

## INNkeeper Agreement - Marketing Engagement

These terms and conditions (the "Terms") form the agreement (the "INNkeeper Agreement" and together with the Terms, "Agreement") entered into between the INNkeeper and INNstight.com, a Delaware Corporation (each a "Party" and collectively known as the "Parties" who have entered into this Agreement).

### 1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement, unless a contrary definition appears elsewhere in this Agreement:

"Customer Service" means the customer service desk of INNstight.com, which can be reached at [help@innstight.com](mailto:help@innstight.com) or such other address as set out in this Agreement.

"Effective Date" means the date this Agreement is signed by the INNkeeper.

"Extranet" means My.INNstight.com, the online Digital Management System (DMS) which can be accessed by the INNkeeper upon user-authentication to manage inventory, rates, upload images, update property information, and access and/or modify reservations.

"Guest" means a person who has booked accommodations at the INN through the Website.

"INN" means a place to stay, including, but not limited to the following lodging accommodations: motels, hotels, lodges, inns, bed and breakfasts, RV Parks, cabins, or vacation rental properties.

"INNkeeper" means the INN's owner, whether an individual or a business entity, on-site manager, or agent responsible for the day-to-day operations of the INN.

"Intellectual Property Right" means 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 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.

"Lowest Price Promise" means the guarantee issued by INNstight.com (under this or any similar name) that INNstight.com offers the best rate for accommodations at the INN, and in the event that a lower rate can be found online for the identical accommodations, check-in/check-out dates, and booking conditions.

"Marketing Engagement" means the service offered by INNstight.com to the INNkeeper solely for the internet and social media marketing, design, and hosting of their website and not including INNstight.com's Reservation Service.

"Powered by INNstight" means a hotel website that has its content, media, and/or rates and availability and booking engine driven by INNstight.com's proprietary technology.

"Reservation Service" means the online reservation system of INNstight.com through which INNkeepers can make their rooms available for reservation, and through which Guests can book reservations at an INN for overnight accommodations with such service provided on both INNstight.com and Standalone Websites  
*Powered by INNstight.*

"Standalone Website (*Powered by INN*sight)" means an INN's website which is hosted and managed by INN

sight.com's online content and property management system and is supported by the INN

sight.com Reservation Service or Third Party Transaction Site.

"Third Party (Transaction) Site" refers to a third party website (i.e. franchise, Online Travel Agent (OTA), Central Reservation System (CRS), or other booking enabled website) where INNkeepers can make their rooms available for reservation, and through which Guests can book reservations at INN for overnight accommodations.

"Website" means INN

sight.com.

"Websites" means the website(s) of INN

sight.com and its affiliated companies and business partners on which the product and service of INN

sight.com are available including any Standalone Website that is *Powered by INN*sight.

## 2. INNKEEPER OBLIGATIONS

### 2.1 INN Information

2.1.1 Information provided by the INNkeeper for inclusion on the Website shall include information relating to the INN (including pictures and descriptions), its amenities and services, and the rooms available for reservation, details of the rates (including all applicable taxes, levies, surcharges and fees) and availability, cancellation and no-show policies and other policies and restrictions (the "INN Information") and shall comply with formats and standards provided by INN

sight.com. INN

sight.com reserves the right to edit or exclude any information on becoming aware that it is incorrect or incomplete or in violation of the terms and conditions of this Agreement.

2.1.2 The INNkeeper represents and covenants that the INN Information shall at all times be true, accurate and not misleading. The INNkeeper is at all times responsible for maintaining correct INN Information, and notifying INN

sight.com of any extraordinary, materially adverse events (e.g. renovation or construction at or near the facility) which may affect the INN's ability to honor a reservation. The INNkeeper shall update the INN Information on a daily basis and may at any time change, via the Extranet, (i) the rate of its available rooms, and (ii) the number or type of available rooms, subject to the Minimum Allocation (as defined below).

