



Campaign Partner Agreement

Acknowledgments

- A. Tourism Top End proposes to book certain services for the Campaign Partner with Customers as the Campaign Partners agent for commission ('Services').
- B. The terms governing the booking of the Services are governed by this Agreement.

1 Definitions

1.1 Definitions

Agreement means this agreement.

Applicable laws means the laws, of the Commonwealth, any State or Territory thereof that applies to this Agreement or the Services provided in connection with this Agreement to the Customers.

Authorities mean any authority, agency, government department, local government body established by Applicable laws.

Bookings mean the reservations made by Tourism Top End for Customers for the Services.

Booking Fee means the costs charged to the Customer from time to time for the Services by the Campaign Partner.

Commencement Date means the date upon which the Campaign Partner signs this Agreement.

Commission means 10% of each Booking Fee.

Customers mean the person or persons who make bookings with the Tourism Top End for provision of the Services by the Campaign Partner.

Expiry Date means the date upon which either party provides the other with 14 days notice in writing of its intention to terminate this Agreement.

Force Majeure Event means

- (a) fire, flood, lightning storm or event, earthquake, utility failures, elements of nature or act of God;

- (a) riot, civil disorder, malicious damage, rebellion or revolution, acts of war or terrorism;
- (b) industry wide strikes; and
- (c) other similar cause beyond the reasonable control of the non-performing party,
- (d) but in each case only if, and to the extent that, the non-performing party is without fault in causing the default or delay, the default or delay could not have been prevented by taking steps specifically required under this Agreement or by taking other reasonable precautions and the default or delay cannot reasonably be circumvented by the non-performing party at its expense through the use of alternate or other means.

Intellectual Property means any and all copyright, registered or unregistered trademarks, design, character names, domain names, business notes, patents, inventions, confidential information and any other similar industrial and intellectual property in any country in the world, in, or arising as a result of, the provision of the Services for the creation of the Advertising, including any such rights not yet in existence.

Campaign Partner means the Campaign Partner specified in the Schedule.

Campaign Partner Materials means all materials provided by the Campaign Partner to Tourism Top End in connection with any Advertising that Tourism Top End agrees to provide for or on behalf of the Campaign Partner from time to time including any photographs, video footage, written materials and materials in electronic form.

Campaign Partner Terms means the terms and conditions upon which the Campaign Partner agrees to provide the Services to the Customer as provided by the Campaign Partner to Tourism Top End from time to time.

Services means the services to be provided by the Campaign Partner to the Customers specified in the Schedule.

Terms means the terms and conditions of this Agreement.

1.2 Interpretation

- (a) The Acknowledgments will be interpreted as forming part of this Agreement and shall be construed together with the balance of the Agreement as though they form part of the terms and conditions of this Agreement.

2 Eligibility

- C. An eligible Campaign Partner is an organisation or individual provider that offers a bookable tourism product and meet the following eligibility criteria:
 - a) Offer accommodation, touring, attraction or car hire

- b) Product must be bookable through the Tourism Top End and Katherine Visitor Information Centre Bookeasy reservations system
- c) Product must be consumed within the Northern Territory
- d) Legally constituted
- e) Australian registered
- f) Currently operate in the NT
- g) Employ resident Territorians

D. Some specific exclusions include:

Gambling Services

Alcohol or promotion of

3 Campaign Partner Payment and Obligations

3.1 Campaign Partner Agreements

The Campaign Partner agrees that:

- a. Campaign Partner will be eligible to have one (1) product loaded into the Bookeasy system for sale for the duration of the Campaign – 04 October 2021 – 31 January 2022 (when travel needs to be completed)
- b. Campaign Partner will accept the Booking from Tourism Top End for the nominated product to the Customer on condition that the Customer pays the Booking Fee prior to delivery of the Services;
- c. Tourism Top End will hold the Service Fee in trust for the Campaign partner. The Service Fee is a commission for placing the Booking by travel consultants employed by Tourism Top End, a not for profit association.
- d. Tourism Top End will receive a Service Fee (commission) of 10% for placing the Bookings for the Campaign Partner product
- e. Tourism Top End will deduct the Service Fee from the Booking Fee held in trust;
- f. Tourism Top End will pay the Service Fee (minus the Service Fee) to the Campaign Partner within 15 days after the Service is completed;
- g. Campaign Partner will provide the Services (and any other services, food or beverages requested by the Customer incidental thereto) to the Customer;
- h. Campaign Partner will be bookable and appear on the Campaign page on the Tourism Top End website for the duration of the campaign – 04 October 2021 – 31 January 2022 (when travel needs to be completed)

