

# Affiliate Agreement

This document establishes the terms of the relationship between Bed and Breakfast (BBI) ("the Company") and the affiliate identified on the Secure Partner Registration Form ("the Affiliate").

## Background

(A) The Company operates an accommodation web site currently at the URL address <http://www.bbinternational.ca> ("the Site"). The Site allows end users to purchase accommodation options.

(B) The Company has a Program which will allow the Affiliate to link from the Affiliate's web site ("the Affiliate's Site") directly to the Site and/or a Booking Provider's web site.

(C) The Affiliate has agreed to use Links provided by the Company for the Affiliate to promote the Site and the Booking Providers on the terms set out in this Agreement. In return, the Affiliate will earn Commission.

(D) The Affiliate acknowledges that its online submission of the Secure Partner Registration Form constitutes acceptance of this Agreement.

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

### Definitions

**Affiliate's Control Panel** – an interface that will enable the Affiliate to get the Links and Promotional Content necessary from the company to begin generating commissions. The Affiliate can also use the Affiliate's Control Panel to provide the Affiliate's personal information and payment information to the Company.

**API** – is the Company's Application Programming Interface which allows integration of the Company's content and data within an API Partner's system, enabling customized live rates and availability results on the API Partner's web site.

**API Partner** – means an Affiliate who has applied and has been accepted by the Company to become an API Partner in accordance with clause 13. API Partners are given access to the API and are subject to the whole of this Agreement including the provisions of clause 13.

**Booking Provider** – A third party offering online reservation services for accommodation to the company.

**Commission** – The Commission based compensation earned by the Affiliate in accordance with clause 3 and 4.

**Confidential Information** – All data and information that is provided by the Company to the Affiliate 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.

**Duplicate Click** – Any subsequent click on the same hyperlink, by the same user within 20 minutes of making the initial click.

**Force Majeure Event** – means 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 licenses authorities or allocations.

**Link** - A URL, embedded in text, forms or graphics that provides an online redirection from the Affiliate's Site to the Site, or the site of a Booking Provider, as the case may be. This Link also includes the Tracking Code.

**Payable Commission** – A Commission which has satisfied the Minimum Threshold payable in US dollars.

**Private Branded version of the Site** – The Company may allow Affiliate to create a style and domain name customization to the interface feature of Site.

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

**Promotional Content** – refers to any of the content, information, code, tools, text or images provided by the Company to the Affiliate through the Affiliate's Control Panel which the Affiliate can use to create Links to generate a commission.

**Tracking Code** - Code that is provided by the Company to the Affiliate and that is used to track and account for commission earn by the Affiliate.

## 1. Account Registration

1.1 The Affiliate must submit the Secure Partner Registration Form and accept the terms of this Agreement to participate in the Program.

1.2 Once the Affiliate has submitted the Secure Partner Registration Form and accepted the terms of this Agreement the Affiliate will have access to the company's Affiliate Control Panel.

1.3 The Affiliate is responsible for ensuring that all of its account information within the Affiliate's Control Panel is accurate and up-to-date.

## 2. Promotional Content, Links and Tracking Code

2.1 The Company will provide the Affiliate with Promotional Content through the Affiliate's Control Panel that will allow the Affiliate to create the Links that will enable the Affiliate to begin generating income.

2.2 The Affiliate must ensure that Links include the Tracking Code provided by the Company. The Affiliate acknowledges that the Tracking Code is necessary for the confirmation of income. The removal or modification of Tracking Code from a Link will therefore interfere with the Companies' ability to track the income stream. The Affiliate acknowledges that the Company will not pay for unconfirmed tracking.

2.3 The Affiliate agrees that all content provided by the Company (including images, html code, and data) will only be used for the purpose of promoting the Site and/or the Booking Provider(s) and will remain the property of the Company at all times. The Affiliate will not use this content to directly promote the websites or affiliate programs of Company competitors.

2.4 The Affiliate 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 Affiliate agrees that it will not corrupt, modify, disable, sell, redistribute, sub-license or transfer the Promotional Content.

