



## DriveNow.com.au Alliance Agreement

### **Introduction**

- A. Company is DriveNow Pty Ltd
- B. The Company operates a Vehicle Rental Booking System
- C. The Partner has agreed to offer the Company's Vehicle Rental Online Booking System to visitors to its Website online on the terms and conditions set out in this Agreement

# TERMS AND CONDITIONS

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Definitions

In this Agreement unless otherwise indicated by the context:-

**"Business Day"** means a day on which Banks are open for business in Melbourne;

- (a) **"Vehicle Hire Booking System"** means the system presently operated by the Company (subject to modification and improvement from time to time) which includes providing information about vehicle rentals Australia-wide including pricing, insurance and the like;
- (b) **"Site"** means the Company's website presently being [www.drivenow.com.au](http://www.drivenow.com.au) and includes any new website address established by the Company.
- (c) **"Associate"** has the same meaning in relation to a person as that word has in relation to a taxpayer in Sub section 26AAB(14) of the Income Tax Assessment Act, 1936 (Commonwealth), to the intent that the definition of the word 'associate' appearing in that sub section will be repeated in this Agreement and have the same meaning in this Agreement as in that sub section, except that the word 'person' will be read as appearing wherever the word 'taxpayer' appears in that definition in that Sub section;
- (d) **"Related Body Corporate"** has the same meaning as contained in the Corporations Act 2001;

## **1.2 Interpretation**

In this Agreement unless the context requires otherwise:-

- (a) the singular includes the plural and vice versa;
- (b) a reference to one gender includes a reference to all other genders;
- (c) headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate;
- (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (e) the word 'person' means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not; and
- (f) this Agreement will bind each party's legal personal representatives, successors and assigns;
- (g) where a party comprises two or more persons the rights and obligations of such persons pursuant to this Agreement will ensure for the benefit of and bind all of them jointly and each of them severally;

## **2. ACCESS TO VEHICLE HIRE BOOKING SYSTEM**

2.1 Subject to the terms and conditions contained in this Agreement the Company agrees during the term of this Agreement to allow the Partner access to the Vehicle Hire Booking System by allowing the Partner and those authorised by the Partner to have access to the Site.

2.2 Subject to the terms and conditions contained in this Agreement, the Partner agrees that some of the contents of the Site will be incorporated into the Partner's website or websites as the case may be ("Website URL") in such format and design as agreed on by both parties.

2.3 The Company agrees at its sole expense to establish the Website URL and to provide the Partner with such technical support as is required to effect this.

2.4 If the Partner obtains the Company's written approval the Partner can make agreed changes to the content of the Website URL but only design changes affecting the manner in which content is displayed.

2.5 The Partner cannot make any change to the content and information listed on the Site without the Company's agreement.

2.6 The Company will provide technical support to the Partner in relation to the Website as reasonably required. This assistance will be available only between the hours of 9 a.m. to 6 p.m. (Australian Eastern Standard Time) on Business Days.

2.7 The Company will use reasonable endeavours to rectify technical problems within 48 hours of notification by the Partner.

### **3. VEHICLE HIRE BOOKING SYSTEM**

3.1 The Company will be solely responsible for the development operation and maintenance of the Vehicle Hire Booking System, the Company's sales systems, the content of the Site and for all materials that appear on the Site.

3.2 Without limiting the generality of the foregoing the Company will be solely responsible for:-

- The technical operation of the Vehicle Hire Booking System, the Site and all related equipment
- The accuracy and appropriateness of communications with customers and
- Ensuring that materials posted on the Site are not defamatory, libellous or otherwise in contravention of any law.

3.3 The Company indemnifies and agrees to keep indemnified the Partner in respect of any claim or demand made or action commenced by any person against the Partner or for which the Partner is liable in connection with loss or damage suffered in connection with the development, operation, maintenance and contents of the Vehicle Hire Booking System, the Site or any other of the Company's operations or systems including but not limited to any legal costs as between Solicitor and client incurred by the Partner or for which the Partner is liable.

3.4 The Partner indemnifies and agrees to keep indemnified the Company in respect of any claim or demand made or action commenced by any person against the Company or for which the Company is liable in connection with any loss or damage suffered as a result of a breach by the Partner of a provision of this Agreement including but not limited to any legal costs as between Solicitor and client incurred by the Company or for which the Company is liable.

