

## **20XX Referral Agency Contract**

This Agreement made by and between [PROVIDER NAME] ("PROVIDER"), whose mailing address is [COMPANY ADDRESS], and [AGENCY NAME] ("AGENCY") whose mailing address is [AGENCY ADDRESS], shall commence on \_\_\_\_\_ and remain in effect until ["December 31, 20XX" OR "terminated as per this agreement"]. As of the effective date, this Agreement supersedes all prior Agreements, whether written or oral, between the parties concerning the subject matter hereof.

### **I. AGENCY CONTACT INFORMATION**

AGENCY Contact Name: \_\_\_\_\_/Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Email address: \_\_\_\_\_

Officer/Owner(s): \_\_\_\_\_/Title: \_\_\_\_\_  
\_\_\_\_\_/Title: \_\_\_\_\_

Sales Manager: \_\_\_\_\_/ Email: \_\_\_\_\_  
AGENCY's Professional Activity Desk License: AD# \_\_\_\_\_

Other Travel Industry Credentials: \_\_\_\_\_

Web Sites owned by AGENCY utilized to promote and sell Hawaii's activities & attractions:

www. \_\_\_\_\_ www. \_\_\_\_\_

www. \_\_\_\_\_ www. \_\_\_\_\_

www. \_\_\_\_\_ www. \_\_\_\_\_

### **II. PRICING, NET RATES & DISCOUNTING**

#### **Pricing & Net Rates**

PROVIDER will provide AGENCY with retail prices and net rates on designated products as per the Price Sheet attached hereto as Exhibit A.

#### **Discounts**

Effective \_\_\_\_\_, AGENCY will not be permitted to discount PROVIDER's retail prices in any manner, including in print advertising, internet advertising, or at the point of sale. By signing this agreement, the AGENCY agrees to sell PROVIDER's products only at the retail price as per Exhibit A.

Providing discounts or implying that discounts are available in your promotion of PROVIDER is not permitted. This includes using PROVIDER's products as a timeshare gift.

Discounting the retail price for PROVIDER's products shall be in the sole discretion of PROVIDER. Discounting without the prior written consent of PROVIDER shall be immediate grounds for the immediate termination of this agreement.

### **III. MARKETING & SALES**

AGENCY must clearly identify itself by name and define its relationship to PROVIDER as a third party on all material promoting PROVIDER.

Any images used for marketing purposes by the AGENCY, including print media, posters and on the internet, must be approved in writing by PROVIDER, prior to the usage of such images.

For all sales of PROVIDER's products, AGENCY must utilize descriptions supplied by PROVIDER in the Activity/Attraction Fact Sheet Description, attached hereto as Exhibit B, unless PROVIDER otherwise agrees in writing.

The following service marks, trade names, trademarks, copyrights, logos and/or trademark configurations registered by PROVIDER, whether with the Department of Commerce and Consumer Affairs of the State of Hawaii, the United States Patent and Trademark Office, or any other state or country agency, together with any other service marks, trade names, trademarks, copyrights, logos and/or trademark configurations which shall hereafter be duly registered, shall be and remain the sole and exclusive property of PROVIDER:

[LIST ALL TRADEMARKS, SERVICES, NAMES, COPYRIGHTS, LOGOS, ECTS...]

Any and all rights under service marks, trade names, trademarks or copyrights and any other property rights under service marks, trade names, trademarks or copyrights involving PROVIDER shall inure to the sole and exclusive benefit of PROVIDER. An AGENCY's right to use any of the above shall be subject to the prior written consent of PROVIDER and shall be further subject to all the terms and conditions hereof. Any such right shall be non-assignable and nontransferable, shall be limited to the AGENCY's use for PROVIDER as set forth herein and in the AGENCY Agreement, and shall be only for the term of the AGENCY Agreement.

#### **A. Internet**

AGENCY hereby agrees to clearly state on AGENCY's website that AGENCY is a third party. AGENCY's website shall not mislead the consumer in any way to think they are booking at PROVIDER's website. On the AGENCY's website page that promotes PROVIDER, AGENCY's name must be at least three (3) times larger than PROVIDER's name.

