

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF INTERNET AND TECHNOLOGY

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In the Matter of

Assurance No. 22-016

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

**FAREPORTAL INC.,**

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law (“GBL”) § 349 into the marketing and sale of travel-related services on websites operated by Respondent Fareportal Inc. (“Fareportal” or “Respondent”). This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**OAG’s FINDINGS**

1. Fareportal is a New York corporation with its principal place of business at 137 West 25th Street, 11th Floor, New York, New York.
2. Fareportal is a hybrid online travel agency (“OTA”), a mix of traditional and online travel agencies. Fareportal operates under several brands, including CheapOair and OneTravel, each with corresponding websites and mobile platforms where consumers can search for and purchase airline tickets and make hotel and rental car reservations.

3. While Fareportal offers a range of travel products, its business is and has been primarily focused on marketing and selling airline tickets. Fareportal accesses the inventory of available airline tickets through a variety of channels, including from the airlines directly and the two major global distribution systems (“GDS”). A GDS is a computer system that enables transactions between airlines and travel agencies. The GDS provides real-time inventory of available flights to travel agencies. The two most widely used GDS systems are Sabre and Amadeus.

4. Fareportal earns a portion of its revenue through service fees added to the price of airline tickets it sells. For most domestic airline ticket purchases, Fareportal adds a service fee that is generally between \$0 and \$35 but can go as high as \$150.00 in certain circumstances. The service fee charged by Fareportal for the online purchase of an airline ticket is typically in the range of \$18.00.

5. Fareportal also earns revenue through cancellation fees. For cancellations made within 24 hours of booking, Fareportal’s policy is to charge a fee of up to \$50 per ticket for domestic flights and up to \$75 per ticket for international flights. In such instances, the service fee that had been added to the price of the ticket at the time of booking would ordinarily be refunded. In the years 2017 through 2019, Fareportal averaged over \$5 million in annual revenues from such cancellation fees.

6. Other revenue sources for Fareportal include commissions on certain airline tickets and sales of ancillary services such as travel protection.

7. For several years, Fareportal displayed, next to the top two flight search results, a false and misleading message purporting to convey the number of tickets left for those flights at the offered price. This “tickets left” message created a false sense of urgency designed to

prompt consumers to complete a purchase of airline tickets and thereby increase Fareportal's revenues.

8. In 2019, Fareportal designed and deployed several other misleading messages that contained false information regarding the available supply or popularity of airline tickets and other travel related products, also with the objective of improving sales. The particular tactics relevant to this Assurance are described below.

### **Urgency and Scarcity Messages**

9. Fareportal included a number of misleading messages on its online platforms that indicated that the supply of airline tickets was limited at a particular price, regardless of the actual number of airline tickets that were available. On certain of its online platforms, Fareportal used similar misleading messages in connection with hotel room availability.

10. In order to create a sense of urgency that would prompt consumers to complete a purchase, Fareportal added a misleading message related to the available supply of tickets for the top two flights returned from a search. In particular, Fareportal added 1 to the number of tickets the consumer had searched for ("X") and displayed a message indicating that there were only X+1 tickets left at the offered price. Thus, a consumer searching for one ticket would see a message stating "Only 2 tickets left" at the offered price, while a consumer searching for two tickets would see a message stating "Only 3 tickets left" at the offered price. The message was accompanied by a "Book Now" message — *e.g.*, "Book Now: Only X tickets left at this price!" Fareportal later modified the message to state, "Only [X] tickets left at" the offered price, as shown in the screenshot below.<sup>1</sup>

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<sup>1</sup> Fareportal also used the same message on any flight if the GDS reported a genuine limitation of available tickets at the offered price. In such cases, the number used in the message was the number of available tickets as reported by the GDS.

**New York All Airports (NYC) to Toledo Express (TOL)**  
 Mon, Nov 18, 2019 -- Fri, Nov 22, 2019 | 1018 results found

Get Your Promo Code to Save up to **\$20 off** our fees. [Learn more](#) [Get Promo Code](#)

All Fares

Non-stop/ 1 Stop	\$226.00 ~	\$226.00 ~	...	\$289.00 ~	...
1+ stop	\$230.70 ~	\$236.00 ~	\$235.00 ~	...	\$10,190.00 ~

Fares for our **carriers** are round trip, incl. all **taxes** and all **fees**. Airfares include applied Booking Bonus. Additional **baggage fees** may apply. ~Some flights displayed may be for alternate dates and/or airports. Certain results may be outside your search criteria.

