



**FLEXIBLE NET RATE PARTICIPATION AGREEMENT
FAX AGREEMENT TO: 858-430-4875**

HOTEL: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

COUNTY: _____

PHONE: _____ **FAX:** _____

HOTEL'S WEB ADDRESS: _____

1. This **FLEXIBLE NET RATE PARTICIPATION AGREEMENT** (the "Agreement"), is made and entered into by and between Advanced Reservation Systems, Inc., a California corporation ("ARES") and _____ a [_____] ("Hotel"), collectively referred to as the Parties. This Agreement memorializes the terms and conditions under which the Hotel will make available flexible room inventory at the property identified on the attached Hotel Rates Sheet ("Hotel Rates Sheet") for booking by guests via the ARES Service. As used herein, the "ARES Service" means the software, databases, products, and other components that make up the service that is marketed and utilized by ARES and its affiliates to enable guests to review, reserve, book and pay for lodging and related services through the Internet, telephone, or other interactive device, or via other booking channels. As used herein, "Affiliates" means and includes entities that control, are controlled by or are under common control with ARES and any third parties that facilitate the booking of hotel room reservations through the ARES Service. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.
2. **TERM AND TERMINATION:** The obligations under this Agreement shall commence on the date of the last signature to this Agreement (the "Effective Date") and, unless otherwise terminated or canceled as provided herein, will continue thereafter pursuant to the terms hereof. Any Party may terminate this Agreement for any reason (or no reason), at the end of a calendar year by giving written notice of termination at least 30 days prior to the end of the calendar year to the other Party. If Hotel breaches any of the provisions of this Agreement and fails to promptly cure such breach, then ARES may cease to offer Hotel's Rooms (as defined below), as contemplated herein. Notwithstanding the foregoing, Hotel shall honor any reservation booked by a guest through the ARES Service prior to the expiration or termination of this Agreement. This agreement shall survive and remain in effect upon the sale or transfer of assets of Hotel, change in management of ARES, or any other change of ownership or management. This agreement supercedes any previous agreement entered into by parties.
3. **PROPERTY INFORMATION:** Hotel represents and warrants that: (i) it is the owner, lessee or operator (as appropriate) of the property identified on the Hotel Rates Sheet; (ii) the Hotel Rates Sheet is correct in all material respects; (iii), Hotel has all requisite rights and authority to enter into this Agreement; and (iv) this Agreement shall not conflict with any other agreement entered into by Hotel. In the event any information contained on the Hotel Rates Sheet is incorrect or inaccurate, Hotel shall use its best efforts to advise ARES immediately so that ARES may inform guests and modify the appropriate contents of the ARES Service accordingly.
4. **FLEXIBLE ROOM ALLOCATIONS:** Throughout the Term, Hotel shall provide the number and category of rooms ("Flex Allocation") as set forth in the Hotel Rates Sheet. If Hotel has no room inventory available for booking on a particular date (or dates), Hotel must reallocate the Flex Allocation for those unavailable date (or dates) to a different date (or dates) in a manner which is equivalent in number and category of rooms as set forth on the Hotel Rates Sheet, The Flex Allocation is also referred to in this Agreement as "Rooms." In addition, Hotel shall keep Rooms available for booking by guests through the ARES Service until the time at which all third party channel inventory is closed by Hotel. Hotel agrees to provide ARES with 1 complimentary room night for every 100-room nights sold by ARES. ARES may utilize such complimentary rooms for promotional purposes or otherwise.