## 3. Compensation

3.1 The Affiliate will earn a Commission from every confirmed booking that is generated from the Links. 3.2 The Affiliate acknowledges that the Commission is a percentage amount.

3.3 The Affiliate agrees that the calculation, determination and payment of the Commission is entirely at the discretion of the Company and the Affiliate's sole recourse in respect of any claim or complaint in connection with the Commission shall be the right to terminate this Agreement in accordance with clause 11.1

3.4 The Affiliate agrees that the Company may run a traffic audit with Booking Providers to determine the Lead-to-Booking Ratio.

## 4. Payment Terms and Reporting

4.1 The Affiliate must specify a method of payment within the Affiliate's Control Panel. The Affiliate must ensure that the Company is provided with all necessary information to enable payment in accordance with the Affiliate's preferred method of payment.

4.2 The Company will pay all Payable Commissions within 45 days after the end of the month in which the Commission becomes a Payable Commission. The Company will provide payment via the means specified in the Affiliate's Control Panel. The Company is not responsible for any banking and transaction fees applied by the Affiliate's financial institution.

4.3 The Company will maintain records of all transactions made pursuant to this Agreement. The Company will provide the Affiliate with an earnings summary and report on the number of Sales generated and Commissions earned by the Affiliate.

4.4 Payable Commissions are inclusive of any and all taxes. The Affiliate is responsible for any taxes that may be due on the services provided to the Affiliate. In no case will any additional compensation be paid to the Affiliate for taxes. If the withholding of any tax is required in respect of any payment to the Affiliate, the Company will:

- Withhold the applicable amount from such payment; and
- Pay such amount to the relevant authorities in accordance with any applicable laws.

## 5. Affiliate's Rights and Obligations

5.1 The Affiliate understands and agrees that this Agreement with the Company is non-exclusive. The Company reserves the right to allow one or more additional affiliates in the same geographic area.

5.2 The Affiliate agrees not to undertake any advertising and/or marketing activities which can be misrepresented or misconstrued as having originated from the Company or a Booking Provider. This precludes, (without limitation): using the Company or a Booking Provider's brand name, or trademarks, or any of their logos, or any of their domain names in Google Maps listings or search engine advertising (such as Google Adwords) without prior written consent of the Company. The Affiliate is prohibited from bidding on keywords in search engines that directly relate in any way to the Company or a Booking Provider's name, as well as any keywords or derivatives of the names, keywords or trademarks of any Booking Provider. Affiliate agrees to suspend or remove immediately any such advertising and/or promotion if instructed to do so by the Company. Failure to do so may result in Affiliate's account being terminated and any Commission owing being forfeited.

5.3 The Affiliate undertakes to ensure that the Affiliate's Site does not include or have a direct or indirect link with sites which:

- have content of violent, racist, extremist or defamatory nature;
- Offer content of a pornographic, erotic, religious or political nature; or
- might be detrimental in any way whatsoever, to the Company or a Booking Provider's goodwill, brands, image or reputation;

5.4 The Affiliate undertakes to ensure that the Affiliate's Site complies with all applicable laws and regulations.

5.5 The Affiliate agrees not to engage in any Click Fraud.

5.6 All the Affiliate's marketing efforts must target booking generation rather than Qualifying Lead generation.

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

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

## **6. Service Level Agreement**

6.1 The Company agrees as a service level agreement ("SLA") that the Site will remain available to Internet users 100% of the time. If the operation of the Site is interrupted for any extended period of time, as measured by the Company's own monitoring tools, the Company will credit the Affiliate's account for 100% of any missed Commissions, estimated based on previous and expected results. The Affiliate must make a claim, which includes evidence of the effect of the interruption on the Affiliate'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 Commissions generated through the Program, and do not include commissions from third-party sources such as other advertising or affiliate revenue. This SLA applies to interruptions caused by the Site's programming, 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, or any Force Majeure Events.

6.2 The Company will offer technical and marketing assistance to the Affiliate as required. The Company will endeavour to solve any problem pertaining to any technical issue relating to this Agreement.

