

**GIATA HOTEL GUIDE**  
**Licence (XML-Internet version)**

<b>Client</b>	<b>represented by</b>
Street	Postcode/City
Telephone	Legal form
Fax	VAT number
URL	Email

**and**  
**GIATA GmbH, represented by the company director,**  
**Andreas Posmeck, Schlesische Str. 26, 10997 Berlin**

- Henceforth referred to as: GIATA -

enter into the following

<b>Licence Agreement</b>
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### **1. Subject of the licence**

**1.1** The subject of the licence is the Internet version of the GIATA HOTEL GUIDE database. The GIATA HOTEL GUIDE database contains a collection of hotel offer descriptions and descriptions of further tourist service offers (e.g. cruises, tours) which are made available from various tour operators. GIATA processes these offer descriptions for the usage of the database, supplies them in a uniform standard and ensures unique identification and comparability of the offer descriptions through the allocation of GIATA codes. Information in the GIATA HOTEL GUIDE database can be retrieved via various search parameters such as catalogue, hotel name, destination area or express searches.

**1.2.** The Internet version of the GIATA HOTEL GUIDE database is dynamically integrated via an XML interface into the client's website, so that Internet users can retrieve the database's content via the website. The purpose of the database usage on the client's website is that Internet users can research operators' offers and find out information about these offers within the database.

**1.3.** In addition, the client has the possibility of integrating the GIATA HOTEL GUIDE database into their own website via an Internet Booking Engine (IBE) from third parties who are working in co-operation with GIATA. The GIATA HOTEL GUIDE database can then be accessed on the client's website via the user interface of the IBE, so that Internet users can connect the database query with a booking.

**1.4.** The extranet version of the GIATA HOTEL GUIDE database (travel agent application for on-site computer workspaces within a travel agency), as well as applications for mobile devices are not subject to this agreement, rather they both require separate licence agreements.

**1.5.** This licence agreement authorises the retrieval of all operator data contained in the Internet version of the GIATA HOTEL GUIDE database, within the framework of the stated conditions, and obliges the client to include all operator data in its entirety, i.e. individual offer descriptions or offer descriptions of individual tour operators must not be deactivated. An individual agreement between the parties is required for a limitation on the retrieval of data from a particular operator. GIATA will create a corresponding offer for the client on request and after the mentioning of all the operators whose data should be excluded from the licence agreement.

## **2. Scope of the granting of rights, GIATA's contractual services**

**2.1.** GIATA systematically compiles the hotel offer descriptions and the descriptions of the further tourist service offers which originate from the tour operators and which are standardised and processed for the database by GIATA in each current form in the GIATA HOTEL GUIDE database and keeps the database available for the client to retrieve data.

**2.2.** Furthermore, GIATA contractually binds the tour operator to present its images and text content accurately and free from the rights of third parties. GIATA will furthermore immediately remedy content or legal errors in the hotel offer descriptions as soon as it receives knowledge of them. GIATA is not obligated to carry out a content or legal check of the images and texts provided by the operator.

**2.3.** GIATA grants the client the non-exclusive (simple) right of use to publically present the GIATA HOTEL GUIDE database on its website as a research and information tool for Internet users and to carry out the acts of reproduction necessary for this. The client is thereby authorised to integrate the database in its own website via a link to the GIATA server, an XML interface, or an IBE from a third party cooperating with GIATA, and to make it retrievable via a user interface provided on their own website.

**2.4.** The right of use granted by GIATA is spatially unlimited and temporally limited to the duration of this agreement. The content limitations of the right of use are derived from the ensuing section 3 of this agreement.

**2.5.** The right to use the GIATA HOTEL GUIDE database is limited to a client's website, independent of whether these websites can be accessed via the client's own domain or via a sub-domain or as a sub-directory of the main domain, and independent of whether only access via further websites to the same server and the same copy of the database is opened. A usage of the database on a website exists when a user interface on the respective website is provided, via which the GIATA HOTEL GUIDE database can be accessed. Special license agreements must be concluded with GIATA for the use of the database on further websites, such as those from network, marketing, affiliate and cooperating partners.