5. **FLEXIBLE RATES:** Hotel shall provide ARES with net offers for room only rates to be booked through the ARES Service that are, (i) at least as favorable as the rates, rules, terms and conditions as the net rates Hotel offers through any third party channel or entity, or at least 22% below the Best Available Rate and (ii) no less than 22% below Hotel's Rack Rate as indicated on the attached Hotel Rate Sheet. Package only net rates must be discounted at least 30% below Hotels Best Available Rate and will be included with other components and sold to customers. As used herein, "Best Available Rate" is the least expensive rate a hotel makes available for sale to the public that does not require joining as a member of an organization or group (i.e. Military, AAA, AARP). Hotel may modify the rates as described in Paragraph 6. ARES shall remit payment of the rates to Hotel pursuant to the payment procedures set forth in Paragraph 10. All Rates are net, non-commissionable. If Hotel or any third party channel sell or offer rooms for less than the booking price for the same room type offered to ARES, then Hotel must reduce the rate(s) to ARES in order to remain at sell rate parity. Hotel shall offer any incentives, specials or promotional rates that Hotel is offering to any other third party channels to ARES. In the event that ARES finds a lower sell rate that is offered to a customer by Hotel or a third party channel, ARES reserves the right to change the rate in order to match what the hotel or third party channel is quoting.
6. **NO REFUSAL OF RESERVATIONS:** Hotel agrees to manage rates and availability via ARES' online reservation program (ARES Extranet). Hotel must inform ARES of sold out dates via the ARES Extranet or other reasonably acceptable means. If Hotel fails to update sold out dates, ARES will continue to sell rooms at the rate provided. In the event that Hotel refuses to honor any reservation, rate or availability provided to ARES, ARES may remove Hotel from all related web sites without prior notice to the Hotel. ARES may fax, email or phone-in reservations to Hotel.
7. **RESERVATIONS PROCEDURE:**
 - a. Customer places reservation with ARES via telephone or Internet.
 - b. ARES faxes, emails or telephones reservation to Hotel which will include date of arrival, number of nights, number of people (adults and children), smoking preference, bedding preference, room type, room rate, and ARES specific booking number.
 - c. Hotel confirms reservation in its property management system, places confirmation number on original fax or email, and signs and faxes/emails back to ARES within 24 hours of receipt.
 - d. Upon receipt of Hotel's confirmation, ARES confirms reservation in its reservation system.
 - e. Upon arrival at the Hotel, guests will be required to provide the following items at check-in; photo identification, credit card for incidental charges and booking number. ARES' rate with the Hotel is strictly confidential and Hotel shall not disclose to the guest the quoted ARES rate. ARES does NOT provide guests with written vouchers.
 - f. Upon check out, the guest shall be billed for all incidental charges. Only the nights reserved by ARES shall be direct billed. Any changes made to a reservation, whether an increase or decrease in nights, must be processed by ARES Customer Service Department.
8. **SAME DAY RESERVATIONS PROCEDURE:** Hotel must follow the Procedures as outlined below in order to prevent credit card fraud for each Same Day Reservation. Same Day Reservations means any reservation in which the booking date is the very same date as the arrival date.
 - a. Confirm receipt of all same day bookings prior to guest's arrival.
 - b. Obtain a credit card impression from each guest.
 - c. Check, match and verify the identity of the credit card holder by obtaining and copying the guest's driver's license or passport at check-in. The purchaser must be the actual guest and must provide valid identification.
 - d. Cash transactions for Room and Tax are prohibited.

In the event that Hotel fails to follow any of aforementioned Procedures, and in the event of any credit card fraud, then Hotel (and in no event ARES) shall be solely responsible for any Room and Tax charges associated with any such credit card fraud. It is the sole responsibility of Hotel to inform and educate the management and personnel regarding the terms and conditions of this agreement and to ensure implementation of the Procedures as defined above.
9. **CANCELLATION, AND NO-SHOW:** ARES may cancel any reservation up to 24 hours before the day of arrival. If ARES cancels any reservation after that deadline, or if the reservation is a no-show reservation, then Hotel may only charge ARES for the first night of the reservation at the rate the original reservation was

confirmed at, and any subsequent nights for the reservation are automatically released back to the Hotel. If the guest arrives at the Hotel but departs as a result of the guest's dissatisfaction with Hotel, Hotel may not charge ARES any amount.