2.1.3 The information provided by the INNkeeper for the Websites shall remain the exclusive property of the INN. Information provided by the INNkeeper may be edited or modified by INN

sight.com and subsequently be translated into other languages. The translations shall remain the exclusive property of INN

sight.com. The edited and translated content shall be for the exclusive use by INN

sight.com on the Websites and shall not be used by the INNkeeper for use on any other website or distribution channel. Requests for changes to or updates to the descriptive information of the INN must be submitted to INN

sight.com for approval. INN

sight.com reserves the sole right to accept or deny any change requests.

2.1.4 Unless INN

sight.com agrees otherwise, all changes, updates and/or amendments of the INN Information (including rates, availability, rooms) shall be made by the INNkeeper directly and on-line through the Extranet or such other ways as INN

sight.com may reasonably indicate. Updates to pictures, and descriptions shall be processed by INN

sight.com as soon as practicable.

2.1.5 When INNkeeper gives INN

sight.com content, INNkeeper grant INN

sight.com a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub licensable (through multiple tiers) right to exercise any and all copyright, trademark, publicity, and database rights (but no other rights) INNkeeper has in the content, in any media known now or in the future, not limited to establishing social media or other internet application accounts on behalf of the INNkeeper.

## 2.2 Standalone Website Booking Engine

The INNkeeper may decide to use INNstight.com's Reservation Service or a Third Party Transaction Site to complete reservations on their Standalone Website. The selected transaction platform will determine the relevant terms of use below:

### 2.2.1 Third Party Transaction Handling

The INNkeeper can elect to have a Third Party Transaction Website handle all guest reservation processing for their INN's Standalone Website *Powered by INNstight*. By selecting this option:

- (i) INNkeeper has received authorization from the Third Party Transaction Website to accept guest reservation requests on behalf of its INN.
  - (ii) Consequently, the INNkeeper hereby authorizes the Third Party Transaction Website to accept Guest reservation availability requests from its Standalone Website and hereby adheres to the Third Party's own terms and conditions.
  - (iii) INNstight.com will follow the Application Programming Interface (API) requirements for the Third Party Transaction Site to establish the connectivity between the Hotel Website and the booking engine of the target Third Party.
- a. If no interface exists nor is supported by the Third Party, INNstight will not be responsible for providing any such proprietary software to enable such an interface.
  - b. The support of any availability and connectivity issues in the interchange and exchange of data between the Hotel Website and the Third Party Transaction Site will not be the responsibility of INNstight.com.
  - c. INNkeeper shall be responsible in full for any API usage or transaction fees levied by their contracted Third Party Transaction Site.

### 2.2.2 INNstight.com Reservation Service

The INNkeeper can instead decide to use INNstight.com's electronic commerce booking engine to process reservations for their INN's Standalone Website *Powered by INNstight*. By selecting this option, the INNkeeper is obligated to the following terms of use:

#### (i) Minimum Allocation and Parity for Reservation Service

- a. The INN shall commit itself to a minimum number of rooms available for sale via its property listing on INNstight.com, as set out in the INNkeeper Agreement (the "Minimum Allocation"). INNkeepers may provide additional inventory as may be available or requested from time to time. The initial inventory provided by the INN is as follows:
- b. The INNkeeper shall provide INNstight.com rate and availability parity:

Rate Parity means the same rates for the same: (i) INN, (ii) room type, (iii) dates, (iv) number of guests, (v) booking restrictions, if any, and (vi) policies such as breakfast, reservation modifications, and cancellation policy as are available via (i) the INN's websites, call-centers (including the customer reservation system), (ii) directly at the INN, (iii) with any competitor of INNstight.com (which includes any Third Party Transaction Site or offline reservation or booking agency or intermediary), and/or (iv) with any other (online or offline) third

party that is a business partner of or in any other way related with or connected to the INN. Rate Parity ensures INNstight.com's Lowest Price Promise.

