do not want credit and will pay in advance in which case this should be stipulated in your contract.

Discussion Area: Virtual Credit Card

For those TO's who insist that will not pay in advance, the Hotelier may want to consider settling for payment on arrival or departure of the guest and some TO's will offer a virtual credit card similar to some OTA arrangements. The hotelier should weigh this against the cost of credit card charges typically at around 4 percent of the transaction. This may be deemed workable by some hoteliers, while others may opt to negotiate a wire transfer arrangement with charges being the responsibility of the sender.

Discussion Area: Laws of the Contract and Dispute Settlements

Some TO's will insist that the laws that govern the contract will be from their home country and this will be written into their contract. This is illogical and provides tremendous exposure to the hotelier, particularly on the matter of settlement disputes with the customer, as the product is in a Caribbean country and the contract should be subject to the laws of that country.

With the current terms, settlement disputes with the customer are often undertaken by the TO without the full engagement of the hotel, which is then dictated to cover substantial amounts to settle the claim. This lack of consultation and transparency would not occur if the dispute is addressed within the hotel's jurisdiction.

Typically, unless you have insurance that offers "worldwide cover" (which often is prohibitively expensive for many independent properties), your insurance will only act if the claim is brought in destination. In as much as most of the TO contracts stipulate the UK or USA or source market as the contract jurisdiction, it leaves many dangerously exposed. While difficult to achieve, efforts should be made whereby contracts with operators list the hotel country as the contract jurisdiction. This allows then for the hotel's insurance to kick in, in the event of a claim/need to defend/etc.

Hoteliers should also be cognizant of the importance of protecting themselves, their insurers, and the TO by adhering to sound practices including: diligently recording each and every incident no matter how trivial it may appear; keeping detailed records or dining schedules and a host of other info that



may be needed to support a position on any claim and immediately informing TO and insurers of all incidents whether or not the guest has indicated that they intend to make a claim.

While efforts to change the jurisdiction of record for customer claims specific to their stay on property will be met with resistance by the TO, hoteliers should persist recognizing their ongoing exposure has come from the issue of jurisdiction and indemnification of the TO.

Discussion Area: Cancellation Terms

It has been put to us that because of Covid 19, various TO's want Hoteliers to not charge for cancellation occurring 7 days before arrival.

Hotelier Position: Hoteliers should seek to refuse to include this in their agreement, arguing that it is impossible to fill a festive or winter booking cancelled 7 days out and further arguing if there is a position of Force Majeure all money will be returned. However, for regular cancellations the policy is as per the hotels terms.

MOCK TOUR OPERATOR CONTRACTUAL AGREEMENT TO SUPPORT RENEGOTIATIONS BY HOTELIERS August, 2020

This agreement incorporates the entire understanding of the parties hereto, and there are no promises, terms, conditions or obligations oral or implied subsisting between the parties other than those contained herein. All previous agreements and arrangements (if any) made between the parties hereto are hereby cancelled, but without prejudice to any rights which here already accrued thereunder to each party.

Your Hotel name
Represented by:
Title:

Tour Operator:
Represented by:
Title:

Hereafter referred to as "**your hotel name**". Both parties agree with the following terms and conditions:

1. VALIDITY OF THE AGREEMENT: From **insert start and finishing dates**

2. NET RATES & POLICIES:

All rates attached are quoted in US dollars. Net rates listed include **??%** government accommodation tax applicable to accommodation charges only and **??%** service charge. Applicable on non-accommodation charges is **??%** tax rate. Gratuities are at the guest's discretion. Net rates are non-commissionable. Rates and promotions are subject to change without notice. Blackout & restrictions dates may apply. **Hotel name rates published and sold in print and online by the Operator may at all times not represent any discount compared to our rack rates.**

3. WINTER RATE DETAIL

Arrivals from 1 Jan 2021 onwards may use the Winter 2021 rates rather than Festive rates. **Clause can be used or deleted as suits your hotel**