## **7. Disclaimer of Warranties and Limitation of Liability**

7.1 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 Site, the Program and/or the Booking Providers including without limitation any warranty or representation in relation to:

- Fitness for purpose;
- Viruses or other harmful components;
- Merchantable quality; or
- Non-infringement of third party rights.

7.2 Neither the Company nor the Booking Providers shall be liable to the Affiliate 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 whether or not the loss or damage was foreseeable or contemplated by the Company/Booking Provider or whether or not the Company/Booking Provider was advised of the possibility of such loss or damage) which the Affiliate may suffer or incur in its participation with the Program or in respect of a failure or omission on the part of the Company to comply with its obligations under this Agreement.

7.3 Without limiting clauses 7.1 and 7.2, to the extent that the Company is found to be liable to the Affiliate under this Agreement, such liability shall be limited to the total of the Commissions paid to the Affiliate within the immediately preceding twelve (12) month period.

## 8. Privacy

8.1 Any use by the Affiliate of an end user's information obtained through the Program, personal or otherwise, for any commercial purpose or to obtain direct financial gain (e.g. mass marketing) is prohibited. Any such use shall be deemed to be a violation of this Agreement. In particular, the Affiliate agrees that it will not use information obtained through the Program for chain letters, junk mail, spamming, solicitations (commercial or non-commercial) or bulk communications of any kind including, but not limited to, distribution lists to any person who has not given specific permission to be included in such a list.

8.2 Without limiting clause 8.1, the Affiliate may send emails to end users, with the end user's prior consent, to market products and services to end users who have purchased services through the Affiliate's Site. The end user must have the ability to unsubscribe to such solicitations and cease to be a recipient of such e-mails. If the Affiliate does not comply with these requests, the Company reserves the right to immediately terminate this Agreement

## 9. Intellectual Property

9.1 Upon completion of the Secure Partner Registration Form, the Company grants to the Affiliate 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 Affiliate's participation in the Program. The Company reserves all rights in the Links and the Promotional Content, including all intellectual property rights.

9.2 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.

9.3 The Affiliate authorises the Company's use of the Affiliate's trademarks and business names provided through the Affiliate's Control Panel to promote the Program.

## 10. Confidential Information

10.1 During and after termination of this Agreement, the Affiliate must:

- Keep all Confidential Information strictly confidential and not disclose it to any third party without the Company's prior written consent;
- 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;
- Put in place and maintain adequate security measures to protect Confidential Information from unauthorised access or use;
- 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;
- 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;
- Only use Confidential Information for the purposes of performing its obligations under this Agreement; and
- 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.

## 11 Termination

11.1 The parties may terminate this Agreement at any time in their sole discretion upon seven (7) days notice to the other party. If the Agreement terminates pursuant to this clause, the Affiliate will be entitled to receive payment for all Payable Commissions in accordance with clause 4 up until the date of termination. Upon such termination, all Commissions due will be paid.

11.2 The Company may terminate this Agreement with immediate effect, or suspend payment of Payable Commissions to the Affiliate if:

- The Affiliate breaches this Agreement and fails to remedy such a breach within two (2) days of notice from the Company specifying the breach and requiring it to be remedied;
- The Affiliate breaches this Agreement and the breach cannot be remedied;
- The Affiliate breaches this Agreement, causing negative impact on the profitability or consumer goodwill of the Company or a Booking Provider;

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 Affiliate's assets, undertakings or business;

The Affiliate is inactive with the Program for a period of six (6) consecutive months;

The Affiliate's history indicates that the Affiliate's Qualifying Leads are not resulting in actual bookings; or

11.3 If the Company elects to terminate this Agreement pursuant to clause 11.2, all Commissions earned by the Affiliate that have not been paid to the Affiliate will be paid.

11.4 Upon termination of this Agreement, the Affiliate will remove all content associated with the Program, including any Links, from the Affiliate's Site.

11.5 The Affiliate must notify the Company that 11.4 has been followed within 7 days. Failure to comply will result in legal action.