Availability Parity means that the INNkeeper shall provide INNstight.com with such availability (i.e. rooms available for booking at the Website) that are at least as favorable as those provided to any competitor of INNstight.com (which includes any online or offline reservation or booking agency or intermediary) and/or with any other (online or offline) third party that is a business partner of or in any other way related with or connected to the INN.

## 2.3 Commissions for Reservation Service

2.3.1 The INNkeeper shall be granted free usage of the INNstight.com Booking Engine and be charged a zero (0%) Commission Rate for any reservations generated through the INNstight.com Reservation Service.

2.3.2 INNstight.com does reserve the right to adjust the Commission Rate after INNstight.com provides the INNkeeper with at least fourteen days' notice by posting the changes on the site or through official print or electronic mail communication. INNstight.com may choose to temporarily change the fees for its services for promotional events (for example, free booking days) or new services, and such changes are effective when it posts the temporary promotional event or new service on the site.

2.3.3 Payment shall be made in accordance with Section 2.4 below. The aggregate commission per reservation is equal to the multiple of (1) the number of nights stayed at the INN by the guest, (2) the booked rate per room per night (excluding sales taxes and such other applicable national, governmental, provincial, state, municipal or local taxes or levies (the "Taxes")) and such other extras, fees and surcharges which are included in the offered rate at the time of booking of the room by a Guest on the Websites (such as breakfasts, meals (half-board or full-board), bicycle rental, late check outs/early check in fees, extra person charges, resort fees, roll-away beds, theatre tickets, service fees, etc.), (3) the number of booked rooms by the Guest, and (4) the relevant Commission percentage set out in the Agreement. For the avoidance of doubt, Commission will also be charged in the event of overbooking or a no-show or a charged cancellation (cancellation in violation of the free cancellation policy of the INN) unless otherwise marked as a no-show in the Property Management System.

2.3.4 The INNkeeper shall inform INNstight.com about applicable taxes (national, governmental, provincial, state, municipal or local), fees, charges and levies (and any changes thereof) which will be charged to the guest upon check-out (to the extent that such other taxes, fees and levies can be reasonably calculated upfront without further information).

2.3.5 The rates displayed on the Website or Websites must be inclusive of sales tax and all such other national, governmental, provincial, state, municipal or local taxes, fees or levies. In the event that there is a change to the applicable law, rules, legislation with respect to taxes, surcharges, or levies assessed, the INN shall update such information through the Extranet in accordance with the terms of Section 2.1.2 as soon as possible, but in any event within 5 business days after (i) amendment to or effective date of the relevant law, rules and legislation in this respect applicable to such INN, or (ii) notification thereof by INNstight.com.

2.3.6 Value Added Tax with respect to the payment of the Commission to INNstight.com will be added to the Commission where applicable.

## 2.4 Subscription Payment & Remittance for Reservation Service

2.4.1 INNstight.com shall invoice the INN for the applicable subscription and/or commission fees at the end of the calendar month of service on the fifth (5<sup>th</sup>) day of the following month.

2.4.2 In addition, INNstight.com will invoice the INN for bookings consumed by Guests in that calendar month (i.e. for guests who have departed in the month of invoice). Bookings cancelled in accordance with INNstight.com's cancellation policy and in accordance with the cancellation policy of the INN shall be excluded from the invoiced commission amount.

2.4.3 Invoices shall be processed as follows:

(i) INNstight.com shall process invoices monthly and shall send a Subscription and/or Commission Fee statement to the INNkeeper via mail, fax or e-mail.

(ii) The INNkeeper shall pay the monthly invoiced fees to INNstight.com within twenty-five (25) calendar days from the invoice date.

(iii) Payment shall be made by the INNkeeper directly to INNstight.com by credit card or check payable to INNstight.com, Inc.

(iv) the INNkeeper shall bear all costs charged by its banking institution for the transfer of funds to INNstight.com.

2.4.4 In the event of a dispute between INNstight.com and the INNkeeper regarding the amount of the Commission, any undisputed amount of the Commission shall be paid by the INNkeeper in accordance with the terms of this Agreement, notwithstanding the status or nature of the dispute.