4. FREE SELL & REPORTING

Sell and report all suite categories. Cut off right up to the day of departure from home destination. Sell and report is valid year-round with the exception of Christmas and New Year bookings. **Hotel**



name will provide updated close out/availability charts by e-mail. **Clause can be used or deleted as suits your hotel**

5. CLOSURE

Hotel name will close on **Clause can be used or deleted as suits your hotel**

6. INCLUSIVE FEATURES

Breakfast Plan (BP) includes

Add the details of your offering here

Half Board (HB) includes all BP rate items plus:

Add the details of your offering here

All Inclusive (AI) includes all HB rate items plus:

Add the details of your offering here

NB: Not included in the AI package: are bottles of wine from the wine list as well as Food & Beverages offered to other guests who have not booked our AI Package. Also not included are motorised water sports, diving excursions, and spa treatments. **Adapt to suit your hotel offering.**

7. ADDITIONAL PERSON CHARGES

Rates are based on double occupancy per bedroom for the suites and based on the maximum occupancy allowed. Maximum occupancy for each suite is advised in the rate grid. Additional person charges only apply when the occupancy exceeds what the existing bedding allows (**Add the details of your offering here**). Additional person charges only include the inclusive features listed above. The following charges apply:

Hotel Only	BP	HB	AI
Child sharing (0 to 2 years inclusive) supplement			
Child sharing (3 to 5 years inclusive) supplement			
Child sharing (6 to 16 years inclusive) supplement			
Single Occupancy			
Third adult supplement			

8. CHILD POLICY

Add the details of your offering here.

9. RESERVATIONS PROCEDURE

Rates and promotions are on a space available basis. For information or reservations please email us at: **Add your reservations email address here**. Reservations must include your company name, your clients name(s), children's names and ages, room category, meal plan, arrival and departure dates and complete flight information. Each reservation must clearly state details of the package and room type (benefits included). Should details be missing on the booking recap, contracted net room rates will be invoiced without applying any promotions or inclusions. Reservations are considered guaranteed when confirmed. Reservations are not transferrable. The names of the persons in whose name the Reservation are being made shall not be changed unless **Hotel name** in its absolute discretion approves of such change in writing prior to Guests' arrival.

10. CANCELLATION POLICY

Any cancellation of a definite confirmed reservation must be notified to the hotel by email to: **Add your reservations email address here** and will take effect on the day received by us. In all instances



the Tour Operator must obtain a cancellation number from the hotel. If a cancellation number is not issued by the hotel, the booking will be considered not cancelled.

Force Majeure cancellations any prepayments will be returned and cancellation terms waived in the event of any such force majeure occurrence such as a natural disaster, political unrest, declaration of a State of Emergency, or Partial State of Emergency in **your country's name**, epidemic or pandemic, change in global or national travel restrictions which prevent the fulfilment of the contract by either party.

Non-Force Majeure cancellations are subject to the following cancellation fee: 28 days or less = 100% of the cost of the holiday booking at **your hotel name**: Early Departures and No shows will be charged at 100% of the cost of the holiday.

NB: It is **vital** that your clients who become our guests arrange their own extensive travel insurance policy which should include coverage for cancellation charges and loss of any deposits. Further It is your clients/our guests responsibility to have complete travel insurance to cover any eventuality whilst travelling on holiday/vacation. In the event of any insurance claim your client/our guest must claim against their own insurance policy and never and in no circumstance can they claim against the Hotel or the Tour Operator/Agent arranging their holiday/vacation for those stipulated losses.

11. FESTIVE DEPOSITS AND CANCELLATIONS

Full payment is required by **fill date in here** and the entire stay will be charged for if any cancellations after the same date.

12. MINIMUM NIGHT STAY REQUIREMENTS

Add your information here

13. PREPAYMENT BASIS

Payment for the Accommodation set out in confirmed Reservations together with the Meal Plan and paid transfers (if applicable) shall be paid in full to **your hotel name** as follows: Not less than 14 days prior to the arrival of the Guests on whose behalf the said accommodation has been reserved failing which and providing the accommodation is still available, the Guest/your client will be required to provide their own credit card upon arrival to settle all charges and the full Room Rack Rates will apply to the Accommodation, Meal Plan and transfers (if applicable) PROVIDED ALWAYS that **your hotel name** reserves the right to cancel any Reservation if the said full payment is not received 14 days prior to the arrival of the Guest as aforesaid.

