



# Experience Partner Agreement – Customer Experiences

## INTRODUCTION

- A. The Experience Partner provides the Experiences to customers as part of its business.
- B. The Experience Partner and **thl** have identified an opportunity to offer the Experiences to **thl** customers.
- C. **thl** will promote the Experiences on behalf of the Experience Partner on the terms of this Agreement.

## TERMS AND CONDITIONS

### 1. APPOINTMENT AND TERM

- 1.1 **Appointment:** The Experience Partner appoints **thl** as its agent to promote, offer and sell the Experiences for the benefit of the Experience Partner, on the terms of this Agreement.
- 1.2 **Non-exclusive:** This Agreement is non-exclusive. Nothing shall prevent **thl** from offering, promoting or selling opportunities and experiences similar to the Experiences to **thl** customers through other channels and partners[, and nothing shall prevent the Experience Partner from offering, promoting or selling the Experiences itself or in connection with third parties.
- 1.3 **No minimums:** For clarity, **thl** is not required to procure any minimum uptake of Experiences by customers, and the Experience Partner is not required to pay to **thl** any minimum Commission, during the Term.
- 1.4 **Term and Termination:** This Agreement shall commence on the Commencement Date and shall (unless terminated pursuant to clause 7) continue for the Initial Term. Following the expiry of the Initial Term, this Agreement may be terminated pursuant to clause 7, or by either party giving one month's written notice to the other of their intention to terminate.

### 2. EXPERIENCES

- 2.1 **Agent:** **thl** may promote, offer and sell the Experiences to **thl** customers through any channel.
- 2.2 **Promotions by thl:** **thl** may promote and offer the Experiences, at its own expense and only in accordance with information provided by the Experience Partner in relation to that Experience.
- 2.3 **Promotions by Experience Partner:** **thl** is not obliged to make any payments for any marketing or promotional activities conducted by the Experience Partner in relation to the Experiences.
- 2.4 **E-Vouchers:** When a Customer books an Experience through **thl**, **thl** shall issue an E-Voucher on behalf of the Experience Partner to that Customer.
- 2.5 **Experience Delivery:** An E-Voucher is binding upon the Experience Partner and the Experience must be provided to the Customer by the Experience Partner in accordance with the Experience Terms and Conditions.
- 2.6 **Experience Terms and Conditions:** The Experience Partner shall ensure that the Experience Terms and Conditions are provided to **thl** in a form that readily be distributed to Customers, available on line, accessible through the Experience Partner's usual website, clear and understandable, meet regulatory or other conditions and comply with all applicable laws.
- 2.7 **Standard of Experience:** The Experience Partner must provide the Experiences to the highest possible standard at a price commensurate to the industry.
- 2.8 **Compliance with laws:** The Experience Partner shall comply with all applicable current legislative requirements and any amendments, including by reviewing and maintaining in force all necessary licences, consents and other documents and permits required for those purposes, at a minimum, to comply.
- 2.9 **Health and safety:** Without limiting clause 2.8, the Experience Partner shall, and shall procure that its employees, subcontractors and agents shall:
  - (a) comply with all statutory health and safety obligations, whether arising under the Health and Safety in Employment Act 1993 or the Health and Safety at Work Act 2015 (including any associated regulations);
  - (b) comply with any health and safety procedures, including any security procedures contemplated in clause 3.10, notified by **thl** to the Service Provider; and
  - (c) so far as is reasonably practicable, consult, cooperate with and coordinate activities with **thl**, to ensure that the parties fulfil their respective statutory health and safety obligations.
- 2.10 **Changes or Cancellations:** If the Customer cancels or alters an Experience after making a Booking, all communications with the Customer will be facilitated by and through **thl**.
- 2.11 **Prices:** The Experience Partner will not make the Experience available at a price lower than the Prices, and will use best endeavours to ensure that no other entity licensed by the Experience Partner to sell the Experiences makes the Experiences available at a price lower than the Prices.
- 2.12 **Sustainability:** In delivering the Experiences, the Experience Partner shall ensure to the best of its ability that it and its employees, contractors and suppliers comply with and behave in accordance with responsible and sustainable business practises which include a commitment to:
  - (a) protect the environment;
  - (b) benefit the communities that are affected by **thl** and the Experience Partner's activities;
  - (c) support ethical and fair practices;

- (d) demonstrate continuous improvement;
- (e) incorporate sustainability into their strategic planning; and
- (f) communicate challenges, issues and progress.