2.4.5 In the event INNkeeper is late with a Subscription and/or Commission payment, INNstight.com reserves the right to: (1) claim interest at the rate of a twelve percent (12%) monthly finance charge subject to the unpaid amount post 30 days within terms, (2) suspend its service under the Agreement, (3) ask for a bank guarantee or other form of financial security from the INNkeeper to restore its listing on the Website.

2.5 Reservation, Guest Reservation, Complaints and Lowest Price Promise

2.5.1 The INN shall receive a fax and email confirmation for every booking made by a Guest via INNstight.com. INNstight.com is not responsible for the accuracy and completeness of Guest's information, including, but not limited to, credit card details. INNstight.com is not responsible to the INN for payment of charges associated with a reservation in the event the credit card provided by Guest declines.

2.5.2 By making a reservation through the Website, a direct contract, and therefore legal relationship, is created solely between the INN and the Guest with respect to the reservation.

2.5.3 The INN is bound to accept a Guest as a contractual party, and to process the online reservation in compliance with the INN Information contained on the Website at the time the reservation was made, including any supplementary information and/or wishes made known by the Guest.

2.5.4 Complaints and legal claims regarding the products or services offered, rendered or provided by the INN or specific requests made by Guests are the sole responsibility of the INN. INNstight.com shall not be responsible for mediating such complaints and/or legal claims. INNstight.com is not responsible for and disclaims any liability with respect to such claims from a Guest. INNstight.com may at its sole discretion offer customer support services to a Guest or act as an intermediary between an INN and a Guest or otherwise assist a Guest in its communication with or actions against the INN.

2.5.5 In the event of a valid claim of a Guest under the Lowest Price Promise, INNstight.com shall promptly notify the INNkeeper of such claim and provide the INNkeeper with the relevant details of the claim. The

INNkeeper shall immediately adjust -to the extent applicable- the rate(s) made available on the Website such that the lower rate is available for further booking(s). The INNkeeper shall also immediately adjust the rate for Guests with a valid Lowest Price Promise claim by 10% off of the lower rate found elsewhere. Prior to Guest's departure, the INN shall adjust the room rate according to the previous sentence in its property management system. INN shall be invoiced for the higher original rate booked by Guest. This section applies only in the event that the Guest brings a valid claim within seventy-two (72) hours of booking.

## 2.6 Overbooking, Cancellations, and No-Shows

2.6.1 The INNkeeper shall provide the rooms booked and in the event that the INN is not able to meet its obligations under this Agreement for any reason whatsoever, the INN shall promptly inform INNstight.com by email at [help@INNstight.com](mailto:help@INNstight.com). The subject line of the email shall state "Overbooking". The INNkeeper shall attempt in earnest to procure alternative arrangements of equal or superior quality at the expense of the INN. In the event that no room is available on arrival, the INNkeeper shall:

- a. find suitable alternative accommodation of an equal or superior standard to the INN holding the Guest's guaranteed booking; and
- b. provide free transportation to the alternative INN for the Guest and other members of the Guest's party who are listed in the Guest's guaranteed booking.
- c. The INN shall not cancel or adjust any online reservation, except as provided for in Section 2.7.1 below.

2.6.2 Reservations which are cancelled by a Guest within the cancellation policy period of the INN are not commissionable. Cancellations made by a Guest after the time and date beyond which a cancellation fee applies shall be commissionable in accordance with the terms of this Agreement.

## 2.7 Credit Card Guarantee for Reservation Service

2.7.1 Guarantee of the booking is based on the credit card details provided by the Guest or the person responsible for the booking. The INNkeeper is responsible for the verification of the validity of these credit card details, the (pre) authorization of the credit card and the limit of credit on the date of the overnight stay(s) booked. If the credit card offers no guarantee (i.e. if the credit card declines), the INNkeeper shall request that the Guest guarantee the booking in an alternative manner, for example, by offering another credit card. If the Guest is unable or unwilling to do this, the INNkeeper may cancel the booking. INN bears the full risk of loss from reservations if the guarantee provided by a Guest, i.e. credit card declines.