Use of PROVIDER's name as a keyword with search engine pay-per-click advertising programs, click-for-pay advertising programs, meta tag use and website use is not allowed without the express prior written permission of PROVIDER.

AGENCY shall not use any search engine optimization (“SEO”) techniques, page titles, hidden values, meta tags areas such as meta name=keywords or phrases that include any trademark of PROVIDER or any misspelling, abbreviation, similarity, or variation thereof within the site(s) SEO areas nor any uniform resource locator (“URL”).

AGENCY shall not purchase keywords/phrases on search engine sites that include any trademark of PROVIDER or any misspelling, abbreviation, similarity, or variation thereof within the description of the keyword/phrase being purchased.

The term “discount” or any reference to a perceived discount shall not be used or implied in the description of PROVIDER on AGENCY’s website so as to mislead guests that discounts are available. All prices shown on the AGENCY’s website for PROVIDER must be at full retail price and all PROVIDER’s tickets sold online, via phone or in person must be sold at full retail price, as per Exhibit A, column d.

The Activity/Attraction Fact Sheet Description, attached hereto as Exhibit B, must be used for all text representing PROVIDER’s product. PROVIDER must be stated in conjunction with all such text. Generic listings using PROVIDER’S description without including PROVIDERS name are prohibited.

#### **IV. VOUCHERS**

All vouchers issued by AGENCY for PROVIDER’s products are required to include the following words in a prominent place in addition to the Balance Due & Customer’s signature:

[LIST ALL RESTRICTIONS REGARDING TRIP, E.G. Cancellation Policy, WAIVERS, WEIGHT, AGE, ETC...]

Original vouchers for PROVIDER’s products will be maintained by PROVIDER. For any discrepancies regarding a particular voucher, PROVIDER will fax to AGENCY. These discrepancies must be addressed within 30 days of date of invoice. Individual discrepancies do not delay payment of invoice as per Hawaii Revised Statute (HRS) 468M.

When making a booking AGENCY’s agent shall call our designated reservation line and provide the customer’s credit card in order to hold the reservation.

#### **V. PAYMENT OF COMMISSION**

PROVIDER will mail payment to AGENCY, at the noted address on page one, [twice monthly or weekly or monthly] for activities for services provided. If past paid commissions are successfully refuted by the customer, in the form of a charge back due to the cancellation or no show situation, the previously paid commission will be reduced from the total payment along with a 5% fee.

**VI. CANCELLATION POLICY**

PROVIDER will accept a cancellation for parties of [LOWER LIMIT] guests up to 24 hours prior to the check-in time and for parties of [UPPER LIMIT] guests up to 72 hours prior to the check-in time without any penalty. The cancellation must come from the AGENCY’s representative and not the guest themselves. A Cancellation Number will be given to the AGENCY’s representative for each cancellation accepted.

For cancellations within the [limits] period as described above, as well as “no shows”, AGENCY shall provide to PROVIDER a faxed copy of the customer’s voucher, with original sent in the mail. AGENCY shall support PROVIDER charging the customer 100% directly.

**VII. GROUP BOOKINGS**

PROVIDER defines group bookings to be parties in excess of [GROUP BOOKING NUMBER]. PROVIDER will determine retail and net rates depending on size of the group. A Group Booking Contract [may be or is] required when reserving for complete Buy Out or Private Function on a specific Date & Product.

**VIII. INSURANCE**

Upon receipt of this executed Sales Agreement, PROVIDER will provide AGENCY with a Certificate of Insurance naming AGENCY as additional insured on PROVIDER’s Protection and Indemnity Insurance coverage with respect to injuries which occur in relation to PROVIDER’s activities.

Said Certificate of Insurance shall also provide that AGENCY shall receive thirty (30) days prior written notice in the event of cancellation, non-renewal or reduction of the coverage required hereunder.

PROVIDER’s insurance agent shall deliver new certificates of insurance to AGENCY with respect to renewal policies.

The following name(s) and address(s) for AGENCY shall appear on PROVIDER’s certificate of insurance as additionally insured:

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**IX. COMPLIANCE WITH HRS 468M**

AGENCY specifically acknowledges and confirms that it is bound by Chapter 468M of the Hawaii Revised Statutes, that it has read and understands all of the provisions of said Chapter 468M, and that it will comply with all such provisions.