## 12 Amendment

12.1 The Company may amend this Agreement at any time with immediate effect by posting the new agreement on the Site. The Affiliate will be bound to the terms of the amended Agreement at the time it is posted on the Site. If the Affiliate does not agree with any amended terms of this Agreement, the Affiliate may elect to terminate the Agreement in accordance with clause 11. The Affiliate will be able to view the current version of this Agreement at the following URL address: [http://www.bbinternational.ca/Affiliate\\_Programs/Affiliate\\_Agreement.pdf](http://www.bbinternational.ca/Affiliate_Programs/Affiliate_Agreement.pdf)

## 13 API Partners

13.1 An Affiliate can apply to the Company to become an API Partner. Acceptance of the Affiliate as an API Partner is at the sole discretion of the Company.

13.2 Unless otherwise agreed in writing, to become an API Partner the Affiliate must pay to the Company USD \$2,000 as a once-off setup fee.

13.3 Prior to being accepted as an API Partner, the Affiliate agrees to provide details of each web site in which the Affiliate intends to use the API. The details must include:

the current number of visitors to the web site;

Expected number of visitors that will be sent to Booking Providers via Links; and

The expected number of API requests.

If the Affiliate's Site is a start-up, the Affiliate must notify the Company to give a demonstration of the Affiliate's web site before it becomes freely available to end users.

13.4 If the Affiliate is accepted as an API Partner, the Company will provide the Affiliate with access to the API. Upon acceptance, the Company grants to the Affiliate a revocable, non-exclusive, non-transferable, worldwide, royalty-free licence for the duration of this Agreement, to use the API in accordance with this Agreement and this clause 13.

13.5 When using the API, the API Partner is free to customize the search results web page design as long as it does not mislead the user into creating Qualifying Leads or force the browser into automatic redirection to Booking Provider's web sites.

13.6 The API Partner understands and agrees that the API Partner will only use the API for providing end users with Links to BBI's web sites.

13.7 The API Partner acknowledges that the API is provided in English only. Foreign-language content may be added to the API at the Company's sole discretion as such content becomes available.

13.8 Where the API is used for the API Partner's web site, the API Partner agrees to acknowledge the Company as follows:

As technology provider on the "Resources" page or the "About Us" page by linking directly to the Company's Site in the following message:

"Vacation Rental – Bed and Breakfast International"

As "Resource Content Partner" or "BBI Partner" in any media release it distributes pertaining to hotels and hotel search.

13.9 The API Partner understands and agrees that this agreement on the API is non-exclusive. The Company may appoint one or more additional API Partners having marketing responsibility in the same geographic area.

13.10 The API Partner agrees that all data received through the API's "Live Rates and Availability" methods is for the sole purpose of allowing web site visitors to click through to Booking Provider's web sites to complete a booking. No data transmitted to the API Partner through the API can be sold or hired for profit or commercial gain, even after that data has been used for the purpose of allowing end users to reach the BBI's web site. Furthermore, the API Partner will not use the API for other commercial or non-commercial price comparison services where the intention is not to directly generate bookings through the Links to BBI's websites.

13.11 The API Partner agrees to maintain a satisfactory Search-to-Lead Ratio. As a guideline, a maximum Search-to-Lead ratio of 5:1 may be maintained, however the Company may determine a lower ratio to be a breach of this Agreement if the Partner's Lead-to-Booking Ratio is also deemed to be unsatisfactory. Excessive use or abuse of the API may result in disabling of Affiliate's API key or account termination without payment.

13.12 The API Partner understands and agrees that, in accordance with clause 5.5, it will not engage in any Click Fraud. Furthermore, the API Partner agrees that:

- It will not submit automatic requests to the API for any reason;
- The API will only be used by the API Partner when a real internet user is running a real search;
- The API Partner will ensure that pages that utilize the "Live Rates and Availability" API methods must not default search dates and must not be crawled by search engines or other robots;
- The API Partner will not attempt to pre-emptively query the API on behalf of end users; and
- The API Partner will not store and reuse API results for subsequent searches by end users (whether the same user or other users) except in the form of summary data.

#### **14 General**

14.1 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.

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

14.3 This Agreement shall be governed, construed, and enforced in accordance with the laws of the country. Each party irrevocably submits to the non-exclusive jurisdiction of the courts.

14.4 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.