10. **PAYMENT:** Hotel shall invoice ARES for each Room consumed by a guest whose reservation was made through the ARES Service within 90 days of a guest's departure (the "Invoice"). For each consumed Room, the Invoice shall include the guest name, the applicable ARES confirmation number, the applicable arrival and departure dates, the applicable Rates and taxes, and whether the consumed Room has been billed to ARES on any previous invoice. ARES shall pay each Invoice net 30 days, unless such sum is disputed by ARES. Hotel agrees that ARES may implement an automated process in place of a paper invoicing process. As an alternative to the Invoice procedure referenced above, Hotel agrees to accept credit card payments for the applicable Rates and taxes. In the event that ARES implements a credit card payment system, ARES will notify Hotel no less than 30 days in advance.
 - a. Hotel acknowledges and agrees that ARES shall not be liable to Hotel for any Invoices not received within 12 months of the final day of any reservation booked through the ARES Service.
 - b. In the event of a dispute between Hotel and ARES over any charge on any Invoice, Hotel will not (i), charge or attempt to charge any guest directly for the disputed amount, or (ii), refuse to honor any other Room reservations made by guests through the ARES Service. If Hotel breaches any of its obligations under this Paragraph 10, then Hotel shall pay ARES or credit its account any losses suffered by ARES (e.g., for refunds provided to guests by ARES).
 - c. For any reservation booked through the ARES Service, Hotel shall not honor any changes claimed by a guest, unless ARES has confirmed those changes in the manner described in Paragraph 7. If there exists a discrepancy between information contained in the booking information from the ARES Service (provided in accordance with Paragraph 7) and a guest's own reservation request, then the booking information from the ARES Service shall govern. Payment for any such changes shall be made in accordance with Section 10.d.
 - d. If a guest requests changes to the guest's reservation directly from the Hotel, then, unless ARES agrees to alternative payment arrangements, Hotel shall be responsible for collecting any applicable amounts directly from such guest.
 - e. Hotel is solely responsible for confirming guest booking information contained in the reservation information provided to Hotel as described in Paragraph 7. Hotel shall indemnify and hold harmless ARES for any liability imposed upon ARES as a result of Hotel's failure to honor the foregoing obligation.
11. **TAXES:** Hotel shall be solely responsible for, and Hotel agrees to remit, as required by applicable law, any and all Taxes due to any applicable federal, state or local taxation jurisdictions or authorities arising from or relating to the purchase of Hotel rooms, and Hotel agrees to defend, indemnify and hold ARES and each Indemnified Party harmless from and against any and all losses relating to the foregoing. Hotel will reasonably and in good faith cooperate with ARES in the administration of Hotel's tax collection and remittance responsibilities.
12. **FORCE MAJEURE/INABILITY TO HONOR RESERVATIONS:** Neither party shall be liable to the other for its failure to perform any of its obligations hereunder (other than payment obligations) during any period in which such performance is delayed by circumstances beyond its reasonable control. A Party whose performance is impaired as a result of such an unforeseeable cause shall promptly notify the other Party. If Hotel is unable to honor any reservations as a result of such an unforeseeable cause, or for any other reason, then Hotel shall relocate guests whom did not book through the ARES Service before Hotel relocates any guests who booked their reservation through the ARES Service. In the event that Hotel must relocate any ARES guest, Hotel must immediately notify ARES, pre-pay for guest relocation at a comparable hotel or resort for all nights in question, and pay any transportation costs associated with such relocation. Relocation of ARES' guests may result in removal from ARES reservation system. Hotel agrees to provide a written apology to the ARES guest(s) for this inconvenience and absolving ARES of any responsibility. If a reservation is a Potentially Fraudulent Reservation (as defined below), or certain data provided by the guest cannot be verified by ARES prior to 4:00PM (of the Hotel's local time zone) of the day that is one day before the date of arrival, then Hotel and ARES agree to work together to address the Potentially Fraudulent Reservation, which may include canceling such reservation by notifying the Hotel in the manner described in Paragraph 7 before 4:00PM (of the Hotel's local time zone) of the day of arrival. In the event of the foregoing, Hotel shall not charge a cancellation charge. "Potentially Fraudulent Reservations" means reservations that result from (i) invalid or incorrect information supplied to ARES at the time of booking, (ii) a credit card dispute, (iii) a report of unauthorized charges, (iv) bookings that may be associated with previous high risk or fraudulent transactions, or (v) as otherwise determined in good faith by either party.