2.7.2 An INN may take payment from the credit card provided by Guest before the date of check-in only if the policy is clearly stated on the Website as part of a special rate restriction, or other terms and conditions which authorize the pre-payment.

2.7.3 The INNkeeper shall be responsible for charging the Guest for their stay at check out, no show fee or charged cancellation (including applicable taxes for which the INN shall be liable and remit to the relevant tax authorities). Credit cards shall be charged in the same currency as set out in the reservation of a Guest. To the extent that this is not possible, the INNkeeper may charge the credit card of the Guest in a different currency with a reasonable and fair exchange rate.

## 2.8 Securitization of Credit Card Data for Reservation Service

Each INN is required to comply with, and to have its sub-servicers comply with, on an ongoing basis, the requirements, compliance criteria, and validation processes as set forth in the Payment Card Industry ("PCI") Data Security Standard as promulgated from time to time by the major credit card companies.

## 2.9 Direct Marketing to Guests

The INNkeeper agrees not to specifically target Guests that have been obtained via INNstight.com in either online or offline marketing promotions and solicited or unsolicited mail that is not approved by INNstight.com.

## 2.10 Extranet: INNstight.com Digital Marketing System "DMS" & Property Management System "PMS"

INNstight.com will provide the INNkeeper with a user ID and password that allows the INNkeeper to access the INNstight DMS/PMS. The INNkeeper shall safeguard and keep the user ID and password confidential and safely stored and not disclose it to any person other than those who need to have access to the Extranet. The INNkeeper shall immediately notify INNstight.com of any (suspected) security breach or improper use.

## 2.11 OTA Connect

If INNkeeper elects to use INNstight.com's OTA Connect product feature, INNstight.com does not warrant or guarantee that rates and inventory will be accurate on any third party OTAs. INNstight limits its liability on the transmission of rate, inventory, and reservation details to connected OTAs. It is the INNkeeper's responsibility to ensure accuracy of rates and inventory on third party OTAs. INNstight.com waives its liability in the case of overbookings or underbookings or any financial loss that might be due to the use of the INNstight.com OTA Connect third party connection product feature. Please review terms with any third parties governing the use of their booking platform.

# 3. INNSIGHT.COM RIGHTS AND OBLIGATIONS

## 3.1 INN Information License

3.1.1 The INNkeeper hereby grants INNstight.com a non-exclusive, royalty free and worldwide right and license (or sublicense as applicable) to:

(i) use, reproduce, have reproduced, distribute, sublicense, communicate and make available in any method and display those agreed upon elements of the Intellectual Property Rights of the INN as provided to INNstight.com by the INNkeeper pursuant to this Agreement and which are necessary for INNstight.com to exercise its rights and perform its obligations under this Agreement;

(ii) use, reproduce, have reproduced, distribute, sublicense, display and utilize (including without limitation to publicly perform, modify, adapt, communicate, reproduce, copy and make available to the public in any manner whatsoever) the INN Information.

(iii) INNstight.com may sublicense, make available, disclose and offer the INN Information, including the relevant Intellectual Property Rights of the INN, special offers made available by the INN on the Website, and all such further rights and licenses set out in this Agreement via or in collaboration with the websites of affiliated companies and/or third parties (the "Third Party Websites").

3.1.2 In no event shall INNstight.com be liable to the INN for any acts or omissions on the part of any Third Party Websites. The sole remedy for the INN with respect to Third Party Websites is to request INNstight.com, which has the right and not the obligation, to (1) disable and disconnect with such Third Party Website, or (2) remove the INN, including the INN Information, from such Third Party Website, or termination of this Agreement, all in accordance with the terms of this Agreement.

## 3.2 Customer Data and "INNstights" Guest Reviews

3.2.1 INNstight.com will transmit or make available the reservation made by a Guest to the INN. Each reservation will contain reservation details such as the date of arrival, the number of nights, the room type, including smoking preference if applicable, the room rate, the Guest's name, address and credit card details (collectively "Customer Data") and such other specific request(s) made by the Guest.