**Save \$147**  
 Low Fare Calendar from **\$217.70**

Cheapest **\$226.00**   Shortest **\$226.00**   Alternate Dates **\$226.00**   Nearby Airports **\$226.00**   Recommended **\$289.00**

**Save \$138.40** by selecting this alternate date and nearby airport.

11:30a EWR	2h 01m Nonstop	01:31p DTW	Tue Nov 19	Select this Departure >	<b>Only 2 tickets left at \$226.00</b> Final Total Price (incl. fees)
09:00a DTW	1h 47m Nonstop	10:47a EWR	Sat Nov 23	Select this Return >	<b>SELECT &gt;</b>

**Flight Details** ▾   OUTBOUND Flight 3537 Operated By REPUBLIC AIRLINES DBA UNITED EXPRESS | INBOUND Flight 3526 Operated By REPUBLIC AIRLINES DBA UNITED EXPRESS   Basic Economy

5:19p LGA	4h 52m 1 stop	10:11p TOL	Mon Nov 18	Select this Departure >	<b>Only 2 tickets left at \$365.00</b> Final Total Price
5:00a TOL	6h 03m 1 stop	11:03a EWR	Fri Nov 22	Select this Return >	<b>SELECT &gt;</b>

**Flight Details** ▾   OUTBOUND Flight 5443 Operated By PSA AIRLINES AS AMERICAN EAGLE | INBOUND Flight 5297 Operated By PSA AIRLINES AS AMERICAN EAGLE   Fusion Fare

7:59a LGA	5h 28m 1 stop	01:27p TOL	Mon Nov 18	Select this Departure >	<b>\$365.00</b> Final Total Price
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**Filter Your Results**

Stops

- Nonstop \$226.00
- 1 stop \$365.00
- 2+ Stop \$369.20

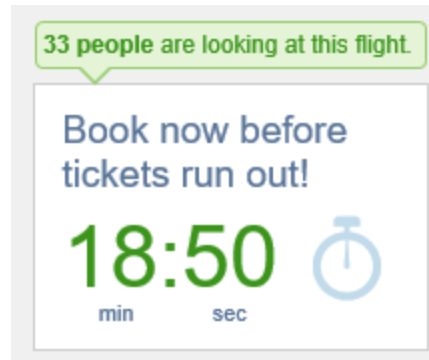
Flight Times

Going to Ohio (TOL)  
 Depart: 5:00 AM - 10:00 PM

Return to New York (NYC)  
 Depart: 5:00 AM - 7:45 PM

11. The messages conveyed the false impression that the listed tickets could sell out at that price at any moment.

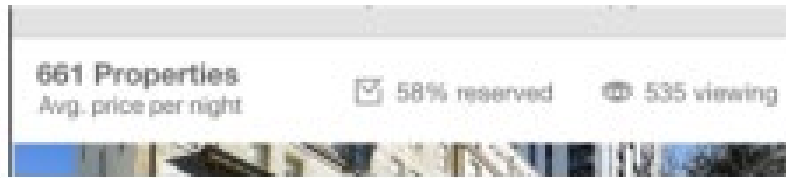
12. In 2019, Fareportal further increased the perception of urgency related to airline tickets offered on its sites by adding another misleading message that was shown to a consumer after he or she had selected a flight from the search results for potential purchase. That message indicated that other consumers were currently looking at tickets for the same flight.



13. However, the purported number of people “looking” at the flight was a computer-generated random number between 28 and 45. Thus, even if a consumer were the only person considering purchasing tickets for a particular flight at a given time, Fareportal would falsely represent that at least 28, and as many as 45, other people were considering purchasing tickets for the same flight at that particular time.

14. Adjacent to this messaging, Fareportal displayed a countdown timer and the message, “Book now before tickets run out!”. However, the time left in the running countdown timer was arbitrary and unrelated to the availability of tickets. Fareportal did not reserve tickets for the consumer while the timer was counting down; indeed, another consumer could have selected and purchased the selected tickets at any time. When the timer expired, the GDS would be queried to determine whether the ticket the consumer was viewing was still available at the offered price. Unless the GDS reported a change, the consumer could complete the purchase after the time had expired.