## **X. INDEMNITY**

PROVIDER hereby agrees to defend, indemnify and hold AGENCY, its directors, officers, agents and employees, free and harmless from and against any and all third party claims, actions or demands brought or served against AGENCY, including any legal fees and expenses incurred in the defense of such claims, arising out of any negligent act or omission or willful misconduct of PROVIDER, its agents, servants or employees, and not attributable to any negligent act or omission or willful misconduct of AGENCY, its agents, servants, or employees.

AGENCY hereby agrees to defend, indemnify and hold PROVIDER, its directors, officers, agents and employees, free and harmless from and against any and all third party claims, actions or demands brought or served against PROVIDER, including any legal fees and expenses incurred in the defense of such claims, arising out of any negligent act or omission or willful misconduct of AGENCY, its agents, servants or employees and not attributable to any negligent act or omission or willful misconduct of PROVIDER, its agents, servants, or employees.

## **XI. RELATIONSHIP OF PARTIES**

Nothing in this agreement shall be construed as constituting either party as an employee, agent, partner or joint venture. Neither party shall have the right to bind the other to any agreement with a third party nor to represent itself as an agent, partner or joint venture nor to incur any obligation or liability on behalf of the other party, nor shall PROVIDER be responsible for any misrepresentation or omission by AGENCY.

## **XII. BANKRUPTCY AND NON-PERFORMANCE**

In the event that either party to this Agreement shall (i) file a voluntary petition in bankruptcy, (ii) make an assignment for the benefit of creditors of all or substantially all of its assets, (iii) fail to secure dismissal of any involuntary petition of bankruptcy within sixty (60) days after the filing thereof, or (iv) default in the performance of any of their duties and obligations as contained in this Agreement and fail to cure such default within ten (10) days after receiving written notice of such default from the other party, then upon the occurrence of any of the said events, the other party may immediately terminate this Agreement.

## **XIII. GENERAL PROVISIONS**

This Agreement shall be construed in accordance with and governed by the laws of the State of Hawaii, and any suit to enforce any terms hereof shall only be brought in the courts of the State of Hawaii.

This Agreement is only between PROVIDER and the AGENCY through its current owner(s). If the AGENCY is sold to a new owner, this Agreement shall immediately become null and void. The new owner will need to contact PROVIDER directly to request a new contract. It is specifically understood and agreed that this Agreement may not be assigned or transferred by either party without the prior written consent of the other party.

In the event of any inconsistency between this and any other contract, this Agreement between PROVIDER and AGENCY shall control. PROVIDER reserves the right to cancel this agreement in its sole discretion at any time for any reason whatsoever. The undersigned hereby confirm that they have read and agree to all the terms stated above on behalf of their respective companies.

\_\_\_\_\_  
AGENCY Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

[PROVIDER NAME]

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# [PROVIDER NAME]

Price Sheet  
EXHIBIT "A" TO  
2013 SALES AGREEMENT

[AGENCY NAME]

Effective Date: \_\_\_\_\_

PRODUCT NAME	PRICE TYPE (a)	PRICE \$(b)	Surcharge \$(c).	TAXES (d)	RETAIL RATE (e)	Commission \$ Amt (f)	Wholesale \$ Amt (g)

- a) Price Type = Adult, Child, Senior, etc...
- b) Price = Retail rate prior to applicable taxes.
- c) Surcharge, e.g. :Fuel Surcharge, Transportation Surcharge
- d) Taxes = All funds paid to government agencies (GET, Habors, etc..)
- e) Retail Rate = Price charged to the consumer
- f) Revenue = Amount AGENCY will be paid for bookings.
- g) Net Rate = Wholesale rate PROVIDER retains

**[Provider's Name]**  
**Exhibit B**  
**Activity/Attraction Fact Sheet Description**

Product Name: \_\_\_\_\_

Time(s): \_\_\_\_\_

Price Types & Retail Prices see Exhibit A

Product Description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Special Information required: