**Strategic Partnership Agreement**

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**This document establishes the terms of the relationship between Product Team Pty Ltd (BN) an Australian company located at Australia ("the Company") and [the Partner’s Company Name and registration number] located at [Address] ("the Partner").**

**Background**

1. The Company operates, a number of hotel price comparison websites which enables end users to search through multiple Booking Providers to view accommodation information and compare accommodation rates.
2. The Partner operates a web site currently at the URL address { } ("the Partner Site").
3. The Company has agreed to provide the Partner with means to link users from the Partner Site directly to the Company Site and/or the Private Brand. The Company has agreed to pay (to the Partner) the Commission.
4. The Partner has agreed to the exclusive use of Links provided by the Company to promote the Company Site and/or the Private Brand, on the terms set out in this Agreement.

**The Company and the Partner agree that:**

**Definitions**

**Agreement** – means this agreement and its schedules.

**Booking Provider** – a third party offering reservation services for accommodation that has entered into commercial agreement with the Company.

**Commission** – the performance-based compensation earned by the Partner in accordance with clause 2 and 3.

**Content** - all (descriptive) information on the Company Site, including, but not limited to accommodation information and descriptions, guest reviews, details of facilities and property policies, photos, videos, pictures, geographical information, rates and availability.

**Confidential Information** – all data and information that is provided by the Company to the Partner that is confidential in nature, including all data and information that is designated by the Company as confidential and all data and information that is reasonably understood to be confidential.

**Force Majeure Event –** any event which is outside the reasonable control of the Company, including without limitation an act of God, strike, lockout or other interference with work, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals consents permits licences authorities or allocations.

**Intellectual Property Right** - any patent, copyright, inventions, database rights, design right, registered design, trade mark, trade name, brand, logos, service mark, know-how, utility model, unregistered design or, where relevant, any application for any such right, know-how, trade or business name, domain name (with whatever (country code) top-level domain, e.g. - .com, .de, .fr, .ru) or other similar right or obligation whether registered or unregistered or other industrial or intellectual property right subsisting in any territory or jurisdiction in the world.

**Lead-to-Booking Ratio** – the number of Qualifying Leads generated by the Partner compared to the number of actual reservations made with the Booking Providers as a result of those Qualifying Leads.

**Link** - a URL, embedded in text, form or graphics that provides a redirection to the site of the Booking Provider.

**Paid Search** - means any form of advertising that ties the presentation of an advertisement to a specific keyword-based search request.

**Partner’s Control Panel –** an interface that will provide the Partner with the Links and Promotional Content necessary to begin generating Qualifying Leads. The Partner can also use the Partner’s Control Panel to provide the Partner’s personal information and payment information to the Company.

**Partner Group** - means the Partner, its majority shareholders and the ultimate holding company of the Partner (including the group of companies or entities which are under the (direct or indirect) control of (the ultimate holding company or shareholder(s) of) the Partner).

**Partner Site** – website(s) or mobile application owned and operated by the Partner and located at URL address [List of domain names].

**Program** - the performance-based partner marketing program operated by the Company that enables the Partner to promote the Company Site and/or the Booking Providers using Promotional Content or Links in exchange for certain performance-based consideration.

**Promotional Content** – means any of the content, information, code, tools or images provided by the Company to the Partner through the Partner’s Control Panel, E-mail, or any other way.

**Private Brand** – means a version of the Company Site, customized to match the Partner’s style guide and/or other requirements.

**Qualifying Lead** – occurs when the end user makes a non-duplicate click on a Link and is redirected to a Booking Provider’s web site.

**Search-to-Lead Ratio** –refers to the number of search requests referred by the Partner compared to the number of Qualifying Leads generated from such search requests.

**Company Site** – means any website owned or operated by the Company as part of the hotel price comparison solution (such as www.example.com), including any version customized or developed to match the Partner’s style guide and/or other requirements.

**SEM -** means search engine marketing and includes any form of marketing that seeks to promote websites by increasing their visibility in search engine result pages through the use of search engine optimization, paid placement, contextual advertising or paid inclusion.

