

AGREEMENT ON CODE OF PRACTICE

Between

Federation of Hotel & Restaurant Associations of India

(FHRAI)

and

Indian Association of Tour Operators

(IATO)

Signed on

8th October, Two Thousand Five

At

New Delhi

M.P. Purushothaman

President - FHRAI



Subhash Goyal

President - IATO





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INTRODUCTION

Federation of Hotel & Restaurant Associations of India (FHRAI) and Indian Association of Tour Operators (IATO) are the two premium organizations for promoting tourism to India through their members and their own activities. Their respective members have close interactions with each other for providing hotel and other services, particularly for foreign tourists coming to India. Both organizations have been working together very closely in the past.

It has been felt that hotels and tour operators should have a set of standard norms and procedures for working with each other. Although individual units and companies have the freedom to decide on their operating procedures and norms for relationships with other trading partners, there is a practice of setting a Code of Ethics for both sides by their respective Associations. Internationally, such an agreement has been signed between International Hotel & Restaurant Association (IH&RA) and Universal Federation of Travel Agents Associations (UFTAA). FHRAI has also signed an agreement on Code of Practice with Travel Agents Association of India (TAAI) in 2001.

FHRAI and IATO have agreed to this text of the Agreement, which follows the international norms and is largely based on the IH&RA-UFTAA Agreement, as well as on the FHRAI-TAAI Agreement.

It is customary practice and it is advised that courts and arbitrators can be expected to apply the principles contained in these Articles and Annexures in the absence of any contract, or when no conflicting contract has been signed by the parties. In the absence of a contract and when non-contractual terms are under dispute, the Code of Practice seeks to provide useful guidance to hotels and tour operators with a view to promoting harmonious relations and avoiding possible misunderstandings or disputes. It includes general principles in the Articles, and the Annexures give definitions, checklists, sample contracts for individuals, groups, allotments, MICE bookings and explanatory charts for cancellation.

Both the Associations commend to their members to adhere to the principles and guidelines contained in this Agreement and the Annexures in their mutual relationships, in their contracts and in the resolution of their conflicts. They also commend them to abide by the spirit of this Agreement and to conduct themselves and their relations with each other on the highest standards of mutual respect and fair dealings.



Art. 1. SIGNATORIES

The signatories to this Agreement are:

- The Federation of Hotel & Restaurant Associations of India, B-82, Himalaya House, 23 K.G. Marg, New Delhi – 110001 (hereinafter referred to as FHRAI and Association)

and

- The Indian Association of Tour Operators, 404 Padma Tower-II, 22 Rajendra Place, New Delhi - 110008 (hereinafter referred to as IATO and Association)

Art. 2. OBLIGATIONS OF THE SIGNATORIES

The signatories undertake:

- to recommend to their members to conclude their contracts and conduct their mutual dealings in terms of the Articles & Annexures of this Agreement.
- to intercede with their members to ensure that the provisions of this Code of Practice are complied with at national and international level for any differences and disputes between the members of the respective Associations.
- to recommend that their respective members and affiliates give preference, when concluding hotel contracts, to the members and affiliates of the other signatory body.

Art. 3. APPLICABILITY OF CODE OF PRACTICE

The Code of Practice shall apply to the mutual relations when the parties are members of the respective Associations.

Art. 4. PERIOD OF AGREEMENT

This Agreement will remain in force till the two Associations decide to enter into a fresh Agreement or agree to make any amendments in this Agreement by mutual consent, in which case the amended Agreement will remain in force.

Art. 5. AUXILIARY AND COMPLEMENTARY ROLE OF THE CODE OF PRACTICE

- a) The Code of Practice shall apply whenever no contract has been concluded between the hotels and the tour operator.
- b) It shall also apply in order to complement contracts in respect of any provision not included therein.
- c) Hotels and tour operators who are members of the two Associations are advised to conclude their contracts on the basis of concepts and guidelines contained in these Articles and Annexures.
- d) This Code of Practice is intended by its signatories to serve as a directive for the solution of disputes between hotels and tour operators, whether amicably, judicially or in arbitration.

Art. 6. SCOPE OF THE CODE OF PRACTICE

The Code of Practice is intended to govern contracts known as “hotel contracts” between tour operators and hotels.

If any article of the Code of Practice conflicts with National Law (for example: MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT) the signatories acknowledge that such articles or parts of articles would not apply.

Art. 7. DEFINITION OF THE HOTEL CONTRACT

The “hotel contract” is a contract by which a hotel agrees with a tour operator to provide hotel services at a specified price, to a traveller or a group of travellers who are client(s) of the tour operator (see **Annexure - 4** “Check-List”).