### 3. REMUNERATION AND PAYMENT

- 3.1 **Payment from Customers:** *thl* will on behalf of the Experience Partner, provide a tax invoice and receive full payment from the Customer for the Experiences Booked.
- 3.2 **Accounts and Payment to Experience Partner:** After each calendar month during the Term, *thl* will provide to the Experience Partner a report detailing all Experiences Booked by Customers, during that month; less the value of all Commissions payable to *thl* in relation to such amounts. *thl* will pay the reported amount to the Experience Partner using the details set out in the Key Information by the 20<sup>th</sup> day of the month following the date of the invoice.
- 3.3 ***thl* Invoice:** After each calendar month during the Term, *thl* will raise an invoice for the value of all Commissions generated during that month and the parties agree that the value of all Commissions retained is *thl*'s remuneration.
- 3.4 **Changes and Cancellations:** If the Customer cancels or alters a Booking and is entitled to any refunds pursuant to the Experience Terms and Conditions, this will be reflected in the report for the month in which the change or cancellation is made and:
  - (a) *thl* will pay any refunds due to the Customer on behalf of the Experience Partner and generate a credit note on behalf of the Experience Partner. This transaction will be shown as a negative on the monthly report; and
  - (b) *thl* will credit the commission invoice if the commission has previously been invoiced.
- 3.5 **Discounts:** *thl* has authority as agent to discount to the Net Value of the Booking and will advise the Experience Partner of the amount paid by the Customer in accordance with clause 3.2. In these situations *thl* will reflect the discount given to the Customer by a reduction to *thl*'s commission. At all times when *thl* is acting as agent, the Experience Partner will receive the Net Value payment.
- 3.6 **Giveaways:** In addition to acting as an agent for the Experience Partner, *thl* may also at times act as a principal in acquiring Experiences from the Experience Partner in cases where *thl* offers a discount below the Net Value of the Booking.
  - (a) In these situations *thl* will acquire the Experience as principal and on-sell the experience to the Customer and *thl* will pay the Experience Partner the Net Value of the Experience.
  - (b) The Experience Partner will issue a tax invoice to *thl* for the Net Value of the Experience.
- 3.7 **Monthly Subscription Fee:** The Monthly Subscription Fee, if applicable, will be invoiced by *thl* to the Experience Partner in advance monthly and will be payable by the Experience Partner the 20<sup>th</sup> month following the date of the invoice.
- 3.8 **Set-Off:** Each party may set off any amount payable to it by the other party against any amount payable by it to the other party.

### 4. CONFIDENTIALITY AND PUBLICITY

- 4.1 **Confidentiality:** Each party will make sure any confidential information exchanged remains confidential, and is only used for the performance of the obligations in this Agreement. If either party discloses information to its employees or any other party, it shall take all necessary steps to ensure that the confidentiality of the information disclosed is safeguarded.
- 4.2 **Publicity:** Neither party shall make a public announcement or distribute any publicity about this Agreement; or the other party; without the prior consent of the other party.

### 5. INTELLECTUAL PROPERTY

- 5.1 **Pre-existing Intellectual Property Rights:** All Intellectual Property Rights which are owned by, or are proprietary to, a party at the date of this Agreement shall remain owned exclusively by that party.
- 5.2 **Created Intellectual Property Rights:** Any Intellectual Property Rights which are created as a result of, or in connection with this Agreement, shall be jointly owned.
- 5.3 **Licence:** Nothing in this Agreement confers on a party any right or interest in, or licence to use, or permit to be used, any of the other party's Intellectual Property Rights except that each party grants a non-exclusive, royalty-free licence to use the other parties Intellectual Property Rights to the extent required to give effect to this Agreement. That licence will expire immediately on termination of this Agreement.

### 6. INSURANCE AND LIABILITY

- 6.1 **Insurance:** The Experience Partner shall maintain sufficient insurance cover for the Experiences and in relation to this Agreement, to a level that is appropriate given the nature of the Experiences.
- 6.2 **Indemnity:** The Experience Partner will indemnify *thl* for any liability, loss or damage *thl* incurs in connection with a breach of this Agreement by the Experience Partner, the Experience Partner failing to deliver the Experiences in accordance with the Experience Terms and Conditions, this Agreement, or any applicable laws, or any third party claims arising in any way out of the Experience Partner's delivery of the Experiences.
- 6.3 **Joint and several liability:** All liability on the part of either of the parties which comprise more than one person or entity will be joint and several.
- 6.4 **Consequential loss:** In no event will either party be liable to the other for any indirect, consequential or incidental damage or loss.

### 7. TERMINATION

- 7.1 **Immediate termination:** Either party may immediately terminate this Agreement by notice to the other party if:
  - (a) the other party breaches, or fails to properly or promptly perform, any substantial and material obligation of a party under this Agreement and fails to remedy the breach or perform the obligation within 10 Business Days after receiving written notice (inclusive of the date of receipt) from the other party specifying the breach or failure and requiring remedy;
  - (b) the other party: is, becomes, or is deemed to be, insolvent or bankrupt; makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors; or goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property; or
  - (c) any resolution is passed, or any proceeding is commenced, for the winding up or liquidation of the other party;

- 7.2 **Consequences of termination:** Upon termination of this Agreement, *thl* will cease selling the Experiences, and each party will pay all outstanding amounts to the other. At *thl*'s discretion, the Experience Partner must either provide any Experiences sold by *thl* on behalf of the Experience Partner to Customers up to the date of termination; or provide a full refund on all Experiences that have not yet been provided.
- 7.3 **Survival:** Clauses 3.2 to 3.5, 4, 5, 6.2 to 6.4, 7.2, 9, 10 and 11 will survive termination of this Agreement.

## 8. FORCE MAJEURE

- 8.1 **Force Majeure Event:** Neither party will be liable for any failure to fulfil its obligations under this Agreement if such act, omission or failure arises from a Force Majeure Event.
- 8.2 **Obligations:** The party unable to fulfil its obligations due to the Force Majeure Event will immediately notify the other party both verbally and in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and subsequently use all reasonable endeavours to avoid and remove the cause and perform its obligations.
- 8.3 **Exclusion:** Nothing in this clause shall excuse a party from any obligation to make a payment when due under this Agreement.

## 9. DISPUTES

- 9.1 **Negotiation:** Where any question, dispute or difference arises between the parties concerning or in any way arising out of this Agreement, the parties shall negotiate in good faith in order to resolve such dispute.
- 9.2 **Notice:** A party will give the other written notice of a dispute in connection with this Agreement.
- 9.3 **Good Faith:** The parties will make genuine efforts to resolve all disputes promptly and in manner that minimises any impact on either party's business continuity.
- 9.4 **Exclusion:** Nothing shall prevent either party from seeking interlocutory or declaratory relief.