**Total Revenue** - commission revenue derived by the company for booked reservations less commission revenue for cancelled reservations, recorded by the Company’s systems to have been generated from activity of users referred by the Partner via Links.

**Tracking Code** – URL parameter structure and a unique identifier assigned by the Company to the Partner and used to track Links.

# Account Registration, Promotional Content, Links and Tracking Code

## Once both parties have accepted the terms of this Agreement and have signed and exchanged the Agreement, the Agreement will be deemed to be in force. The Partner shall be granted access to the Partner’s Control Panel. The Partner shall integrate/install the Links and shall prominently market the Promotional Content on the Partner Site; this shall not be unreasonably delayed.

## The Company will provide the Partner with the Promotional Content through the Partner’s Control Panel that will allow the Partner to create the Links. The Partner may, with the consent of the Company, make visual modifications to the Promotional Content.

## The Partner must ensure that Links include the Tracking Code provided by the Company. The Partner acknowledges that the Tracking Code is necessary for the generation of Total Revenue. The removal or modification of the Tracking Code from the Link will interfere with the Company’s ability to track Qualifying Leads and Total Revenue. The Partner acknowledges that the Company will not pay the Commission for the activity conducted by users referred via the Links without the Tracking Code.

## The Partner agrees that the Content and the Promotional Content shall be used only for the purpose of promoting the Private Brand and will remain the property of the Company at all times. The Partner will not use the Content or the Promotional Content to promote any other web site including web sites of the Booking Providers directly (excluding the Company from the process).

## The Partner agrees that it will only use the Promotional Content and the Links in a lawful manner and only in accordance with this Agreement. Furthermore, the Partner agrees that it will not corrupt, modify, disable, sell, redistribute, sub-licence or transfer the Promotional Content.

## The Partner agrees and acknowledges that the restrictive covenants, undertakings, commitments, obligations and restrictions set out in Clauses 4. of this Agreement are of material importance to the Company, in particular for (i) its willingness to enter into this Agreement with the Partner and make the Content and the Company and Booking Providers Intellectual Property Rights (directly or indirectly) available to the Partner, and (ii) the protection of goodwill, product, competitive barriers, service and (market) reputation of the Company Site(s) and Booking Providers. Furthermore, the Partner agrees and acknowledges that all covenants, undertakings, warranties and obligations set out in Clause 4. of this Agreement shall (a) be promptly, duly and diligently complied with by the Partner, and (b) also apply in respect of the companies within the Partner Group and the Partner shall procure, warrant and undertake that the companies within the Partner Group shall observe, adhere to, comply with the respective provision; and be enforceable by way of injunction or other equitable relief, in addition to any other remedies available under law.

# Compensation

## The Company agrees to pay, and the Partner shall earn Commission as a percentage of the Total Revenue. The Commission shall be calculated as per the table below:

|  |  |
| --- | --- |
| Total Revenue generated in any given calendar month | Commission (as of % of the Total Revenue) applied in the respective calendar month |
| [amount USD] | **78%** |

# Payment Terms and Reporting

## The Company will pay the Commission to the financial account specified in the Partner’s Control Panel. The Partner is responsible to ensure the specified details are correct and to bear any banking or transaction fees applied by its financial institution. The timing of the payment must not be more than 45 days from the end of each month, and the Parties agree this is not an unreasonable time for the Company to collect funds from all Booking Providers and account for Commissions owed to the Partner.

## The Company will provide the Partner a monthly report showing all reservations booked (by booking date); all reservations cancelled (by cancellation date as made known to HC). The systems, books and records of the Company (including the Booking Provider reports and/or emails) shall be considered conclusive evidence in respect of the amount of the Commission.

## The Commission is inclusive of any and all taxes. The Partner is responsible for any taxes that may be due on the Commission. In no case will any additional compensation be paid to the Partner for taxes. If the withholding of any tax is required in respect of any payment to the Partner, the Company will:

1. withhold the applicable amount from such payment; and
2. pay such amount to the relevant authorities in accordance with any applicable laws.

## The Commission is payable only for the reservations where the Company has been able to collect commission from the Booking Providers (or direct from the property). The Partner remains liable to the Company for all reservations cancelled or where commission has not been collected.

## If the Total Revenue for any month is a negative amount then the Partner shall, within 10 days from the Company notifying the Partner, pay the Company the sum equal to the difference between monthly commission revenue for cancelled reservations and commission revenue for booked reservations, to the bank account as specified by the Company.

## If the Company, acting reasonably, believes that Total Revenue is likely to be a negative or lesser amount in a future month, the Company may adjust the payment of Commission to the Partner. The Company may adjust the payment of Commission to the Partner for any liabilities, including but not limited to overpayments in accordance with Clause 4 of this agreement.

# Partner's Rights and Obligations

## The Partner and the Partner Group agrees to a full exclusivity in respect of accommodation search (or reservation) functionality, links or references. For the avoidance of doubt, until this Agreement is terminated, the Partner and the Partner Group shall not (directly or indirectly) integrate, link or refer users to any accommodation search or reservation system (third party or related to the Partner Group), other than the Company Site or the Private Brand, unless otherwise agreed to in writing by the Company.

## The Partner agrees not to take or omit to take any action which may affect the Company's relationship with the Booking Providers. The Partner agrees not to cause or permit to be done anything which may cause the Company to be excluded from the process of booking with the Booking Providers on the Partner Site. Moreover, the Partner shall not persuade induce or attempt to induce any third party to terminate its contract with or reduce its dealings and business with the Company.

## During the term of this Agreement (and continuing thereafter in respect of the Company trademarks and Content) the Partner shall immediately comply with any request made by the Company to adhere to and comply with Clause 4 of this Agreement.

## In the event of a major breach of the covenants, undertakings, restrictions, obligations and/or warranties set out under this Clause 4 of this Agreement by or attributable to the Partner, the Company shall be entitled to exercise the following actions and rights, notwithstanding the remedies and actions for specific performance, damage compensation or injunctive or equitable relief available by law or contract:

1. suspension of its (payment) obligations under; or
2. termination of this Agreement with immediate effect;

*If the agreement is terminated pursuant to this clause, unpaid commission shall be forfeited by the Partner.*

## The Partner undertakes to ensure that the Partner Site complies with all applicable laws and regulations.

## The Partner acknowledges that this Agreement does not create any direct contractual relationships between the Partner and any of the Booking Providers.

## The Partner will indemnify and hold the Company harmless from all claims, damages, and expenses (including, without limitation, attorney's fees) relating to the Partner's breach of this Agreement and/or the development, operation, maintenance, and contents of the Partner Site.

# Service Level Agreement

## The Company agrees as a service level agreement (“SLA”) that the Program will remain available to Internet users 100% of the time. If the operation of the Program is interrupted for any extended period of time, as measured by the Company’s own monitoring tools, the Company will credit the Partner’s account for 100% of any missed Commissions, estimated based on previous and expected results.

## The Partner must make a claim, which includes evidence of the effect of the interruption on the Partner’s Commissions, via email, fax or post within thirty (30) days of the date when the interruption initially occurred, to be eligible for payment under this SLA. Claims are limited to the Commission generated through the Program, and do not include commissions or revenue from any third-party sources (such as for example banner advertising).

## This Clause 5 applies to interruptions caused by the Program’s application code, hosting platform or content delivery network, and excludes interruptions caused by factors outside of the Company’s scope of control, such as end-user browser issues, ISP issues, DDOS attacks, or any Force Majeure Events.

## The Company shall offer reasonable technical assistance to the Partner as required for the integration on Links, Content. The Company will endeavor to solve any problem pertaining to any technical issue relating to this Agreement.

# Disclaimer of Warranties and Limitation of Liability

## Without limiting clause 6.1, but otherwise to the fullest extent permitted by law, the Company disclaims and excludes all warranties and representations (express or implied) in relation to the Program and/or the Booking Providers including without limitation any warranty or representation in relation to:

#### fitness for purpose; or

#### viruses or other harmful components; or

#### merchantable quality; or

#### non-infringement of third party rights.

## Neither the Company nor the Booking Providers shall be liable to the Partner in respect of any loss or damage (including for loss of profits, wasted expenditure, anticipated savings, loss of goodwill, loss of data or for any indirect, consequential or special loss or damage, howsoever caused, even by way of tort (including but not limited to negligence), or breach of statutory duty. The Partner agrees this exclusion of liability is at all times valid irrespective if the loss or damage was foreseeable, contemplated, or if the company or Booking Provider was put on notice.