Art. 8. RESERVATION

- a) Hotel contracts shall be initiated by a reservation request from the tour operator to the hotel.
- b) Verbal reservation requests shall be confirmed immediately in writing (letter, fax, e-mail etc.) to the hotel.
- c) Reservation requests shall specify the services to be supplied.

Art. 9. CONFIRMATION

- a) Upon receipt of the reservation request from the tour operator, the hotel shall confirm the reservation in writing within 3 working days, stipulating in particular the type of room, validity of the reservation and rates of the services being confirmed, by letter, fax, e-mail and, wherever applicable, by issuance of a reservation number explicitly referring to the request.
- b) Upon receipt of the hotel’s confirmation and within a time-limit fixed in the letter, the tour operator must notify, in writing, his/her acceptance of the hotel’s conditions.

Art. 10. RESERVATION DOCUMENT

- a) Acceptance of the voucher:

If so agreed between the hotel and the tour operator, the hotel must accept a voucher.

The tour operator acknowledges that the voucher issued to his/her client –for the hotel is a guarantee of payment, unless clearly specified otherwise.

- b) Services to be specified on the voucher should include at least dates of arrival and departure, hotel services to be provided and possibly the means of transport.
- c) Vouchers covering an extension of hotel services are subject to prior written agreement between the hotel and the tour operator regarding the services to be provided and/or the maximum credit amount permitted.
- d) For any service not covered in the voucher, the hotel must collect the charges from the guest directly.

Art. 11. RATES AND CONFIRMATIONS

Once the contractual rates are agreed to, the hotel must abide by them and confirm the reservation on request, on the basis of availability. Hotels must abide by their contractual obligations on room reservations and rates.

Art. 12. ADVANCE PAYMENT

The hotel may request either total or partial pre-payment.

- a) The hotel may require advance payment (earnest money or guarantee deposit) as a condition of his/her acceptance of the order. If the hotel considers “advance payment” as “earnest money”(see definition in **Annexure-I**) it should be specifically stipulated. The reservation fee will be deducted from the final invoice but will not be reimbursed in case of late cancellation.
- b) Any such advance payment may be treated as a “guarantee deposit” except when a cancellation is made in accordance with the hotel’s written cancellation policy or customary trade practices.

Whenever the hotel requests an advance payment, the hotel contract shall be concluded only on payment of this amount or when proof of payment has been produced.

- c) The hotel shall acknowledge receipt of the advance payment not later than 3 working days thereafter.

Art. 13. PAYMENT DUE TO THE HOTEL

- a) The services payable by the tour operator are those specified in the confirmation document (hotel contract) or the service voucher.
- b) The tour operator having concluded a hotel contract is responsible for payment of the specified services except when it has been agreed that the invoice shall be paid directly by the client.
- c) In the case of a long hotel stay, the tour operator may be asked to pay the hotel during the course of the stay for the services already provided, according to the terms of the contract.
- d) In cases where the tour operator reserves hotel services to be paid directly by the client, the hotel guarantees the tour operator's commission on the confirmed services.
- e) For direct payments, the hotel will accept only those credit cards for which it is accredited. The transaction fee or collection charges of the credit card company will not be debited to TO's account.

Art. 14. CLEAR UNDERSTANDING OF THE COMMISSION POLICY

The hotel policy regarding payment of commission and terms of such payment must be clearly indicated and agreed upon by the tour operator before or at the time of the confirmation.

Information regarding commission policy should normally include:

- a) Whether a commission will be paid and on which services;
- b) the rates (s) of commission;
- c) whether commissions are payable on any extension of stay agreed by the hotel and/or reservations effected by the client during his stay, for a further period where the payment is guaranteed by the tour operator.
- d) The hotel will pay commission to the tour operator even on corporate bookings if they are received through the TO and confirmed accordingly.

Art. 15. DEFINITIONS OF GROUPS AND INDIVIDUALS

a) THE GROUP

A group is a minimum of fifteen (15) persons arriving and departing together, considered by the tour operator and the hotel as one entity.

Allotments, congresses, conferences, seminars, incentive tours, exhibitions etc. may require specific written agreement.

The group confirmation from the hotel shall specify identical services for each member of the group. The total charge shall be presented in one invoice.

If, after the confirmation, the group is reduced to less than fifteen(15) persons, the hotel must notify the tour operator whether it still considers this party as a group.

b) INDIVIDUAL

An individual client is the person who cannot benefit from group conditions.