15. Fareportal utilized similar tactics to increase certain hotel bookings. In 2019, on its iOS application, Fareportal introduced messages that misrepresented the percentage of hotel rooms in a particular area that had already been reserved and the number of people that were currently viewing hotels in the selected area for the date range chosen by the user.



16. The percentage of rooms “reserved” was actually a computer-generated random number within a range that depended on the proposed check-in date entered by the consumer. If the check-in date was more than 30 days away, the message would indicate that between 0-40% of available rooms were already reserved. If the check-in date was between 16-30 days away, the message would indicate that between 41-70% of the hotel rooms were booked. If the check-in date was between 7 and 15 days away, the message would indicate that between 71-80% of the hotel rooms were booked. If the check-in date was less than 7 days away, the message would indicate that between 81-99% of the rooms were reserved.

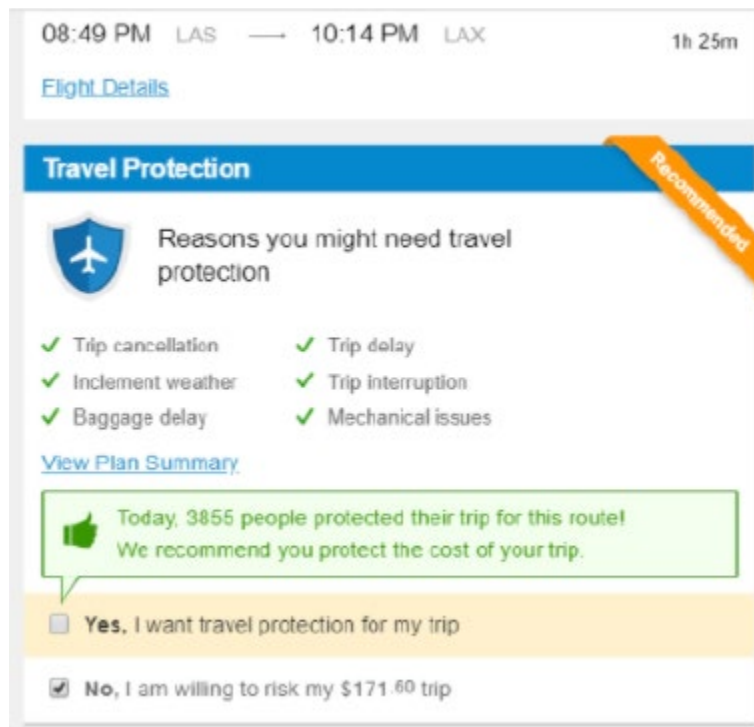
17. The number of people “viewing” hotels in the area was also unrelated to any viewing data. Fareportal generated the number based on the nightly rate for the fifth hotel returned in the search. In most cases, the number was the difference between the numerical value of the dollar figure and the numerical value of the cents figure. For example, if the nightly rate of the fifth hotel returned in the search was \$195.63, Fareportal represented to consumers that 132 (195-63=132) people were viewing hotel listings in the area.

### **Other Misleading Social Nudge Messages**

18. In 2019, Fareportal introduced several other features on its websites and mobile platforms designed to increase sales of ancillary travel products and services, like travel protection and seat upgrades, through misleading messages that inaccurately represented the number or percentage of other consumers that had purchased the product in question. As it did in

the “tickets left,” “number of people viewing,” and “percentage booked” messages, Fareportal generated false numbers to populate these messages.

19. Fareportal recommended that consumers booking flights also purchase a travel protection policy to “protect the cost of [their] trip” and required consumers to accept or decline such a policy before completing a purchase.



20. Fareportal displayed a number of different false messages that purported to identify the number of consumers that had purchased travel protection that day or for the particular route selected. The numbers in these messages did not, in fact, reflect the actual number of consumers that had purchased travel protection but were instead computer-generated random numbers.