## Without limiting clauses 6.1 and 6.2, to the extent that the Company is found to be liable to the Partner under this Agreement, such liability shall be limited to the total of the Commissions paid to the Partner within the immediately preceding twelve (12) month period.

# Intellectual Property

## The Company grants to the Partner a revocable, non-exclusive, non-transferable, worldwide, royalty-free licence for the duration of this Agreement, to display Links in accordance with this Agreement and to use the Promotional Content to facilitate the Partner’s participation in the Program. The Company reserves all rights in the Links and the Promotional Content, including all intellectual property rights.

## Each party owns and retains all rights, title and interest in its names, logos, trademarks, service marks, copyrights, patents, proprietary features, and proprietary technology. Neither party shall copy, distribute, reproduce, or use such proprietary items except as expressly permitted under this Agreement.

## The Company warrants, represents and undertakes that it has all rights and licences necessary to perform its obligations under this Agreement and to permit the Partner to link to and display the information and materials provided or made available pursuant to this Agreement.

# Confidential Information

## During and after termination of this Agreement, the Partner must:

1. keep all Confidential Information strictly confidential and not disclose it to any third party without the Company’s prior written consent;
2. only disclose Confidential Information to those of its officers, employees or contractors who need to know and who have been expressly directed to, and have agreed to, keep that information confidential;
3. put in place and maintain adequate security measures to protect Confidential Information from unauthorised access or use;
4. immediately notify the Company of any suspected or actual unauthorised use, copying or disclosure of Confidential Information, and provide assistance as reasonably required by the Company in relation to any steps or proceedings the Company may take as a result;
5. not copy Confidential Information without the Company’s prior written consent, and must mark all copies “CONFIDENTIAL”, or, where a notice of proprietary rights and/or confidentiality appears on the Confidential Information, ensure that those notices are reproduced on any copies;
6. only use Confidential Information for the purposes of performing its obligations under this Agreement; and
7. immediately notify the Company if it is required by law to disclose any Confidential Information and provide assistance as reasonably required by the Company if the Company wishes to defend or resist that requirement.

# Termination

## This Agreement shall be in force from its execution date for a period of 12 Months (Minimum Period). After the Minimum Period, the Agreement shall continue to be in force until it is terminated by either party, having provided a 6 months’ written termination notice to the other party. If the Agreement terminates pursuant to this clause, the Partner shall be entitled to receive payment for all Commissions and shall be liable to the Company for any commission cancelled in accordance with clauses 2 and 3.

## The Company may terminate this Agreement with immediate effect, or suspend payment of Commissions to the Partner if:

1. the Partner breaches this Agreement and fails to remedy such a breach within Seven (7) days of notice from the Company specifying the breach and requiring it to be remedied; or
2. the Partner breaches this Agreement and the breach cannot be remedied; or
3. the Partner breaches this Agreement, causing negative impact on the profitability or consumer goodwill of the Company or the Booking Provider; or
4. any step is taken to appoint a receiver, a controller, a liquidator, a provisional liquidator, an administrator or other similar person of the whole or any part of the Partner's assets, undertakings or business.

## Upon termination of this Agreement, (i) the Partner shall remove Content and Promotional Content from the Partner Site, and (ii) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

# General

## This Agreement contains the entire understanding between the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement.

## Any Amendment to this Agreement will not be effective unless agreed in writing by both parties.

## The Partner and the Company agree that the Partner is an independent contractor for all purposes, and the Partner will be responsible for his own withholding taxes, insurances, worker's compensation and all other matters related to work.

## This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

## This Agreement shall not be assignable, except by operation of law, by either party without the prior written consent of the other party, and any purported assignment by either party without the prior written consent of the other party shall be void.