3.5 The Company will be solely responsible for all issues relating to the booking process and the Partner must not, without the Company's written permission, correspond with any customer and must immediately refer any queries or other issues to the Company for attention. Other than issues relating to the booking process, queries, which directly relate to the Partner, must immediately be referred by the Company to the Partner for attention.

3.6 Subject to Clause 3.3, the Company will not be liable for any loss or damage, whether arising in contract, tort or otherwise, sustained by the Partner or any other person in connection with this Agreement. Such loss or damage may include, but is not limited to, loss or damage caused by the negligence or wilful act or default of the Company or others, whether consequential or otherwise and whether or not such loss or damage is reasonably foreseeable. This Agreement contains all warranties and conditions given by the Company in connection with the subject matter of this Agreement and to the extent that the Company may exclude any warranties or conditions which might otherwise be implied by any competent legislation then the Company excludes from application all such implied warranties and conditions. Without limiting the generality of the foregoing, the Company makes no representation or warranty that the operation of the Site will be uninterrupted or error free and the Company will not be liable for the consequences of any interruptions or errors

#### **4. NO EXCLUSIVITY**

4.1 The Partner acknowledges and agrees that this Agreement does not give to the Partner any exclusive rights in relation to the Vehicle Hire Booking System. The Company is free to appoint other partners having marketing responsibility for the Vehicle Hire Booking System in the same territory as the Partner operates.

#### **5. REMUNERATION**

5.1 The Company shall pay a Standard Commission as follows:

(a) 5% of the Gross Value of each booking made via the Partners Website URL.

5.2 The Company will remit quarterly for completed Bookings. A booking is completed 30 days after the vehicle drop off date.

#### **6. TERMINATION**

6.1 Either party may terminate this Agreement at any time during the term by giving Thirty (30) days written notice of termination to the other party or upon the happening of any one or more of the following events:-

- (a) where the other party is an individual, he commits an act of bankruptcy or is declared bankrupt or insolvent or his estate otherwise becomes liable to be dealt with under any law relating to bankruptcy and/or insolvency;
- (b) where the other party is a company, a resolution is passed or Court Order made for the winding up of that party or an Administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the other party or any part thereof; or
- (d) the date of expiry without rectification of a notice referred to in this paragraph, that is to say:-
  - (i) if the other party fails duly and punctually to carry out any obligation on its part to be performed or observed pursuant to this Agreement; and
  - (ii) the failure is not rectified within seven (7) days after service of written notice on the other party specifying the nature of the failure and directing the other party to whom the notice is addressed to rectify the failure or cause the failure to be rectified;
  - (iii) and upon service of such notice of termination this Agreement will be deemed terminated.

## **7. CONFIDENTIALITY**

7.1 Each of the parties acknowledge that each other party (Owner) will disclose various information relating to its business, products and services or such information may otherwise become known by another party to this Agreement (Business Information), which is and will always remain the exclusive property of the Owner.

7.2 Each party will regard the Business Information as confidential information and will not, without the prior written consent of the Owner or unless required to by law, disclose or allow the disclosure of any of the Business Information to any person except its authorised representatives and employees who have need of any of the Business Information for the purposes of assisting in the performance of its obligations or exercising any of its rights pursuant to this Agreement or the Constitution of the Company.

7.3 To ensure the obligations of confidentiality set out in this clause are complied with, each party agrees as follows:-

(a) neither to use nor circulate the Business Information within its organisation or among its affiliates or authorised representatives except to the extent necessary to perform its obligations or exercise its rights pursuant to this Agreement or the Constitution of the Company;

(b) not to copy the Business Information in whole or in part except as permitted pursuant to this Agreement;

(c) not to alter or remove any proprietary rights or copyright notice or other identification which indicates an ownership interest in any part of the Business Information;

(d) to notify the Owner promptly in writing of the existence of any circumstances surrounding any unauthorised knowledge, possession or use of the Business Information or any part thereof by any person;

(e) to take any actions deemed necessary or desirable to ensure continued confidentiality and protection of the Business Information and to prevent access thereto or use thereof by any unauthorised person;

(f) to establish specific procedures designed to meet its obligations pursuant to this clause, including but not limited to the execution of such non-disclosure agreements by its contractors or other authorised representatives who must have access to the Business Information as the Owner may reasonably require; and

(g) to return promptly to the Owner or to provide satisfactory evidence as to the destruction of all documents, media and other property containing any of the Business Information belonging to the Owner upon request by the Owner.

## **8. DISPUTE**

### **RESOLUTION**

#### **Dispute**

8.1 If any dispute arises out of this contract (Dispute) a party to the contract must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.