## **3. Limitations of use and contractual penalty**

**3.1.** The client is not permitted to use the GIATA HOTEL GUIDE database for purposes other than those set out in this agreement. Legally obligatory exceptions remain unaffected. In particular, the client must adhere to the following limitations of use:

- a. The elements of the database, especially photos, may only be used within the framework of the GIATA HOTEL GUIDE database and only in connection with the offer of the respective operator, not for any other purpose, such as artwork on a website or in the creation of the operator's own catalogue.
- b. The client is obligated to dynamically integrate the following copyright notice, matched to the respective current year "Copyright GIATA GmbH 1996 – 20XX" into its web offer, so that the copyright notice appears at the end of every hotel offer description.
- c. The client is not authorised to systematically analyse the GIATA HOTEL GUIDE database beyond the database usage, e.g. through the indexing of the data by the allocation of attribute characteristics. Using the GIATA data for the purpose of search engine optimisation (SEO) and search engine marketing is prohibited. Search engine indexing via applicable means (robots.txt, meta tags or others) must be excluded on web pages in which GIATA content is integrated.
- d. The client is not authorised to reconfigure or alter the GIATA HOTEL GUIDE database, e.g. through the exchange or alteration of individual database elements. The deactivation of individual operators whose offers the client does not broker is not deemed to be a reconfiguration of the database.
- e. The client is not authorised to significantly enlarge individual image formats (e.g. 74 or 150 pixels), or to use a larger size to save on licensing fees.
- f. The client is not authorised to produce a new database based on the GIATA HOTEL GUIDE database or to supplement the data in the database with data other than the available hotel offer descriptions or individual images and texts in the database and to make this retrievable via a standardised user interface. If the client wishes to integrate further databases into their website, these are to be integrated in the website separately from the GIATA HOTEL GUIDE database and accessible via a separate user interface.

**3.2.** In the case of an infringement of the above-mentioned limitations of use the client must pay GIATA a contractual penalty for every instance of culpable infringement of EUR 2,500.00 per contained dataset, where every assigned booking code identifies a dataset. Minor violations incur a correspondingly reduced contractual penalty. The client is entitled to prove that damage or a diminution in value has not occurred or is considerably less than the claimed contractual penalty. Further legal or contractual claims, which arise for GIATA based on the infringement - in particular claims for damages - remain unaffected, where a pre-existing contractual penalty for special payment claims is charged.

#### **4. Integration of the database, responsibilities and obligations of the client**

**4.1.** The client has the possibility of integrating the GIATA HOTEL GUIDE database via a XML interface in their own website, electively with or without advertising banners. The respective licence fee arises from section 5 of this agreement.

**4.2.** GIATA provides the client with an XML interface, via which the respective current data, which is necessary for the integration of the database on the client's own website, can be accessed with password protection. The general XML interface documentation can be found at <http://www.giata-xml.de/dokumentation/>.

**4.3.** The client must keep their allocated access data secure and protect it from being accessed by unauthorised third parties. If the customer does however become aware that

their user data has or may have become known to third parties they are obligated to inform GIATA immediately so that GIATA can block the access data.

**4.4.** If the client has licensed the database with advertising banners, GIATA makes these advertising banners available via one of their authorised online marketing distributors. The client is also obligated to integrate these within 60 days of the contract being signed on all pages of their website where the content of the GIATA HOTEL GUIDE database appears, in each current version and in a clearly visible position.

## **5. Procedure in the case of third-party complaints**

**5.1.** Should GIATA be made aware that individual content from the GIATA HOTEL GUIDE has possibly violated the rights of third parties, GIATA will immediately remove the relevant content from the database and request, via the above-mentioned email, that the client's data be immediately updated in order to prevent any further violation of rights.

**5.2.** Should the client be made aware that individual content from the GIATA HOTEL GUIDE has possibly violated the rights of third parties, they should inform GIATA immediately via the email address [kataloge@giata.com](mailto:kataloge@giata.com) or telephone number +49 (0)30 420 265 0, and specify the type of complaint as clearly as possible, e.g. by presenting the written complaint that the client received.

Should the client not comply with the aforementioned obligations, they take responsibility for any damages incurred by them or GIATA as a result of the delayed updating or notification of complaints.