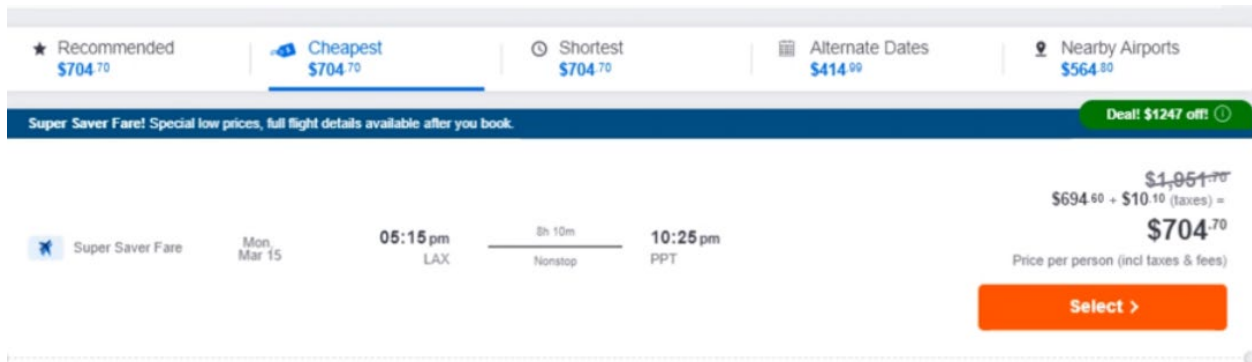
21. Fareportal employed a similar strategy with respect to seat upgrades for certain flights. In particular, for certain flights, Fareportal showed messages to consumers indicating that a certain percentage of consumers had upgraded their seats for the selected flight. Like the travel

protection messages, the purported percentage of passengers who had purchased seat upgrades was actually a computer-generated random number.

### Misleading Slash-through Pricing

22. In April 2020, Fareportal began marketing certain airline tickets on its websites using price comparisons that appeared to show that Fareportal was offering tickets for sale at a discounted price.

23. Fareportal displayed the price comparisons on the flight search result webpage. The comparison price typically appeared as a slashed-through price immediately above or adjacent to the current price at which Fareportal was offering the tickets for sale with a diagonal or horizontal line running through it. Above the slashed-through price, Fareportal displayed an additional message that stated either “Deal! \$[X] off!” or “\$[X] off!”, where [X] was the difference between the higher, slashed-through price and the actual ticket price. An example of a Fareportal price comparison is shown in the image below.



24. Fareportal’s price comparisons and the associated messaging conveyed that the advertised tickets had previously been offered for sale at the higher, slashed-through comparison price and were currently available from Fareportal at a discount from that price.



25. These representations, however, were not accurate. In most cases, the advertised tickets were never offered for sale at the higher, slashed-through comparison price. Indeed, for certain low-cost carriers, Fareportal's slashed-through comparison prices were often higher than the prices at which the same tickets could be purchased directly from the airlines or competitor OTAs.

26. Fareportal engaged in this practice when an airline published two fare "types" for the same ticket, one of which was more expensive than the other. To generate the slashed-through comparison price, Fareportal selected the more expensive fare type, referred to in the industry as the "published fare," and added its service fee. Critically, the resulting price was used only in price comparisons; Fareportal never offered tickets for sale at that price. To set the price at which it actually offered tickets for sale, Fareportal selected the less expensive fare type, referred to in the industry as the "private fare," and added its service fee.

27. If a consumer hovered their cursor over the small information "i" icon next to the "\$[X] off!" message, a pop-up window appeared that stated, "Discount off published fare." In July 2020, Fareportal modified the text in the pop-up window to the following: "Discount off published fare for the same itinerary searched today, including our service fees." Neither version of the pop-up messages cured or even addressed the false impression conveyed by the slashed-through price or the associated claim of "\$[X] off!" that the advertised tickets had previously been offered for sale at the higher, slashed-through comparison price.

### **Misleading Service Fee Disclosures**

28. For flights on certain airlines, Fareportal provides consumers a price breakdown on the checkout page. Prior to August 2020, this breakdown typically included a line item

labeled “Base Price” and a separate line item labeled “Taxes and Fees”. The “Taxes and Fees” text was hyperlinked.

Price Details (USD)	
	1 Adult
Base Price	\$186. <sup>00</sup>
<a href="#">Taxes &amp; Fees:</a>	\$39. <sup>02</sup>
Travel Protection:	Declined
<a href="#">Promo Code</a> or <a href="#">Gift Card</a>	
<b>Final Total Price:</b>	<b>\$226.<sup>00</sup></b>
Please note: All fares are quoted in USD. Some airlines may charge <a href="#">baggage fees</a> . Your credit/debit card may be billed in multiple charges totaling the final total price.	

29. If a consumer clicked on the “Taxes and Fees” link, a pop-up window would appear that contained a schedule of governmental charges and Fareportal’s service fees.