13. **NOTICES AND OTHER COMMUNICATIONS:** All notices, requests and other communications hereunder shall be in writing and shall be delivered in person or sent by nationally recognized overnight courier service, or by facsimile transmission (with confirmation of receipt) to the address or facsimile number of the party set forth on the signature page or to such other address designated in writing by the receiving party. Unless otherwise provided, notice shall be effective on the date it is officially recorded as delivered, as evidenced by delivery receipt or equivalent.
14. **CONFIDENTIAL INFORMATION:** ARES and Hotel understand and agree that in the performance of this Agreement, each party may have access to or may be exposed to, directly or indirectly, confidential information of the other party, including, but not limited to, pricing information, trade secrets, contractual terms, customer information, (and customer travel, membership and usage data, including all records and files pertaining thereto) booking information, transaction volumes, marketing and business plans and technical information, methods and travel service provider relationships, product plans, product prices, employees, business opportunities or personnel (“Confidential Information”). Without limiting the foregoing, Confidential Information of ARES shall include the terms of this Agreement. Each party agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party and the receiving party shall not use any Confidential Information for any purpose except in furtherance of this Agreement; (b) it shall maintain, and shall use prudent methods to cause its employees and agents to maintain, the confidentiality and secrecy of the Confidential Information; (c) it shall disclose Confidential Information only to those of its employees who have a need to know such information in furtherance of this Agreement; (d) it shall not, and shall use prudent methods to ensure that its employees and agents do not, copy, publish, disclose to others or use (other than pursuant to the terms hereof) the Confidential Information; and (e) it shall return or destroy all copies of Confidential Information upon request of the other party. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it (a) is or becomes a part of the public domain through no act or omission on the part of the receiving party, (b) is in the receiving party’s possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement, (c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto, (d) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information, (e) is released from confidential treatment by written consent of the disclosing party, or (f) is required to be disclosed pursuant to law, court order, subpoena or governmental authority; provided that the receiving party promptly notifies the disclosing party and makes diligent efforts to limit such disclosure to that which is reasonably necessary.
15. **GENERAL PROVISIONS:**
- a. **GOVERNING LAW:** This Agreement shall be governed by the laws of the United States of America and the State of California regardless of choice of law principles. The parties agree that jurisdiction over any dispute arising in connection with this Agreement will be vested exclusively in the courts located in San Diego County, California.
 - b. **NO WARRANTIES:** ARES make no warranties or representations regarding the ARES Service, or their ability to obtain reservations for any portion of the Rooms.
 - c. **RIGHT TO DISPLAY CONTENT:** Hotel hereby grants ARES a worldwide, non-exclusive, royalty-free license to use Hotel brands on ARES (including its affiliates) Web sites and in connection with ARES (including its affiliates) marketing efforts, and making reasonable use of other known identifiers that may serve to help promote Hotel services, on the Internet, in print advertising and other forms of media. Hotel represents and warrants that such use does not and will not infringe any third party’s rights.
 - d. **INDEMNIFICATION:** Hotel shall hold harmless, indemnify and defend ARES, its affiliates, directors, employees, or agents, against any third-party claim or action brought against Hotel
 - e. **NO PARTNERSHIP:** This Agreement does not create a partnership or agency relationship between or among the Parties.
 - f. **NON-EXCLUSIVITY:** Hotel acknowledges that ARES provides bookings for multiple hotels, including competitors of Hotel, and that ARES has no obligation to disclose any terms relating to ARES relationship with other hotels.
 - g. **ENTIRE AGREEMENT:** This Agreement is the Parties’ entire agreement respecting its subject matter and supersedes all prior agreements, written and oral, respecting the subject matter.
 - h. **WAIVER:** Any waiver or modification of this Agreement must be in writing and signed by the Parties to be effective.
 - i. **ENFORCEABILITY:** If a court of competent jurisdiction deems any part of this Agreement invalid or unenforceable, then the remainder of this Agreement continues in effect.
 - j. **INSURANCE:** Hotel shall name ARES as an additional insured on any liability insurance policies that it pays premiums. As soon as reasonably possible after the execution of this Agreement, Hotel shall deliver to ARES certificates of insurance (i) that verify compliance with the preceding sentence and (ii) that

establish that ARES shall receive 30 days prior written notice before the insurance is canceled or expires. No later than ten (10) days prior to the date of expiration of an existing insurance policy, Hotel shall deliver new certificates of insurance to ARES for any renewal policies.

k. TERMINATION FOR BANKRUPTCY OR INSOLVENCY: Upon written notice, a Party may terminate this Agreement immediately if any other Party ceases to do business, becomes insolvent, or is subject to bankruptcy or insolvency proceedings, whether actual or reasonably believed to be imminent. If reasonable grounds for insecurity arise with respect to a Party's performance of this Agreement, then any other Party may demand written adequate assurance of due performance. Until such Party receives such assurance in writing, it may suspend its performance of this Agreement. If such Party does not receive such written assurance within five (5) days after its request for such assurance, or within such other reasonable period of time it may designate under the then existing circumstances, then the failure by the Party to furnish such assurance constitutes a material breach of this Agreement, entitling the requesting Party to immediately terminate this Agreement in whole or in part as to the Party failing to furnish the requested assurance.

l. DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, ARES SERVICE, AND ANY PRODUCT, SERVICE OR INFORMATION OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. ARES DOES NOT WARRANT THAT THE ARES SERVICE OR WEBSITE OR EXTRANET WILL OPERATE UNINTERRUPTED OR ERROR-FREE.

LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM ANY PROVISION OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE. IN NO EVENT SHALL EITHER COMPANY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE PAYMENTS TO EITHER PARTY HEREUNDER. THE LIMITATIONS OF LIABILITY UNDER THIS SECTION SHALL NOT APPLY TO, (i) CLAIMS ARISING FROM A BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION, (ii) A PARTY'S INDEMNIFICATION OBLIGATIONS CONTAINED IN SECTION, (iii) CLAIMS OF INFRINGEMENT OR UNFAIR COMPETITION OR, (iv) CLAIMS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

SIGNED:

ADVANCED RESERVATION SYSTEMS, INC.
3750 Convoy Street
Suite 312
San Diego, CA 92111
Fax: 858-430-4875

HOTEL

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

HOTEL RATE SHEET

HOTEL: _____

Room Information

Room Type: _____

Bed Type: _____

Flexible Base Allocation: _____

Max Occupancy: _____

Season - Enter Date Range	*ARES Sell Rate	*Hotel Rack Rate

Room Type: _____

Bed Type: _____

Flexible Base Allocation: _____

Max Occupancy: _____

Season - Enter Date Range	*ARES Sell Rate	*Hotel Rack Rate

Room Type: _____

Bed Type: _____

Flexible Base Allocation: _____

Max Occupancy: _____

Season - Enter Date Range	*ARES Sell Rate	*Hotel Rack Rate

*MUST exclude all additional mandatory fees including but not limited to all taxes. "Resort Fees", "Energy Surcharge", "Parking", etc. should be charged to the guest directly along with all other incidental fees.

Hotel Taxes and Fees

City Tax Rate: _____%

Number of Rooms at Hotel: _____

Self Parking Fee: _____

County Tax Rate: _____%

Resort Fee (if applicable): _____

Valet Parking Fee: _____

State Tax Rate: _____%

Extra Adult Fee: _____

Check In Time: _____

Other Room Only Taxes: _____%

Roll-A-Way Fee: _____

Check Out Time: _____

Total Taxes on Room Only: _____%

Baby Crib Fee: _____

Hotel Terms and Conditions

Hotel requires that all changes and cancellations be made directly with hotel at least _____ hours prior to arrival.

Pet Policy: _____

OPTIONAL BONUS INCENTIVE PROGRAM

Hotel agrees to pay ARES an additional bonus as incentive to reach a specified number of room nights. Hotel will pay bonus on highest level attained only. Hotel agrees to pay bonus no later than 2/15 of the following calendar year. Please initial next to any or all four of the options:

- 1. Hotel agrees to pay ARES a bonus of \$250 for 250 room nights or more booked by ARES and realized during each calendar year that the agreement is in place.

Initial in the space provided: _____

- 2. Hotel agrees to pay ARES a bonus of \$500 for 500 room nights or more booked by ARES and realized during each calendar year that the agreement is in place.

Initial in the space provided: _____

- 3. Hotel agrees to pay ARES a bonus of \$750 for 750 room nights or more booked by ARES and realized during each calendar year that the agreement is in place.

Initial in the space provided: _____

- 4. Hotel agrees to pay ARES a bonus of \$1 per room night for 1000 room nights or more booked by ARES and realized during each calendar year that the agreement is in place.

Initial in the space provided: _____

ADVANCED RESERVATION SYSTEMS, INC.
3750 Convoy Street
Suite 312
San Diego, CA 92111
Fax: 858-430-4875

HOTEL

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

HOTEL CONTACT SHEET

General Manager: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Director of Sales: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Reservations Manager: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Sales Manager: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Front Desk Manager: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Controller: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Revenue Manager: _____

Phone #: _____

Fax #: _____

E-Mail Address: _____

Please indicate the names of the employees the hotel would like to have as ARES extranet users

Primary User: _____

Secondary User: _____

Please indicate the fax number you would like the reservations to go to

Fax #: _____