

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against Priceline.com, Inc., Lowestfare.com, Inc., Travelweb, LLC, Travelport, Inc. (f/k/a Cendant Travel Distribution Services Group, Inc.), Cheaptickets, Inc., Trip Network, Inc., Orbitz, Inc., Orbitz, LLC, Expedia, Inc., Hotels.com, Hotels.com, L.P., Hotels.com GP, LLC, Hotwire, Inc., Travelnow.com, Inc., Sabre Holdings Corporation, Travelocity.com, Inc., Travelocity.com, LP, Site59.com, LLC (collectively referred to as "online travel companies" or "OTCs"), and potentially other entities for their direct and intentional violation and evasion of Mississippi's Sales Tax Law, MISS. CODE ANN. § 27-65-1, et seq. (along with other local tax laws and ordinances), in failing to remit the full and proper amounts of taxes imposed for the sale of hotel rooms to guests, resulting in millions of dollars in lost revenue and thereby causing harm to the State of Mississippi and its citizens; and

WHEREAS, the OTCs employ a nationwide business model in which they buy/acquire hotel rooms at wholesale prices and then sell hotel rooms to consumers at retail prices, controlling the entirety of the transaction as the merchant of record; and

WHEREAS, the OTCs, as persons engaged in the business of and deriving income from the sale of hotel rooms, should collect and remit a tax to the State of Mississippi equal to seven percent of the gross income they collect from such sales; and

WHEREAS, pursuant to the merchant model employed by the OTCs, the online travel companies charge and collect tax charges from consumers on the retail rate paid, but remit taxes only upon the wholesale rate paid by the OTCs, wrongfully pocketing the difference and withholding funds rightfully owed to the State and its citizens; and

WHEREAS, in addition to the state Sales Tax being collected by the OTCs, the OTCs are also charging and collecting local hotel taxes and tax charges, including but not limited to the "Tourism and Economic Development Taxes", from hotel guests at the time of purchase at the retail rate paid by consumers, but the online travel companies are only remitting these local taxes at the wholesale rate paid by the OTCs for the said rooms; and

WHEREAS, the Attorney General, as a constitutional officer possessing all the power and authority inherited from the common law as well as that specially conferred upon him by statute, *See* MISS. CODE ANN. §§ 27-65-87 and 7-5-55, has the right to institute, conduct and maintain this suit in order to enforce the laws of the State of Mississippi, preserve order and protect the public's rights; and

WHEREAS, the Attorney General has the right to maintain this suit in a *parens patriae* capacity due to the State's quasi-sovereign interest in the economic well-being of its residents and consumers who have been unfairly deceived by and who have suffered an economic loss due to the online travel companies' practice of charging retail tax charges but only remitting taxes on the wholesale price and bundling such taxes with alleged fees in order to hide their deceptive and unfair trade practices; and

WHEREAS, the State of Mississippi prohibits unfair or deceptive trade practices in or affecting commerce, *See* MISS. CODE ANN. § 75-24-5; and

WHEREAS, the Attorney General has reason to believe that the OTCs are using and have used unfair or deceptive trade practices in or affecting commerce and that it would be in the public interest to initiate proceedings against the OTCs to restrain them

by temporary or permanent injunction from the use of such methods, acts, or practices;
and

WHEREAS, the Attorney General has determined that the claims against the OTCs may include, among others, a declaration that the OTCs are subject to the Sales Tax and local hotel taxes, injunctive relief from further violations of the tax laws by the OTCs, violations of Mississippi's Sales Tax Law and the aforementioned local hotel tax laws and/or ordinances, conversion, unjust enrichment, assumpsit for money had and received, joint enterprise liability, violations of Mississippi's Consumer Protection Act, imposition of a constructive trust, statutory interest, penalties, fines and attorneys' fees, and punitive damages for the OTCs' intentional violation of the tax statutes and ordinances in failing to remit funds which should have been paid to the State of Mississippi or its citizens; and

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require work of numerous lawyers, paralegals, accountants, and secretaries who are familiar with sales tax and hotel tax litigation, and related issues for an extended period of time; and

WHEREAS, the below listed Firm is experienced in complex litigation involving lodging taxes and has consented to represent the State of Mississippi, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof;

IT IS, ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby retains the firm of Bird Law Group, P.C. ("Firm"), and its employed and/or affiliated attorneys are hereby designated as Special Assistant Attorneys General to investigate, research, and file the Claims in any appropriate Court or Courts or before any appropriate governmental agency, either individually or as part of a class action.

2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and its citizens. The Firm shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and the Firm will agree upon entities to be contacted and/or claims to be pursued; the Firm will thereafter be entitled to its reasonable fees and expenses, as provided below, on any recovery from such agree-upon entity or claims, discovered as a consequence of the Firm's inquiry/demand. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and the Firm shall cooperate fully with the Office of the Attorney General and shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.

3. The Attorney General and the Firm both recognize that the Claims present numerous factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Attorney General shall maintain responsibility for the public distribution of information concerning the matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Detailed contemporaneous time records shall be maintained by all law firms for their attorneys and staff working on this matter.

6. Notwithstanding the potential difficulties, the Firm has agreed to represent the State, and the Attorney General hereby agrees that the Firm will be compensated for its efforts on the following basis:

A. Fee Agreements:

Exhibit A – Retention Agreement: Matter Settled Prior to Initiation of Litigation

Exhibit B – Retention Agreement: Matter Resolved After Initiation of Litigation

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Firm, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis.

C. The Firm shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized, the Firm shall receive no compensation or reimbursement.

6. With the approval of the Attorney General, the Firm may associate other attorneys at its own expense and at no cost to the State of Mississippi. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-

transferable, nor are the Firm's commitments delegable without the express, written approval of the Attorney General.