Name & Description	May Apply To	Code	Amount
<b>Travel Facilities Tax</b> (aka Alaska/Hawaii Ticket Tax) Applies to certain flight segments to or from Alaska or Hawaii.	U.S. Domestic and International	US	\$8.40
<b>U.S. Federal Segment Fee</b> Per-segment fee applicable to flights within the continental United States	U.S. Domestic and International	ZP	\$3.90
<b>U.S. Excise Tax</b> (aka U.S. Domestic Transportation Tax; U.S. Ticket Tax) Percentage of fare; applies to flights within the continental United States or Canada/Mexico 225-mile buffer zones.	U.S. Domestic and International	US	7.50%
<b>Passenger Facility Charge (PFC)</b> Variable fee based on airport for facilities improvement. A maximum of 4 charges per itinerary applies.	U.S. Domestic and International	XF	up to \$18
<b>September 11th Security Fee</b> (aka U.S. Passenger Civil Aviation Security Fee) U.S. government-assessed fee of \$2.50 per U.S. enplanement per ticketed journey for security costs not to exceed \$5.00 one-way or \$10.00 round-trip.	U.S. Domestic and International	AY	up to \$10
<b>U.S. International Transportation (Arrival/Departure) Tax</b> Applies to all flights arriving in or departing from the United States, Puerto Rico, or the U.S. Virgin Islands.	International	US	\$16.70
<b>U.S. Animal and Plant Health Inspection Service (APHIS) Fee</b> Applies to all flights originating abroad, except Canada, and landing in the United States, Puerto Rico, or the U.S. Virgin Islands.	International	XA	\$5.00
<b>U.S. Immigration and Naturalization Fee</b> Applies to international arrivals to the United States, Puerto Rico, or the U.S. Virgin Islands.	International	XY	\$7.00
<b>U.S. Customs User Fee</b> Applies to international arrivals from outside of the U.S. Customs territory.	International	YC	\$5.50
<b>International Taxes and Government or Airport-imposed fees</b> Various foreign taxes, inspection fees, and security charges typically excluding airport departure taxes	International	Varies	up to \$349*
<b>Our Fees †</b>	<b>May Apply To</b>	<b>Code</b>	<b>Amount</b>
<b>Air Transaction Service Fees</b> On most airlines a service fee up to \$35 <sup>†</sup> is charged on a per-passenger, per-ticket basis. **	U.S. Domestic and International	Fees 0	\$0.00 to \$35.00
<b>Hotel Transaction Service Fees</b> (per night, per room)	All Hotels	Fees 0	up to \$37.00
<b>Car Rental Transaction Service Fees</b> (per rental)	All Car Rentals	Fees 0	up to \$35.00

30. As shown in the image above, clicking on the “Taxes and Fees” hyperlink opened a table containing two sections, one for government taxes and one for “Our Fees”—*i.e.*, Fareportal’s service fees. The line item label of “Taxes and Fees” in the price breakdown and the link to the table shown above conveyed the message that Fareportal’s service fee was included in the Taxes and Fees line item in the price breakdown.

31. Fareportal’s service fee, however, was not part of the “Taxes and Fees” amount but, instead, was included in the base price.

### Misleading Cancellation Fee Disclosures

32. Airlines are required by law to offer, for US-related flights purchased more than 7 days in advance, free cancellations for a 24-hour period. Most major OTAs follow the airline rule. In contrast, Fareportal’s policy is to charge a cancellation fee of up to \$75 per ticket for airline ticket purchases cancelled within 24 hours of booking.

33. Despite its atypical policy of charging a fee for cancellations made within 24 hours of booking, Fareportal promoted “24 hour cancellation” as a feature of tickets purchased on its websites.

The screenshot displays a flight booking interface. At the top, a yellow banner reads "Book Now: Only 2 tickets left at \$126<sup>00</sup> per person!". Below this is a blue header for "Flight Details". A green banner states "You saved \$27<sup>00</sup> by selecting this alternate date and nearby airport". A red checkmark icon is next to the text "Good choice! This deal is backed by our Price Match Promise." To the right, a red circle highlights the text "24 hour cancellation". Below this are two flight options. The first is for Tuesday, Sep 24, from RDU to ISP, departing at 05:14p and arriving at 07:08p, with a 1h 54m flight time. The second is for Sunday, Sep 29, from ISP to RDU, departing at 08:01p and arriving at 10:04p, with a 2h 03m flight time. Both flights are nonstop and in the Coach cabin. Each flight option has a "Change this flight" button. At the bottom, there are links for "Flight Details", "Fare rules", and "Baggage fees".