## 10. GENERAL

- 10.1 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.
- 10.2 **Severability:** If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this Agreement and shall not affect the enforceability, legality, validity or application of any other provision of this Agreement.
- 10.3 **Notice:** Every notice to be given under, or in connection with, this Agreement shall be given in writing by e-mail; personal delivery; or mailing by pre-paid post, and shall be deemed to be given 4 Business Days after (but exclusive of) the date of mailing to the addresses and contacts specified on page 1 of this Agreement or if a written notice of change of address is given then to the new address. Notwithstanding any other provision contained in this clause any notice given after 5pm, or on a day which is not a Business Day, shall be deemed to be given at 9am on the next Business Day.
- 10.4 **Assignment:** Neither party shall assign any of its rights or obligations under this Agreement, or appoint sub-distributors, without the prior consent of the party, such consent not to be unreasonably withheld.
- 10.5 **Non Waiver:** No waiver of any breach or failure to enforce any provision of this Agreement at any time by any party shall in any way affect, limit or waive such party's rights to enforce that or any other provision of this Agreement at a later time.
- 10.6 **Errors or omissions:** Clerical errors or omissions, whether in compilation or otherwise in any booking, invoice price or other such documentation, shall be subject to correction by *thl*.
- 10.7 **Relationships:** Nothing in this Agreement shall create or evidence any partnership, joint venture, trust or employer/employee relationship between the parties and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this Agreement.
- 10.8 **Variations:** No variation or amendment to this Agreement will be effective unless in writing and signed by the duly authorised representatives of the parties.
- 10.9 **Counterpart Copies:** This Agreement may be executed on one or more counterpart copies, including emailed scanned copies, which, taken together shall constitute one and the same document.
- Governing law:** This Agreement is governed by either the laws of New Zealand (if the Experience is provided in New Zealand) or the Commonwealth of Australia and the States and Territories (if the Experience is provided in Australia). The parties submit to the non-exclusive Jurisdiction of the relevant courts in respect of any dispute or proceeding arising out of this Agreement.

## 11. DEFINITIONS AND INTERPRETATION

**Definitions:** In this Agreement, unless the context otherwise requires, capitalised words have the meaning given to them in the Key Information, or as set out below:

**"Agreement"** means this document together with the Key Information and Schedule 1.

**"Booking"** means an Experience that has been purchased, confirmed and paid for in full.

**"Business Day"** means any day other than a Saturday, Sunday or a statutory public holiday in the place the Experience is provided.

**"Commission"** means the amount calculated by multiplying the Commission Percentage by the Price as detailed in the Key Information and/or Schedule 1.

**"Customer"** means any individual, company, group or body whether incorporated or unincorporated for whom *thl* arranges or facilitates a Booking.

**"Experiences"** means the as activities detailed in the Key Information and Schedule 1.

**"Experience Terms and Conditions"** means any terms and conditions applicable to an Experience.

**"E-Voucher"** means a document generated by *thl* as proof that the Customer has purchased and booked an Experience.

**"Force Majeure Event"** means any event beyond the reasonable control of a party, including acts of god, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental action, fire, telecommunications service failures, power failures, earthquakes, floods, slips or other disasters.

"**GST**" means (where this Agreement is governed by New Zealand law) goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect of goods and services tax; or (where this Agreement is governed by Australia law) means goods and services tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) at the rate prevailing from time to time, including any tax levied in substitution for such tax, and excludes any penalties or interest payable in respect of such tax.

"**Intellectual Property Rights**" means all industrial and intellectual property rights of any kind, including copyright, rights in business names, trademarks, designs, patents and company names, logos and any right to registration of any such rights, whether created before or after the Commencement Date, anywhere in the world.

"**Key Information**" means the terms detailed on page 1 of this Agreement.

"**Net Value**" means the Price less the Commission.

"**Price**" means the price a Customer pays for an Experience, as detailed in Schedule 1, without any discount applied, subject to change with reasonable notice by the Experience partner to *thl*.

"**Remuneration**" means either: a) Commission, or b) the Monthly Subscription Fee, or c) any combination thereof as described in the Key Information and/or Schedule 1.

"**Term**" means the period from the Commencement Date until the date this Agreement is validly terminated in accordance with clause 1.4.

11.1 **Interpretation:** In this Agreement:

- (a) a reference to a "person" includes a corporation, association, firm, company, partnership, individual or government or local body;
- (b) a reference to "includes" or "including" is to be construed without limitation;
- (c) section and clause headings are used as a matter of convenience only and shall not affect the interpretation of this agreement;
- (d) the singular includes the plural and vice versa;
- (e) reference to monetary amounts, money, or money's worth are to New Zealand dollars, or Australian dollars. Experiences provided to a location in Australia is in Australian dollars and Experiences provided to a New Zealand location is in New Zealand dollars; unless specifically noted; and
- (f) reference to any statute includes any modification or re-enactment of the statute and all legislation, orders and regulations issued under that statute.