# Execution

**Executed** as an agreement between:

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| --- | --- | --- |
| **Company: Hotels Combined Pty Ltd ACN: 122 130 554** |  | **Partner: [Insert Name]** Company Number: **[ ]** |
| Address:  Suite 1, Level 1, 7 Kelly St, Ultimo, 2007, Australia  Contact Ph:  Contact Email: |  | Address:  **[Insert Address]** Contact Ph: **[Insert Ph]**  Contact Email: **[Insert Email]** |
| Authorised signature: |  | Authorised Signature: |
| Name and title of authorised signatory: |  | Name and title of authorised signatory: |
| Date: |  | Date: |

**Schedule 1 - AUP**

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**The Company and the Partner agree that:**

**Definitions**

**Click Fraud** – means any conduct aimed at generation of Qualifying Leads when the end user does not intend to make an actual booking through the Booking Providers. This includes, without limitation, the following:

(a) undertaking any activity that may result in automatic generation of Qualifying Leads and traffic via the Links that are provided by the Company;

(b) creating systems that force the browser into automatic redirection to any URLs which include Tracking Code;

(c) instructing end users to click on Links without the end user first having the intention of booking accommodation; as well as actively generating, or promoting the generation of, reservations where no customer intends to stay at the hotel. This includes 'no-shows' (not arriving at the hotel at all), and intentionally cancelling the reservation prior to the check-in date.

(d) inserting default search dates in any Links; or

(e) allowing date driven search results to be crawled by search engines or other robots.

(f) using Link(s) to serve the Company Site or the Private Brand in a “non-visible” or “poorly-visible” frame for the sole purpose of setting the Program’s tracking cookie (known as “cookie stuffing”).

**Spamming Regulations** - means any policies, regulations, restrictions or obligations as from time to time prescribed, declared applicable or announced by Third Party Platforms which (i) prohibit or prevent Double Serving, Cloaking or any similar technique or method, or (ii) contain such further restrictions or regulations in respect of spamming or preserving a unique user experience.

**Third Party Platforms** - means any (third party) search engine (marketing provider), website, meta-search engine, search engines spiders, travel search sites, price comparison sites, social networking communities, browsers, content sharing and hosting services and multimedia blogging services or other (similar) channels or other forms of (traffic hosting) media, whether online or offline.

# AUP

## The Partner shall not programmatically evaluate and extract information (including guest reviews) from any part of the Company Site (e.g. screen scrape) or sites of the Booking Providers.

## The Partner shall not make any bookings or reservations on the Company Site, via the links provided by the Company or sites of the Booking Providers with the purpose of reselling such bookings or reservations to (or for the benefit of) a third party.

## The Partner Site shall not be (directly or indirectly) linked to the Company Site or the Private Brand, due to Double Serving or any similar technique or method or such other restrictions as set out in any Spamming Regulations.

## The Partner shall not (directly or indirectly) make the Partner Site or the Content available or present the Content, to the Third Party Platforms with the intention or purpose of or by (trying to) mislead(ing), deceive (deceiving), trick(ing) or fool(ing) human editors, computer search engine spiders, web-crawlers or (meta) search engines (including any similar tools or engines) of Third Party Platforms in order to give the Partner Site a higher ranking or display when it would not otherwise be displayed or higher ranked if it would not have been using Cloaking or any similar technique or method.

## The Partner covenants, undertakes and warrants to promptly adhere to, observe and comply with the Spamming Regulations (and all reasonable requests made by the Company in this respect) in order to avoid any breach by the Company Site or the Partner Site or the Private Brand of such policies due to or in respect of the Partner Site. For the avoidance of doubt, the Partner cannot enforce any rights in this respect towards or vis-à-vis the Company and hereby waives any (right of) defence or claims against the Company in this respect.

## The Partner shall not exploit or use the Content for any purpose or in any manner and/or on or through Third Party Platforms except as expressly provided for in this Agreement.

## The Partner agrees to not engage in any Click Fraud.

## The Partner agrees to not use, link or reference the Company Site from any third party platform, including but not limited to major search engines such as Google and Bing.