34. Fareportal did not clearly and conspicuously disclose to consumers that a fee would be charged for cancellations made within 24 hours of booking. Instead, Fareportal disclosed this information through a pop-up window that was activated only if a consumer clicked the small “i” icon next to the “24 hour cancellation” and in the terms and conditions displayed in fine print during check out.

35. Many consumers who viewed the “24 hour cancellation” messages while booking flights on Fareportal sites believed that it was Fareportal’s policy to allow cancellations within 24 hours of booking at no cost.

Respondent’s Violations

36. Respondent’s conduct violated Executive Law § 63(12), which authorizes the OAG to pursue repeated fraudulent or illegal acts, and GBL §§ 349 and 350, which prohibit deceptive acts and practices and false advertising.

37. Respondent neither admits nor denies the OAG’s Findings, paragraphs 1-35 above.

38. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL §§ 349 and 350.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

39. For the purposes of this Assurance, the following definitions apply:

a. “Clear(ly) and Conspicuous(ly)” mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be

presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“Triggering Representation”) is made through only one means.

- ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  - iii. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  - iv. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.
  - v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the Triggering Representation appears.
  - vi. The disclosure must not be contradicted or mitigated by, or inconsistent with, any other representation(s).
  - vii. The disclosure must not be combined with other marketing or promotional text or information that is unrelated or immaterial to the subject matter of the disclosure or not legally required.
  - viii. The disclosure must be in close proximity to the Triggering Representation.
- b. “Comparison Price” means any price used as a basis for comparison to a price

offered by Fareportal for Travel Reservations.

- c. “Hotel Rooms” mean any hotel or motel rooms that are available for booking or reservation through a Fareportal site.
- d. “Travel Countdown Timer” means any timer displayed in connection with the booking or purchase of airline tickets.
- e. “Travel Reservations” mean any booking or purchase related to travel, including but not limited to the purchase of airline tickets and bookings for lodging and car rentals.

40. Respondent shall comply with Executive Law § 63(12) and GBL §§ 349 and 350 in connection with the offer and provision of Travel Reservations, except where such laws are preempted by federal law.

41. Respondent shall not misrepresent, expressly or by implication, the availability of Travel Reservations, including but not limited to:

- a. Representing the number of airline tickets that are available, or available at a certain price, for purchase for a scheduled flight unless the representation reflects the actual number of available seats that remain, or that remain at a certain price, as reported by the applicable airline, GDS, third-party aggregator, consolidator, or any other industry-standard data source that is available now or may be available in the future, unless Fareportal is aware that such reporting is inaccurate; and
- b. Representing that a smaller number or percentage of Hotel Rooms are available for booking or reservation at a certain price than are in fact available as reported by the hotel or industry supplier, third-party aggregator, or any other industry-standard data source that is available now or may be available in the future.

Respondent shall not be deemed to have violated this paragraph solely due to Respondent's reliance on inaccurate reporting by an industry-standard data source, unless Respondent is aware that such reporting is inaccurate.

42. Respondent shall Clearly and Conspicuously disclose, with any Travel Countdown Timer, the consequences of allowing the Travel Countdown Timer to expire prior to purchase.

43. Respondent shall not misrepresent, expressly or by implication, the number or percentage of individuals who are viewing or have purchased Travel Reservations, including but not limited to:

- a. Using a randomly generated value to represent the number or percentage of individuals who are viewing an offer or have purchased a product or service;
- b. Using a value based on historic data to represent the number or percentage of individuals who are viewing an offer or have purchased a product or service without Clearly and Conspicuously disclosing that the value is based on historic data and the time period of the historic data used to generate the value; and
- c. Using an input from a consumer's search criteria to generate an unsupported or inaccurate number or percentage of other consumers who are viewing an offer or have purchased a product or service.

Respondent shall not be deemed to have violated this paragraph solely due to Respondent's reliance on inaccurate reporting by an industry-standard data source of the number or percentage of consumers who have purchased a product or service, unless Respondent is aware that such reporting is inaccurate.