## **6. Scope of services and licence fees**

**6.1.** For the uses of the GIATA HOTEL GUIDE database covered in this contract, the client pays, depending on the manner of integration of the database, a monthly licence fee according to the following table:

<b>Licence Package</b>	<b>Scope of licence</b>	<b>Net price in Euros</b>	<b>Amount</b>
GHG XML	Per website, incl. up to 4,000 hits/requests per month	EUR 19.90	

**6.2.** The number of XML hits is defined as follows: The number of monthly XML requests or the sum of requested images with a width larger than 150 pixels – whichever value is higher. Thus, either the sum of image requests or the number of XML requests will be charged - not both.

**6.3.** The hits/requests are determined by GIATA's cooperating IBE providers, the rest is determined by GIATA.

**6.4.** If the 4,000 hits/requests per month limit is exceeded (whereby the first occurrence of the limit being exceeded is not taken into consideration), GIATA is authorised to offer the client the opportunity to sign a corporate licence agreement, which is more suitable for larger scopes of usage. Should the client fail to sign a corporate licence agreement within three weeks, GIATA is authorised to charge a monthly usage fee proportional to the extent the limit was exceeded for the following month (e.g. a request count of 5,000

would incur a 25% increase in fees for the following month). Alternatively, GIATA reserves the right to terminate this contract without notice after the acceptance period, should the customer not be able to provide sufficient reasons to suggest this limit will not be exceeded in the future.

**7. Payment methods**

**7.1.** Subject to the provisions outlined in clause 6.4, the customer pays GIATA a total licence fee for the services detailed in sections 1. to 4. to the amount of

EUR.....

per month, plus the statutory VAT, currently 19%. The licence fees are due to be paid every 6 months in advance.

**7.2.** The client authorises GIATA to debit the licence fees when due from their account via direct debit (direct debit order) in accordance with Appendix 1. This remuneration is not due for the first four weeks of the contract duration.

Should the client not have an account in a country where the SEPA scheme applies, the client authorises GIATA to charge the licence fees to the company’s credit card as they are due in accordance with Appendix 2. If paying by credit card, GIATA must additionally charge the client a credit card company fee of 1.5% of the sum to be deducted. Consequently, the respective licence fee increases by 1.5%.

The invoice will be sent via email to the below contact person. The client confirms that the owner of the address is responsible for handling and, where required, authorizing payments in relation to this agreement.

First and last name:.....

Email address: .....

Phone: .....

Any changes of the above need to be communicated to fibu@giata.com

**8. Tax liability regarding VAT for companies based outside of Germany**

If the client is registered abroad, i.e. outside of the region of the Federal Republic of Germany, the client is legally required to register the VAT with its tax authority. The levying of VAT in accordance with section 7.1. by GIATA is not applicable in this case. Clients within the European Union are also obligated to inform GIATA of their current VAT identification number and of a new VAT identification number if there are changes.

**9. Duration of the agreement, alteration to the contract, extraordinary termination right**

**9.1** The agreement is concluded for a minimum duration of 24 months. It is extended for a minimum duration of a further 12 months after its expiration if one of the parties to the agreement does not cancel it a minimum of three months before the end of the minimum

duration period, or as the case may be, the extended duration period of the contract. Termination must be given in writing. The right to terminate the contract for good cause remains unaffected.

**9.2.** GIATA reserves the right to terminate the contract without notice, should the client refuse to conclude a retail licence agreement, which replaces and annuls the present contract, although the maximum of 4,000 PI included in the monthly basic fee, according to §6, has been exceeded, and GIATA has offered the client a retail licence agreement with a 2-week term of acceptance, and the client is unable to prove that the PI limit will not be exceeded in the future. In the event of the unsuccessful expiration of this period of acceptance, GIATA may exercise the right to an extraordinary termination within 2 weeks of its expiry.

**9.3.** GIATA has the right to change and adapt these terms of use during the period of the contract, including expanding or reducing the services or adding services which incur a fee. GIATA shall inform the client of the amended conditions and in particular will point out the new clauses. GIATA will allow the client a reasonable time to decide whether they accept the amended terms for the further use of services and to confirm this. If no declaration is received before this deadline the altered terms are presumed to have been accepted. GIATA will expressly inform clients of these legal consequences at the beginning of the time period. Should the client decline the changes of these terms, then the terms of the contract remain unchanged. GIATA reserves the right in this instance to terminate the agreement within the legal termination period.

