

**Rakuten Smart Pass/Rakuten Card AGREEMENT 2024-2025**

This Rakuten Smart Pass/ Rakuten Card Agreement (this "Agreement") is made and entered into by and between Nautech Guam Corporation dba; Nautech Travel Services., a Guam Corporation whose mailing address is: 1082 Pale San Vitores Rd., Ste 347, Tumon, Guam 96913 ("NAUTECH"), and the undersigned operator (the "Operator").

Whereas, NAUTECH is a land operator and operates ground tour services and online reservations and services for visitors to Guam;

Whereas, NAUTECH is an assigned local representative and General Service Agent for Rakuten Travel;

Whereas, the Operator is a provider of goods or services described herein;

Whereas, the parties hereto desire to better serve NAUTECH's customers (the "Customers");

Whereas, the Operator desires to have NAUTECH promote the Operator's services or goods to the Customers under the exclusive value incentive marketing program of the Card; and,

Whereas, the parties hereto desire to increase and better serve the Customers.

Now, therefore, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

**1. Term; termination.**

The initial term of this Agreement shall commence upon the date that the parties hereto sign this Agreement and shall expire on March 31, 2025, unless earlier terminated pursuant to the further provisions hereof; provided, however, that notwithstanding any other provision of this Agreement that may be to the contrary, this Agreement may be terminated for any reason by either party, at any time, upon seven days' written notice to the other party hereof.

**2. The Card (Rakuten Smart Pass).**

The Operator shall accept all Cards which are issued by NAUTECH.

**3. Rakuten Card (Credit Card).**

The Operator understands that Rakuten issues credit cards, which are plastic credit card with the "RAKUTEN" Credit Card logo thereon, which plastic credit card may be used by the Customer to purchase services or goods at participating merchants (the "RAKUTEN Card"). The Operator shall accept the RAKUTEN Card in the same manner as the Cards, if the Rakuten Card is "valid." A Rakuten Card shall be considered valid, if the Operator swipes the Rakuten Card on an appropriate electronic terminal, and the terminal indicates that the Rakuten Card is valid. The Operator shall not accept any Rakuten Card which is not valid. NAUTECH is hereby released from any and all liability to the Operator for any Rakuten Card which is not valid but accepted by the Operator.

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**4. Commission.**

There is **no commission** associated with this program. The operator agrees to provide the holder of the card with the agreed upon benefit with the terms which was first agreed upon. If the benefit cannot be offered, the operator will offer another benefit equivalent or like the original benefit offered.

**5. Description of incentives.**

The Operator shall provide NAUTECH with a written description of services or goods to be given to the Customers as value incentives. If the Operator intends to change any of the services or goods to be given to the Customers as value incentives, the Operator shall give not less than thirty (30) days advance written notice thereof to NAUTECH. Any such notice shall, upon acceptance and agreement to the changes by NAUTECH, be attached to this Agreement as an addendum. Notwithstanding any other provision of this Agreement, if any proposed change in the Operator's price to the Customers for any of the services or the goods is unacceptable to NAUTECH, then NAUTECH may, upon not less than fourteen (14) days written notice to the Operator, terminate this Agreement.

**6. Marketing.**

The parties shall, as they deem appropriate and may agree, coordinate any efforts to market the Operator's goods or services, and to create demand; therefore, *provided, however*, that the Operator may be required to pay to NAUTECH, in advance, for extraordinary costs incurred, or to be incurred by NAUTECH, and associated with any advertising or advertisement of the Operator's goods or services. Unless otherwise agreed in writing by NAUTECH, NAUTECH is not obligated, and does not guarantee, to sell any specific goods or services of the Operator, nor any minimum or specified number thereof.

**7. Insurance.**

In addition to any other insurance coverage as may be required by applicable law, each party shall maintain during the term of this Agreement a public liability insurance with respect to all of its activities and operations conducted pursuant to this Agreement. The Operator shall provide NAUTECH from time to time within ten (10) days following a request, a certificate evidencing its insurance coverage in accordance with this Section 7.