- c) Hotel may agree to half tour leader complimentary (50% discount) for group strength between 10 to 14. For full groups of 15 and above hotel may give tour leader complimentary services upto maximum 4 pax. Hotel may agree to any group policy with tour operator with mutual agreement.

Art. 16. CANCELLATIONS-GENERAL TERMS

- a) The terms and time-limits governing total or partial cancellation of the hotel contract, together with the amount of any possible compensation due in case of late cancellation, shall be agreed upon at the time of confirmation. The hotel shall clearly define its cancellation policy for the concerned period.

The client shall be informed of this cancellation policy.

- b) Cancellations shall be signified in writing and dated (via registered letter, courier, fax, e-mail etc.). For a cancellation to take effect from the date of a verbal communication, the written cancellation must refer expressly to it. Any written document received from the hotel, referring to the verbal communication, shall dispense the tour operator from any further written reconfirmation.

Where applicable, the hotel may issue a cancellation reference number to be retained by the tour operator.

- c) At the time of cancellation, if any retention charges are applicable as per the cancellation policy or otherwise agreed in the hotel contract, the hotel shall inform the TO in writing that it is applicable.

Art. 17. CANCELLATION OF GROUPS

a) CANCELLATION TIME-LIMITS

In the absence of agreement to the contrary, the tour operator may cancel a group reservation without having to pay compensation, according to the following rules:

1. The entire group (100%) may be cancelled validly up to thirty (30) days prior to the arrival date.

2. A maximum of 50% of the initial reservation may be cancelled at least twenty-one (21) days prior to the arrival date.

3. A maximum of 25% of the initial reservation may be cancelled at least fourteen (14) days prior to the date of arrival.

b) CANCELLATION FEES

1. Cancellations made outside the above-mentioned time limits shall entitle the hotel to the following compensation:

- i) a fee fixed in advance;
- ii) In the absence of such an agreement: two-thirds (2/3) of the price of the reserved services (minimum one night per cancelled client);
- iii) in case of cancellation within three(3) days preceding the arrival date: three-quarters(3/4) of the price of the reserved services;

2. If the hotel covers the loss by sub-letting the room(s), he/she will not be entitled to such compensation. In case the TO is able to utilise the room(s) for some other clients, this will be allowed by the hotel and cancellation charges will not be payable in such cases.

c) RECLAIMING OF ROOMS BY THE HOTEL

1. When a reserved group occupies more than 30% of the total room capacity, the hotel will notify the tour operator in writing between sixty (60) and thirty (30) days prior to the date of arrival, that it intends to dispose off all or some of the rooms which the tour operator does not guarantee.

2. The hotel cannot dispose off any rooms guaranteed by the tour operator.

3. If the tour operator guarantees the rooms initially reserved, he cannot make use of article 17 a) 1.

Art. 18. CANCELLATION FOR INDIVIDUALS

a) CANCELLATION TIME-LIMITS

In the absence of contractual conditions to the contrary, the minimum periods of notice that shall be observed by the tour operator to notify a cancellation to the hotel, are as follows:

- i) Fourteen (14) days in case of 5 to 9 pax before the date of arrival and 1 day (24 hours) in case of less than 5 pax in high season,
- ii) 3 days (72 hours) in case of 5 to 9 pax and one day (24 hours) in case of less than 5 pax in low season.

b) CANCELLATION FEES

In the absence of contractual conditions to the contrary, cancellations notified after the above-mentioned time-limits shall entitle the hotel to the following compensation:

- i) For any stay of one (1) or two (2) nights, in low or high season: equivalent of services ordered for a one-night stay.
- ii) For any stay of three (3) nights or over, in low season: equivalent of services ordered for a one-night stay.
- iii) For any stay of three (3) nights or over, in high season: equivalent of services ordered for a one-night stay, or as required by the hotel in the hotel contract.

Art. 19. GUARANTEED AND NON-GUARANTEED RESERVATIONS. NO SHOWS

a) NON-GUARANTEED RESERVATIONS

If a hotel accepts a booking, it must keep rooms available for the guests until 1800 hours on the scheduled day of arrival.

After 1800 hours, it may dispose off the rooms.

b) GUARANTEED RESERVATIONS

The guarantee given by the client or the tour operator is constituted by a payment in cash, cheque or credit card (or, in the case of tour operator, a formal guarantee indicated on the reservation document or the voucher) as stipulated in article 12.b).

The hotel can demand a guarantee for any non-guaranteed reservation, for which the client or tour operator expressly requests the hotel to maintain the reservation beyond the normal time-limit of 1800 hours.