- i. Campaign Partner to provide confirmation within 24 hours of receiving the booking request from Tourism Top End / Katherine Visitor Information Centre
- j. Campaign Partner will provide Tourism Top End with best available rates - to ensure transparency to consumers
- k. Tourism Top End makes no warranty to the Campaign Partner that the Customer will comply with the Bookings in whole or in part and does not accept any liability of the Customer to the Campaign Partner including (but not limited to):

any cancellation fee or charge;

- a. the Customers not attending for the Services;
- b. the Customers not accepting the terms and conditions of the Booking;
- c. the Customers not paying for any other food, beverages or services requested by the Customers and provided by the Campaign Partner in connection with the Services ;
- d. the Customers not complying with any terms implied in connection with the Booking or the Campaign Partners Terms;
- e. any loss or damages the Campaign Partner suffers in connection therewith.

4 Warranties by the Campaign Partner

4.1 Warranties

The Campaign Partner warrants to Tourism Top End as follows:

- a. the Campaign Partners Terms are not illegal, void or unenforceable;
- b. the Campaign Partners Terms comply with all Applicable Laws and will continue to do so until the Expiry Date;
- c. the Campaign Partners Services comply with All Applicable Laws and all requirements of all Authorities and will continue to do so until the Expiry Date including but not limited to:
 - i. permits, licences and registrations; and
 - ii. occupational health and safety laws;
- d. the Campaign Partner must take out and maintain insurances of a type and to an amount that is to a standard, having regard to the Campaign Partners Services, equal to the Australian Standards or industry best practice whichever is the greater;
- e. to the fullest extent permitted by Applicable Law, Tourism Top End will not be liable to the Campaign Partner or anyone else for any

loss or damage, however caused (including negligence), which may be directly or indirectly suffered, in connection with this Agreement;

- f. the Campaign Partner has complied with and will continue to comply with all Campaign Partnership obligations contained in Tourism Top End's Constitution under the Associations Act;
- g. all information provided by the Campaign Partner to Tourism Top End in connection with the Services are true and correct and will remain so until Expiry of this Agreement;
- h. all Campaign Partner Materials belong to the Campaign Partner and that the Campaign Partner owns the Intellectual Property in them;
- i. the Campaign Partner grants to Tourism Top End until the Expiry Date, a non-exclusive, royalty free, licence (including the right of-sublicence) to:
 - i. produce, make, take and cause to be produced, made and taken by others use; and broadcast, use, reproduce, transmit, publish and communicate,
 - ii. Tourism Top End (in conjunction with Tourism NT) reserve the right to decline a provider application should the applicant not be deemed as meeting the eligibility criteria or the intent of the program.
 - iii. Tourism Top End also reserve the right to suspend a Campaign Partner if a complaint is made against the Campaign Partner that cannot be resolved.
 - iv. Applications to be assessed by a panel including representatives from Tourism NT.

5 Acknowledgements

5.1 Campaign Partner Acknowledges

- b) The Campaign Partner acknowledges and agrees that Tourism Top End:
 - (a) does not by agreeing to act as a selling agent pursuant to this Agreement in any way endorse the Services or the quality and compliance of the Services with Applicable Laws;
 - (b) does not accept any responsibility for any Bookings it makes which exceed the Campaign Partners capacity to provide the Services;
 - (c) does not make independent enquiries of the Campaign Partners Services to determine:
 - (i) compliances with Applicable Laws or

- (ii) the truthfulness or accuracy of Campaign Partner Materials;
 - (iii) the Intellectual Property rights of the Campaign Partner in connection with Campaign Partner Materials;
 - (iv) if necessary licences, permits or registrations are held by the Campaign Partner for the provision of the Services.
- (d) does not assess the financial capacity of the Customer to pay for the Services or any other food, beverages or services requested in connection with the Services.

6 Indemnity

6.1 No liability

- (a) The Campaign Partner must perform the Services at the Campaign Partner's sole risk and Tourism Top End shall not be liable to the Campaign Partner or any other person for any loss, damage, injury (which expression shall include disease or illness), or death sustained by any person or to any property, howsoever caused, arising out of negligence, breach of duty, or breach of statute by the Campaign Partner, its employees, other agents or contractors in connection with the Services or this Agreement.

6.2 Indemnity

- (a) The Campaign Partner must be solely liable for and indemnify and keep indemnified Tourism Top End, its officers, employees, and agents against all loss of reputation, costs, charges, damages, expenses, proceedings, claims, and demands of any nature whatsoever, for which the Tourism Top End is held liable, or which it incurs, including legal fees on a solicitor/own client basis, for any matter or thing if arising out of, or as a result of negligence, breach of duty, or breach of statute by the Campaign Partner, or its employees, other agents or contractors in connection with the Services or this Agreement.