**8. Trademarks.**

Each party agrees never to contest the rights to any presently existing trademark or trade name of the other party. Neither party shall use any of the other party's trademarks or trade names in any manner or for any purpose whatsoever without obtaining the other party's prior written consent. Each party acknowledges that the other party shall be entitled to immediate injunctive relief against any misuse or infringement of its trademark by the other party and agrees to pay all attorneys' fees of the other party resulting from any action taken to terminate such misuse, infringement, or other violation under this Section 8.

**9. Responsibility for Employees.**

Notwithstanding any other provision to the contrary herein contained, each party hereto shall be solely responsible for the compensation and the conduct of its own employees, for the conduct of its own activities and operations, and for the payment of its own liabilities with respect to all transactions provided for herein.

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**10. Indemnification.**

Each party hereby indemnifies and holds harmless the other party and any of the other party's partners, officers, directors, agents, and employees (collectively the "Indemnitee") from and against any and all liability, losses, claims, demands, actions and suits, including claims for property damage, personal injury, or wrongful death, arising out of, or in connection with the indemnifying party's performance of this Agreement, and any person claiming by, through, or under the indemnifying party, for any failure to (i) conduct such performance in safe conditions, (ii) observe or perform all applicable laws, regulations, or ordinances, or (iii) perform any of the covenants or agreements to be performed by the indemnifying party hereunder. The indemnifying party shall reimburse the Indemnitee for all costs and expenses, including reasonable attorneys' fees incurred by the other party, in connection with the defense of any such claim. Each party, as a material part of the consideration for this Agreement, hereby assumes all risks of damage to property or injury to persons in, upon, or about its property, and waives all claims in respect thereof against the other party, except where such injury or damage is caused by the willful acts or negligence of the other party. In addition to and without limitation of the indemnification provisions contained herein, the Operator shall hold NAUTECH harmless from any and all claims, lawsuits, damages, expenses for personal injury and personal property loss or damage suffered by any of the Customers while on the premises of the Operator including any losses or claims resulting from the theft or the conversion of personal property of the Customers, or any injury or loss of any of the Customers in connection with the Operator's goods or services.

**11. Taxes.**

Each party hereto will be solely responsible for the payment of any and all taxes with respect to its income and the operation of its business. If for any reason the Government of Guam or any other taxing authority should assess, or attempt to assess, NAUTECH for any taxes with respect to the income of the Operator, the Operator immediately shall indemnify, defend, and hold harmless NAUTECH with respect to any such tax liability.

**12. Corporate Representations.**

If applicable, each corporate party hereto and each individual signatory on behalf of such corporate party represents and warrants that (i) such corporation is a duly qualified corporation licensed to do business on Guam, and (ii) such corporation has full power and authority to enter into this Agreement.

**13. Miscellaneous.**

- (a) All notices given to either party hereunder shall be in writing and hand-delivered, emailed, or mailed, postage prepaid, return receipt requested, to such party at its last known address.
- (b) The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.
- (c) This Agreement shall not create any partnership or joint venture between the parties. The legal relationship between NAUTECH and the Operator shall be that of principal and independent contractor, as applicable.
- (d) In the event of any action to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees and costs incurred with respect thereto.

(e) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(f) This Agreement is the entire agreement and supersedes any other prior oral or written contract or agreement between the parties regarding its subject matter and may be amended only by a written agreement signed by both parties. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party. This Agreement shall be governed by the laws of Guam.

In Witness Whereof, the parties hereby execute this Agreement.

Dated:

**NAUTECH GUAM CORPORATION**

Db; Nautech Travel Services



William Nault  
President & CEO

**OPERATOR:**

Company (Corporate) Name: \_\_\_\_\_

Trade Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

Signer's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Email: \_\_\_\_\_

**Vendor Incentive Program Description**

Corporate Name: \_\_\_\_\_

Trade Name: \_\_\_\_\_

Effective Date:    /    /

Incentive Benefit is for:

- Rakuten Smart Pass Holders
- Both Rakuten Smart Pass and Rakuten card (Credit Card Holders)

Benefit Type:

- Discount of \_\_\_\_\_%
- Gift Item: \_\_\_\_\_
- Added service or value: \_\_\_\_\_
- Other: (Explain): \_\_\_\_\_

Does the service or product first must be booked or purchased before receiving the benefit?

- Yes
- No

Comment Box:

Thank you for your support and participation to this program.