Once the guarantee is granted, the hotel will keep the room at the client's disposal until midday on the day following the scheduled date of arrival. Thereafter it may dispose off the room.

c) NO-SHOWS

If the client does not arrive at the hotel before 1800 hours, or the time indicated by the TO and accepted by the hotel, this will constitute a no-show. In this case, the conditions relating to late cancellations are applicable (article 16 to 18).

If the amount of compensation to be paid in the case of a late cancellation or no-show is not specified it is accepted that it should be equivalent to the cost of the start rooms for a minimum of one night and a maximum of three nights per room.

Art. 20. PREMATURE DEPARTURE

In the event of a premature departure or non-utilisation of services ordered, the tour operator shall compensate the hotel for the actual loss suffered, except in those cases where the hotel is responsible for the premature departure or for non-utilisation of these services or when the hotel and the client have agreed, in writing, on any other solution. However, any such compensation may not be payable if the premature departure takes place due to force majeure.

If the advance payment made by the tour operator is not sufficient to cover the full amount of the bill, the hotel shall request the balance of payment from the tour operator unless it has been agreed that the bill shall be paid directly by the client.

These provisions shall be applicable to the tour operator's clients only if they also apply to the hotel's direct clients.

Art. 21. INFORMATION PROVIDED TO THE HOTEL

The tour operator shall provide the hotel with all necessary, relevant and detailed information on the services requested and send the rooming list minimum 7 days prior to arrival, unless a different schedule is required by the hotel.

The tour operator shall provide information concerning the group's arrival details.

Art. 22. INFORMATION TO THE TRAVEL AGENT AND CLIENT

- a) The hotel shall provide the tour operator with relevant, precise information concerning the category/standards, location and services of the hotel.
- b) The tour operator is obliged to transmit to his/her client the information exactly as supplied by the hotel.
- c) The hotel & tour operator must refrain from taking any action or making any statement that would cast doubt on the quality of services provided by the other party or that could damage his/her professional reputation.
- d) The hotel should ensure that the rates given by it to the tour operator are not divulged to the clients and bills should not be presented to the clients on special contracted rates for signature. Hotel can obtain signature on the voucher or on a folio as per its convenience.

Art. 23. QUALITY OF SERVICES PROVIDED

The services provided by the hotel to the tour operator's clients, in accordance with the hotel contract, shall be of the same quality as those provided by the hotel on the same conditions, to its direct clients, unless otherwise agreed to in the contract.

Art. 24. DISPOSAL OF ROOMS

The hotel must keep the reserved room at the disposal of the client from 1500 hours, on the day of arrival, or earlier if possible.

Unless otherwise agreed, a hotel room must be vacated by the client no later than twelve (12) noon on the day of departure.

Art. 25. OBLIGATIONS TO THE CLIENT

- a) For any reservation duly accepted and confirmed, the hotel shall respect its contractual commitments. Failing this, it shall compensate the tour operator for the loss actually suffered.
- b) Should the hotel not provide the client with the reserved accommodation, it has confirmed, it will, at its own expenses:
 1. Secure accommodation for the client at the nearest equivalent hotel and pay, where applicable, for any difference of price;
 2. Notify the client or the tour operator, in advance of the client's arrival and where applicable, eventually pay for the client's communication cost to notify his/her home or office of the change of hotel. The hotel will also pay for the client's transportation to the other hotel;
 3. Pay for the client's transportation back to the original hotel, if the client wishes to return to the hotel he/she had originally reserved when space becomes available.

- c) The hotel will refrain from soliciting the client to make direct reservations in future.

Art. 26. FORCE MAJEURE

Whenever one of the parties to the hotel contract finds it impossible to fulfill his/her obligations owing to a case of force majeure, that is circumstances that are unforeseen, irresistible and beyond his/her control, he/she is exonerated from their obligations without having to pay any compensation.

Art. 27. NOTIFICATION OF FORCE MAJEURE

When the hotel or tour operator finds him/herself unable to fulfill his/her obligations for reasons of force majeure, he/she shall immediately notify the other party by all means at his/her disposal in order to limit potential damages.

Art. 28. REFRAINING FROM MULTIPLE BOOKINGS

Even if a tour operator has simultaneously requested reservations for the same stay of a client or a group from different hotels, he/she shall refrain from finalising more than one hotel contract for the same stay of a client or a group, with the intention of canceling, at a later date and within the time-limits mentioned in this Code, the reservations he/she decides not to retain.

In such cases of multiple bookings the hotel can unilaterally cancel the reservation concerned and not refund any paid reservation fee.

In the case of a series of group reservations, all reservations concerned may be cancelled.