14. BANK INFORMATION

You bank name and details of Account number and wiring details

NB: **Your hotel name** can only be paid by bank wire transfer. Wire charges must be paid for by the sender and **your hotel name** cannot and will not accept the Tour Operator's bank charges for sending funds.

15. GUEST ARRIVAL AND DEPARTURE TIMES

Our check-in time is **? hrs**. Our checkout time is **? hrs**. Residents who wish to depart after or before these times are advised to extend their stay at time of booking. Applicable room rates will apply. We will do all that we can to accommodate early arrivals and late departures.

16. RESPONSIBILITY

Your hotel name assumes no liability whatsoever for injury, damage, loss, accident or delay to persons or property due to negligence or default of an air carrier, agency, and ground representative or tour



operator. No responsibility will be accepted for labour disputes, machinery breakdowns, governmental restraints, weather or any act of God beyond the control of **your hotel name**.

17. MARKETING

By virtue of receiving concessionary Tour Operator rates, it is the sole responsibility of the OPERATOR to market and promote **your hotel name** during the term of this agreement. **Your hotel name** will not be responsible or obligated to contribute to joint marketing campaigns.

18. AMENDS TO THE CONTRACTUAL AGREEMENT

Your hotel name may make amendments to contract from time to time. Any amendment in one or several elements of the present contractual agreement will be notified in writing to the OPERATOR by e-mail. These amendments are considered to be Addendum to the present agreement once the OPERATOR confirms and approves them in writing.

19. LAWS AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the Law of **your country**. The parties irrevocably agree that, unless **your hotel name** elects otherwise, the Courts of **your country** shall have exclusive jurisdiction to hear and determine all disputes or claims that arise out of or in connection with this Agreement or its subject matter, including for the avoidance of doubt, any claims brought by the OPERATOR connected with or in any way arising out of any loss or damage suffered by or to the person or property of a Resident whose accommodation at **your hotel name** has been booked by the OPERATOR. In the event of any dispute, this Agreement is the only contract document which will be reviewed by the Courts of **your country**.

20. CONFIDENTIALITY

Both **your hotel name** and the OPERATOR are bound to keep all information and documents strictly confidential. These conditions also remain after the expiration of the agreement. The terms of this agreement may not be transmitted by the OPERATOR to any other person without prior permission of **your hotel name**. Likewise, the terms of this agreement may not be transmitted by **your hotel name** to any other person without prior permission of the OPERATOR.

21. DURATION AND TERMINATION OF THE CONTRACTUAL AGREEMENT

This contract agreement runs from the date of reception of an original signed copy by **your hotel name** until the expiration of the rates on **put date here**. If the OPERATOR or **your hotel name** fails to perform its contractual obligations, in whole or in part, and such failure has not been remedied upon the expiration of a seven (7) day period from the date on which the party in default receives formal notice, given by registered letter, return receipt requested, from the other party, the agreement shall be terminated ipso jure, in the discretion of the party serving the formal notice. In the event of continued late payments by the OPERATOR, this agreement is subject to review, and **your hotel name** reserves the right to immediately terminate the agreement by simply informing the OPERATOR by registered letter.

22. VALIDITY OF THE CONTRACTUAL AGREEMENT

The invalidity of any clause in the agreement shall not affect the validity of the other clauses. **Your hotel name** Tour Operator net rates become effective and can only be used by the OPERATOR once this agreement has been signed and each page initialed and returned via scan to: **your reservations email address**. The signed and initialed agreement must be returned no later than **fill date here**, should this agreement not be returned by the due date we at **your hotel name** will assume that the OPERATOR has no interest in being included as a select OPERATOR and the agreement will be cancelled accordingly.



Signed

Date.....

Name.....

On behalf of **your hotel name**

Signed

Date

Name.....

Position.....

For and on behalf of: **Tour Operator**