6.3 Agency

- c) For the purpose of this clause 6, Tourism Top End shall be or be deemed to be acting as agent or trustee for and on behalf of and for the benefit of its officers, employees, and agents from time to time and all such persons shall to this extent be or be deemed to be parties to this Agreement.

7 Disclaimers and Limitation of Liability

7.1 Exclusions

- d) Except where to do so would cause any part of these terms to be illegal, void or unenforceable, Tourism Top End:

- (a) excludes all conditions and warranties implied into these terms;
- (b) to the fullest extent permitted by applicable law, is not liable to the Campaign Partner or anyone else for any loss or damage, however caused (including negligence), which may be directly or indirectly suffered, in connection with this Agreement; and
- (c) excludes liability (whether that liability arises under contract, tort (including negligence) or statute) for any special, indirect or consequential loss or damage (including without limitation loss of revenue) suffered or incurred in connection with this Agreement.

7.2 Further Exclusions

- e) Without limiting the general disclaimer, Tourism Top End:
 - (a) makes no warranty as to the completeness or accuracy of any material or information provided to the Customer including in relation to the Campaign Partner, Booking or Services;
 - (b) Tourism Top End is not liable to the Campaign Partner or anyone else if errors occur in the information provided by Tourism Top End or if that information is not up-to-date in connection with this Agreement;
 - (c) The financial capacity of the Customer to pay for any other food, beverages or services requested in connection with the Services.

8 Termination

8.1 Termination for breach

- f) A party may terminate this Agreement immediately by notice to the other party if:
 - (a) the other party commits a material breach of this Agreement and that breach cannot be, or is not, rectified within 10 Business Days after notice specifying the breach;
 - (b) an Insolvency Event occurs in relation to the other party; or
 - (c) the other party commits a series of breaches of this Agreement that together constitute a material breach of this Agreement.

8.2 Termination for Convenience

- (a) Tourism Top End may, by notice in writing, terminate this agreement at any time by giving the Campaign Partner not less than 10 Business Days notice.

8.3 Not to prejudice rights

- g) Termination of this Agreement under clause 8.1 or 8.2 will not prejudice any rights or remedies already accrued to any party under, or in respect of any breach of this Agreement.

9 Force Majeure

9.1 Excuse from performing

- h) Subject to clause 9.3, if a party is delayed in or prevented from carrying out any of its obligations under this Agreement (other than a payment of money) due to a Force Majeure Event that party will be excused from performance of such obligation for as long as and to the extent that the prevention or delay lasts.

9.2 Obligation in relation to Force Majeure Events

- i) Each Party must:
 - (a) notify the other party immediately after becoming aware that a Force Majeure Event has occurred;
 - (b) keep the other party fully informed of the circumstances of the Force Majeure Event and the effect upon performance of its obligations; and
 - (c) take all reasonably practical steps to limit the effects of the Force Majeure Event on the performance of its obligations.

9.3 Tourism Top End's right to terminate

- j) Without limiting the obligations in clause 9.2, either party may terminate this Agreement if the other party is prevented from carrying out its obligations under this Agreement due to a Force Majeure Event for a period of 30 days or more.

10 Notice

10.1 Writing

- (a) A party giving notice or notifying under this Agreement must do so in writing:
 - (i) directed to the recipient's address specified in this clause, as varied by any notice; and
 - (ii) hand delivered or sent by prepaid post or facsimile to that address.
- (b) The parties' addresses and facsimile numbers are those provided to or advertised by the parties as their addresses and facsimile numbers.

10.2 Service

- (a) A notice given in accordance with clause 10.1 is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, three days after the date of posting;
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within twelve hours after that transmission, the recipient informs the sender that it has not received the entire notice.
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11 General

11.1 Entire Agreement

- k) This Agreement contains the entire agreement of the parties with respect to its subject matter, and supersedes all prior understandings, negotiations and agreements, whether written or oral, express or implied.

11.2 Assignment

- (a) Neither party may assign this Agreement or any part of it without the prior written consent of the other party (which may be withheld in its absolute discretion).

11.3 Invalidity

- l) If any part of this Agreement is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

11.4 Signatory Duly Authorised

- (a) Each person executing this Agreement warrants that he or she is duly authorised to bind the party for whom he or she signs this Agreement.

11.5 Counterparts

- m) If this Agreement is signed in counterparts, each is deemed an original and all constitute one and the same instrument.

11.6 Jurisdiction

- n) This Agreement will be governed by and construed in accordance with the laws in force in the Northern Territory of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia and the courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.

The person submitting this application at www.tourismtopend.com.au/campaign-partner is responsible for adhering to the Campaign Partner Agreement.

Tourism Top End

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