DATED this 31st day of December, 2011.

**ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI**

By:  (by MWH)
JIM HOOD, ATTORNEY GENERAL

BIRD LAW GROUP, P.C.

By: 
WILLIAM Q. BIRD

Exhibit "A"
(Counsel Retention Agreement)
(Matter Settled Prior to Initiation of Litigation)

For any "Matter Settled Prior to Initiation of Litigation," the following structured contingent fee schedule for aggregate recovery shall apply and govern compensation of the Attorneys:

For Recovery by the State of Mississippi Up to \$25,000,000.00:

15%

For Recovery by the State of Mississippi between \$25,000,000.00 and \$75,000,000.00:

13%

For Recovery by the State of Mississippi between \$75,000,000.00 to \$200,000,000.00:

7%

For Recovery by the State of Mississippi between \$200,000,000.00 to \$500,000,000.00:

4%

For Recovery by the State of Mississippi between \$500,000,000.00 to \$1,000,000,000.00

2%

For Recovery by the State of Mississippi greater than \$1,000,000,000.00:

1%

Explanatory Note & Illustration of Fee Computation

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery by the State of Mississippi (e.g., "For Recovery by the State of Mississippi Up to \$25,000,000.00," *etc.*), there shall be a specified percentage or percentages governing the amount or valuation of the aggregate contingent fee in each such category, so that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the State of Mississippi by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added together to compute the aggregate fee to be paid to the

Attorneys. By way of illustration only, the cumulative contingent fee structure shown on this Exhibit "A" shall be computed, utilizing the following method:

Assume Recovery by the State of Mississippi of a monetary sum, benefit, or value equal to \$600,000,000.00.

The Attorneys' contingent fee will be computed by adding together the specified, applicable percentage of each category or level, as follows:

- 15% of the first \$25,000,000.00 (*i.e.*, 15% of any sums or values between 0 and \$25,000,000.00)

PLUS

- 13% of the next \$50,000,000.00 (*i.e.*, 13% of all sums or values between \$25,000,000.00 and \$75,000,000.00)

PLUS

- 7% of the next \$125,000,000.00 (*i.e.*, 7% of all sums or values between \$75,000,000.00 and \$200,000,000.00)

PLUS

- 4% of the next \$300,000,000.00 (*i.e.*, 4% of all sums or values between \$200,000,000.00 and \$500,000,000.00)

PLUS

- 2% of the next \$100,000,000.00 (*i.e.*, 2% of the difference between \$500,000,000.00 and the amount of the award greater than that sum or value, or in this example, \$600,000,000.00)
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Exhibit "B"
(Counsel Retention Agreement)
(Matter Resolved After Initiation of Litigation)

For any "Matter Resolved After Initiation of Litigation", the following structured contingent fee schedule for aggregate recovery shall apply and govern compensation of the Attorneys:

For Recovery by the State of Mississippi Up to \$25,000,000.00:

After filing complaint before discovery completed:	17%
After filing complaint after discovery complete awaiting trial:	20%
After commencement of trial:	25%

For Recovery by the State of Mississippi between \$25,000,000.00 and \$75,000,000.00:

After filing complaint before discovery completed:	15%
After filing complaint after discovery complete awaiting trial:	18%
After commencement of trial:	21%

For Recovery by the State of Mississippi between \$75,000,000.00 to \$200,000,000.00:

After filing complaint before discovery completed:	10%
After filing complaint after discovery complete awaiting trial:	14%
After commencement of trial:	18%

For Recovery by the State of Mississippi between \$200,000,000.00 to \$500,000,000.00:

After filing complaint before discovery completed:	6%
After filing complaint after discovery complete awaiting trial:	8%
After commencement of trial:	10%

For Recovery by the State of Mississippi between \$500,000,000.00 to \$1,000,000,000.00:

After filing complaint before discovery completed:	3%
After filing complaint after discovery complete awaiting trial:	4%
After commencement of trial:	5%

For Recovery by the State of Mississippi over \$1,000,000,000.00:

After filing complaint before discovery completed:	2%
After filing complaint after discovery complete awaiting trial:	3%
After commencement of trial:	4%

Explanatory Note & Illustration of Fee Computation

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery by the State of Mississippi (e.g., "For Recovery by the State of Mississippi Up to \$25,000,000.00," *etc.*), there shall be a specified percentage or percentages governing the amount or valuation of the aggregate contingent fee in each such category, so that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the State of Mississippi by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added together to compute the aggregate fee to be paid to the Attorneys. By way of illustration only, the cumulative contingent fee structure shown on this Exhibit "B" shall be computed, utilizing the following method:

Assume Recovery by the State of Mississippi of a monetary sum, benefit, or value equal to \$600,000,000.00, and assume further that the sum or value was derived "[a]fter filing complaint after discovery complete awaiting trial."

The Attorneys' contingent fee will be computed by adding together the specified, applicable percentage of each category or level, as follows:

- 20% of the first \$25,000,000.00 (*i.e.*, all sums or values between 0 and \$25,000,000.00)

PLUS

- 18% of the next \$50,000,000.00 (*i.e.*, all sums or values between \$25,000,000.00 and \$75,000,000.00)

PLUS

- 14% of the next \$125,000,000.00 (*i.e.*, all sums or values between \$75,000,000.00 and \$200,000,000.00)

PLUS

- 8% of the next \$300,000,000.00 (*i.e.*, all sums or values between \$200,000,000.00 and \$500,000,000.00)

PLUS

- 4% of the next \$100,000,000.00 (*i.e.*, 4% of the next sum or value greater than \$500,000,000.00 which, in this example, is \$600,000,000.00)