Art. 29. CONVERSION OF FOREIGN EXCHANGE RATES

On conversion of dollar and other foreign currency rates, for the payments to be received from clients/TOs, the hotel should use the cash rates, as per the normal industry practice and not TT rates, unless a different arrangement has been agreed to between the two parties.

Art. 30. AMICABLE SETTLEMENT OF DISPUTES

- a) In case of disagreement, including on a force majeure issue, between the contracting parties, an amicable settlement should be sought. Failing such a settlement, either party can refer the case to the Indian Council of Arbitration (ICA). For this both parties are advised to mention in the contract that all disputes arising from it or arising on any matters not mentioned in the contract, shall be settled through arbitration through the Rules of ICA and procedure prescribed by it for such settlement. The ICA has advised that the parties may include the following arbitration clause in their contracts, "Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties".
- b) In case the parties wish to avoid the lengthy and expensive arbitration procedure, they can also take advantage of the conciliation facility provided by the Indian Council of Arbitration. This allows for economic and expeditious settlement of a dispute. However there is no legal sanction to compel the parties to abide by the decision of the conciliator. For settling disputes through conciliation, the contract should mention that any disputes shall be settled through the Rules of Conciliation of the Indian Council of Arbitration.



- c) Members of the two Associations are also encouraged to write to their respective Associations about any problems they are facing from a member of the other Association. The Association Secretariat will write to the concerned member with the reported facts and urge upon him/her to abide by his/her commitment and contractual obligations. It is hoped that this persuasive mechanism will resolve majority of problems in the mutual relations of members of the two Associations, without their having to take a recourse to the lengthy Arbitration or judicial process.
- d) For any international dispute between a member of one of the Associations and hotel/tour operator

based abroad, the Indian party can refer the dispute for conciliation and arbitration through IH&RA/UFTAA liaison committee, following the Arbitration Rules annexed to the IH&RA-UFTAA Agreement on Code of Practice. This Agreement applies to FHRAI/IATO members for international disputes through the membership of the Two Associations of IH&RA and UFTAA (as the case may be).

Art. 31. ENFORCEMENT DATE OF THE AGREEMENT

This Code of Practice will come into force on the date of signing of this Agreement between the two signatories.

SIGNED THIS DAY,

**For
Federation of Hotel & Restaurant
Associations of India**

**For
Indian Association of Tour Operators**

**(M.P. Purushothaman)
PRESIDENT**

**(Subhash Goyal)
PRESIDENT**



FHRAI-IATO AGREEMENT ON CODE OF PRACTICE

Annexure -1

DEFINITIONS

In the application of this Code of Practice, the following terms shall be used with the meaning given below, even if this meaning differs from a meaning in customary use.

ADVANCE PAYMENT

Any sum that is paid before the arrival of a client/group to guarantee the reservation. An advance payment must be identified at the time of payment by the parties as “guarantee deposit”, “earnest money” or “reservation fee” in order to define its possible refund.

GUARANTEE DEPOSIT

Partial payment in advance of reserved services, made by the tour operator to the hotel. Such payment is deducted from the final hotel invoice or refunded if the hotel contract is cancelled in accordance with the provisions in Articles 16-20.

EARNEST MONEY

The term “earnest money” means “contractual compensation which is not repayable if the contract is cancelled by the fault of the person who paid the earnest money, and which is to be paid back double if the contract is cancelled by the fault of the person who received the earnest money”.

RESERVATION FEE

Sum paid by the tour operator to the hotel, before the client’s arrival. Such amount will be deducted from the final hotel invoice but not reimbursed in case of cancellation.

HOTEL

It shall be considered as hotel all accommodation establishments so designated in accordance with the laws and rules in force in India.

HOTEL CONTRACT

Document by which a hotel agrees to provide hotel services to a traveller/or a group of travellers who is (are) a client (s) of the tour operator.

HOTEL SERVICES

Hotel Services include bedroom, breakfast and other meals, meeting and function rooms and/or other facilities & services etc.

HOTEL TARIFF

List of the prices of the various services provided by the hotel separately or jointly, published officially for travellers.

TOUR OPERATOR

All individuals or corporate bodies (companies) so designated in accordance with the legal provisions of the country or accepted by customary practice or by IATO and whose work consists in particular of reserving rooms and other services in hotels to accommodate travellers.

VOUCHER

A voucher is a document issued by a tour operator by which he undertakes to pay the hotel for services ordered by the tour operator and to be rendered to the tour operator’s client(s). Such services or their maximum value shall be mentioned on the voucher.

A copy of a voucher may be used as reconfirmation document.