#### **Notice of Dispute**

8.2 A party to this contract claiming that a Dispute has arisen out of or in relation to this contract must give written notice (Notice) to the other party to this contract specifying the nature of the Dispute.

#### **Dispute Resolution**

8.3 If the parties do not agree within 7 days of receipt of the Notice (or such further period as agreed in writing by them) as to:-

- (a) the dispute resolution technique (eg expert determination) and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of Victoria, and, the President of the Law Society of Victoria or the President's nominee will select the mediator and determine the mediator's remuneration.

## **9. FORCE MAJEURE**

9.1 No party will be liable nor deemed to be liable to the other party for failure or delay in meeting any obligation due to strikes and/or lockouts (whether of their own employees or those of others and whether or not the party against whom such action is taken could have avoided the same by acceding to the demands of the employees responsible for such action) Acts of God, war, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any other cause beyond the control of the party which had the duty to perform.

In any such event, the time for performance of the obligations under this Agreement will be extended by the same period or periods (as the case may be) for which performance is delayed. The party so affected will use its best endeavours to avoid or remove such causes of non-performance and will continue performance hereunder with the utmost despatch as

soon as such causes are removed. Nothing in this clause will be construed as requiring the affected party to settle any industrial dispute.

## **10. NO ASSIGNMENT**

10.1 The rights of a party pursuant to this Agreement may not be assigned nor may the obligations of a party be subcontracted without the prior written consent of the other party, such consent not to be unreasonably withheld but the rights and obligations of a party may at the option of that party be assigned to or exercised or discharged by any Related Body Corporate or Associate of that party.

## **11. NO PARTNERSHIP**

11.1 Notwithstanding any other provision contained in this Agreement or any implication, which might otherwise arise, but for this clause, the relationship between the parties or between any of them is not one of partnership.

## **12. NOTICES**

12.1 Service of any notice under or relating to this Agreement will be sufficiently served:-

(a) if delivered personally to the party to be served;

(b) if left at or sent by pre-paid registered post to:

(i) the address of the party to be served as set out in the description of that party at the beginning of this Agreement;

(ii) the last known place of abode or business of the party to be served; or

(iii) the registered office of any party to be served which is a company;

(c) and in the case of posting such notice will be deemed to have been duly served on the second day after such notice has been posted; or

(d) if sent by facsimile transmission to the last known facsimile number of the party to be served and will be deemed to have been duly served at the time such facsimile transmission is sent.

## **13. PROPER LAW**

13.1 This Agreement will be governed by and construed pursuant to the laws of Victoria and the parties agree to submit to the jurisdiction of the Courts of Victoria in connection with any dispute relating to this Agreement.

## **14. RIGHTS NOT AFFECTED BY FAILURE TO ENFORCE**



14.1 The failure of either party at any time to enforce any of the provisions of this Agreement or any rights in respect hereto or to exercise any election herein provided will not be a waiver of such provisions, rights or elections or affect the validity of this Agreement.

## **15. RIGHTS TO SURVIVE TERMINATION**

15.1 Termination of this Agreement will not release either party from any liability or right of action which at the time of expiry or termination has already accrued to either party or which may thereafter accrue in respect of any act or omission prior to such expiry or termination. Such rights may include but not be limited to the recovery of any money due.

## **16. SEVERABILITY**

16.1 The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.

16.2 If, despite the application of clause 16.1, a provision of this Agreement is illegal or unenforceable:-

(a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and

(b) in any other case, the whole provision is severed, and the remainder of this Agreement continues in force.

## **17. WHOLE AGREEMENT**

17.1 This Agreement embodies the whole agreement between the parties relating to the subject matter of this Agreement and supersedes any and all oral and written negotiations and communications by or on behalf of any of them. The parties have not, in entering into this Agreement, relied upon any warranty representation or statement, whether oral or written, made or published by any other party or any person on behalf of any other party or otherwise in connection howsoever with the subject matter of this Agreement, except such as are expressly provided herein and subject thereto have relied entirely upon their own enquiries relating to the subject matter of this Agreement. The parties agree that to the extent that each of them may exclude any warranties or conditions which might otherwise be implied in connection with this Agreement or the subject matter of this Agreement by any competent legislation, then each party expressly excludes from application all such implied warranties and conditions.

**18 Validation**

We understand the terms and conditions of this Alliance Agreement and confirm our acceptance of them.