## **10. Limitation of liability**

**10.1.** In the case of intent or gross negligence GIATA is liable under the provisions of the law. GIATA is liable for minor negligence only in accordance with the provisions of the Product Liability Act, in cases of harm to life, the body or health, in cases of a breach in the basic contractual obligations or guarantees and in cases of fraudulent concealment of a defect. Damage claims for the minor negligent breach of basic contractual obligations is nevertheless restricted to foreseeable damages, typical for this type of contract, as long as there is no liability for harm to life, body or health.

**10.2.** The above limitation of liability applies to any claims for damages, including claims for compensation in the case of negligent acts or pre-contractual violations.

**10.3.** GIATA is liable for the errors of agents and representatives to the same extent.

## **11. Final Clauses**

**11.1.** When in doubt, content in the client's General Terms and Conditions which contradict this agreement will only become part of this agreement with GIATA's written approval.

**11.2.** The laws of the Federal Republic of Germany apply exclusively, excluding private international law and the United Nations Convention on Contracts for the International Sale of Goods.

**11.3.** Divergent agreements or sub-agreements are only valid if confirmed in writing. The same applies for waivers of the requirement of the written form itself.

**11.4.** In cases where certain terms of this agreement are, or become null and void, the validity of the remaining terms remains unaffected.

**11.5.** If the customer is a merchant or has no general court of jurisdiction in the Federal Republic of Germany, GIATA's head office is the exclusive place of jurisdiction. GIATA may also bring action against the client in their general place of jurisdiction.

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City, date, signature (Client)

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City, date, signature (GIATA)

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Print name, position, company stamp

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Print name, position, company stamp

## APPENDIX 1: Granting a mandate for the SEPA Core Direct Debit Scheme

<b>Name of the payment recipient:</b> GIATA GmbH - Gesellschaft zur Entwicklung und Vermarktung interaktiver Tourismusanwendungen GmbH	
<b>Address of the payment recipient:</b> Schlesische Str. 26 10997 Berlin Germany	<b>Please note:</b> A direct debit mandate is only valid in the original contract. The delivery by fax or email is not legally binding.
<b>Creditor identification number:</b> DE69ZZZ00000020261	
<b>Mandate reference number is your client number / product:</b> (will be sent to you separately)	

### SEPA direct debit mandate:

I/we hereby grant (a) the payment recipient GIATA GmbH - Gesellschaft zur Entwicklung und Vermarktung interaktiver Tourismusanwendungen GmbH the right to withdraw payments from my/our account via direct debit. And (b) I/we instruct my/our bank to honour the direct debit payments drawn from my/our account by the payment recipient GIATA GmbH - Company for the Development and Marketing of Interactive Tourism Applications GmbH.

### Note:

I/We can request the amount charged is refunded within eight weeks of the debiting date. The conditions agreed with my/our bank apply.

<b>Payment method:</b>	
<input checked="" type="checkbox"/> Recurrent payments	<input type="checkbox"/> Single payment

<b>Name of the payer (account holder):*</b>	
<b>Address of the payer:*</b>	
<b>IBAN:*</b>	<b>BIC:*</b>
<b>City:*</b>	<b>Date:*</b>
<b>Signature(s) of the payer(s) (account holder)*:</b>	

\*Required fields to be completed.

Before the first payment collection through a SEPA direct debit the payee (see above) will inform me/us of the proceedings for collection.

## APPENDIX 2: Credit card payments

<b>Client</b>	<b>represented by</b>
Street	Postcode / City / Country
Telephone	Legal Form
Fax	VAT Identification Number (EU only)
URL	Email

<b>Name of cardholder</b>	_____ <b>Card number (16 digits)</b>
<b>Valid until</b>	<b>CVC/CVV Code (security number)</b>
<input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> American Express <input type="checkbox"/> JCB  <b>Credit card type</b> <b>(please mark with a cross)</b>	_____ <b>Cardholder's signature</b>

In the case of payment by credit card, GIATA must additionally charge the credit card company fee to the client's account, at a rate of 1.5 % of the invoiced amount.

Please note, that for safety reasons and in accordance with our Privacy Policy and the international safety standards of the credit card industry (PCI DSS), we unfortunately cannot receive this data via e-mail. We therefore request you to forward your payment information via Fax: +49 (30) 42026519

\_\_\_\_\_  
City, date, signature (Client)

\_\_\_\_\_  
Print name, position, company stamp