44. Respondent shall not display a Comparison Price, in the form of a strike-through price or similar display, and thereby represent, expressly or by implication, that the price at which Respondent offers a product or service is less than one or more Comparison Prices, unless:

- a. The product or service offered by Fareportal was available for purchase by the public at the Comparison Price in reasonable quantities and for a reasonable period of time either (i) immediately prior to the offer or (ii) during a time frame that is identified and clearly disclosed;
- b. Respondent clearly identifies and describes the Comparison Price; and
- c. The product or service was not made available for purchase at the comparison price for the purpose of establishing a fictitious higher price.

45. Respondent shall, in all disclosures related to Respondent's service fees, clearly distinguish Respondent's service fees from governmental taxes and fees.

46. Respondent shall, when indicating that a flight is offered with "24-hour cancellation" or a similar statement implying the ability to cancel a booking within 24 hours, Clearly and Conspicuously disclose that a Fareportal service fee may be charged for cancellations made within 24 hours, if that is the case.

47. If the OAG believes Respondent has failed to comply with a provision of the Assurance, and if in the OAG's sole discretion the failure to comply does not threaten the health or safety of the citizens of New York or create an emergency requiring immediate action, prior to taking legal action for any alleged failure to comply with the Assurance, the OAG shall provide notice to Respondent. Respondent shall have 14 days from receipt of such notice (the "Notice Period") to provide a written response, including either a statement that Respondent believes it is in full compliance with the relevant provision or a statement explaining why it did not comply



with the relevant provision, and how it has come into compliance or when it will come into compliance. Respondent shall not seek a declaratory judgment concerning any alleged failure to comply with the Assurance during the Notice Period.

48. Within thirty (30) days of the effective date, Fareportal shall provide notice of the requirements of this Assurance to each of its current officers and managers that have supervisory authority with respect to the subject matter of this Assurance. Further, Fareportal shall provide notice of the requirements of this Assurance to each new officer and manager that has supervisory authority with respect to the subject matter of this Assurance within thirty (30) days from which such person assumes his/her position at Fareportal.

#### Monetary Relief

49. Respondent shall pay to the State of New York \$2.6 million dollars (\$2,600,000.00) in disgorgement and costs (the “Monetary Relief Amount”). Payment of the Monetary Relief Amount shall be made in full within fourteen (14) days of the effective date of this Assurance and reference AOD No. 22-016.

50. Payments shall be made by wire transfer in accordance with instructions provided by an OAG representative.

#### **MISCELLANEOUS**

51. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 58, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance, subject to any applicable work product or attorney-client privilege;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

52. Respondent's agreement to the terms of this Assurance shall not be deemed a waiver of any defense related to preemption, except with respect to the prospective relief set forth in paragraphs 39-48.

53. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

54. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, except where such assignment, delegation, or transfer is part of a merger, acquisition, bankruptcy, or other transaction in which a third party assumes control of all of the Respondent's assets or a part thereof.

55. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

56. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

57. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-016, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Liwayway Reilly, Esq.  
General Counsel  
Fareportal Inc.  
137 West 25<sup>th</sup> Street; 11<sup>th</sup> Floor,  
New York, NY 10020

With a copy to:

Andrew Lustigman, Esq.  
Olshan Frome Wolosky, LLP  
1325 Avenue of the Americas; 16<sup>th</sup> Floor  
New York, NY 10019

If to the OAG, to:

Marc Montgomery, Assistant Attorney General, or in his/her absence, to  
the person holding the title of Bureau Chief  
Bureau of Internet & Technology

28 Liberty Street  
New York, NY 10005

58. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-35 above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

59. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

60. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Werner Kunz-Cho, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of Fareportal.

61. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

62. Respondent shall not make or permit to be made any public statement denying, directly or indirectly, the propriety of this Assurance or the OAG investigation. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right to take positions in

defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding.

63. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

64. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

65. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

66. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

67. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

68. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

69. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for

purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

70. The effective date of this Assurance shall be March 10, 2022.

**LETITIA JAMES**  
ATTORNEY GENERAL OF THE  
STATE OF NEW YORK



By: Marc Montgomery  
Assistant Attorney General  
Bureau of Internet and Technology  
Office of the New York State  
Attorney General  
28 Liberty St.  
New York, NY 10005  
Phone: (212) 416-8433  
Fax: (212) 416-8369

3/16/22  
Date

**FAREPORTAL INC.**



By: Werner Kunz-Cho

3/10/22  
Date