3.2.2 Guests who have stayed at the INN will be asked by INNstight.com to comment on their stay at the INN and to provide a score for certain categories as determined by INNstight.com. Guest reviews ("INNstights") will be posted on the Website.

3.2.3 INNstight.com reserves the right to post INNstights on the Website. The INN acknowledges that INNstight.com is a distributor, without any obligation to verify, the INNstights. Guests, and not INNstight.com, are publishers of INNstights.

3.2.4 INNstight.com undertakes to use its best efforts to monitor and review INNstights for obscenities or the mention of an individual's name. INNstight.com reserves the right to edit or remove INNstights if such INNstights include obscenities or mention an individual's name. INNstight.com must approve an INNstight in order to get published.

3.2.5 INNstight.com will not enter into any discussion, negotiation or correspondence with the INN with respect to the content of, or consequences of the publication or distribution of INNstights.

3.2.6 INNstight.com shall not have and disclaims any liability and responsibility for the content and consequences of the publication or distribution of any comments or reviews whatsoever.

3.2.7 INNstight.com is the rightful owner of any and all Customer Data and makes such data available at will to the INNkeeper and/or users of The Site.

### 3.3 Internet Marketing and Pay Per Click (PPC) Advertising

3.3.1 INNstight.com is entitled to promote the INN using the INN's name(s) in online marketing, including email marketing and/or pay-per-click (PPC) advertising. INNstight.com runs online marketing campaigns at its own costs and discretion.

3.3.2 The INN is aware of the working methods of search engines, such as spidering of content and ranking of URLs. INNstight.com agrees that if the INN becomes aware of behavior by Third Party Websites that breaches the INN's Intellectual Property Rights, then the INN will notify INNstight.com in writing with details of the conduct and INNstight.com will use its commercially reasonable endeavors to ensure that the relevant third party takes steps to remedy the breach.

3.3.3 The INN agrees not to specifically target the INNstight.com brand directly through keyword purchases that use INNstight.com Intellectual Property Rights.

## 4 WEBSITE SEARCH RANKING

### 4.1 Ranking on INNstight.com

4.1.1 The order in which the INN is listed on INNstight.com. Ranking is based on and influenced by various factors, including but not limited to the commission percentage to be paid by the INN, the minimum allocation provided by the INN, the ratio of bookings to the number of visits to the INN's page on the Website (the "Conversion"), the volume realized by the INN, the ratio of cancellations, the INNstight scores, the customer



service history, the number and type of complaints from Guests and the on-time Commission payment record of the INN.

## 4.2 Ranking on Meta Search Engines

4.2.1 The order in which the INN is listed on meta search engine results is based on a variety of factors that are unbeknownst or controlled by INNstight.com. While INNstight.com makes every effort to drive direct traffic, it does not guarantee page placement on search engine natural search results or promise high volume of traffic to a Standalone Website.

## 5. WEBSITE DESIGN AND HOSTING

The Parties agree that by signing up for the Lite Package, Basic Package or the Premium Package, INNstight shall custom design and host a website ("Hotel Standalone Website *Powered by INNstight*") for the INN.

### 5.1 Marketing Packages

In addition to the free listing provided by INNstight under the INNkeeper Agreement, INNstight offers three (3) packages for additional services, as more fully described on INNstight.com's website at:

<http://www.innstight.com/hotel-digital-marketing-system-subscription-fees>

- (i) As part of this Marketing Engagement, INNkeeper has elected to process guest reservation transactions either via a Third Party Transaction Site or using INNstight.com's Reservation Service.
- (ii) INNkeeper acknowledges having reviewed this above webpage and fully understands the differences between the various packages.
- (iii) INNkeeper acknowledges that specific services may change from time to time and that if the services change, INNstight will provide notification to INNkeeper of such changes to services provided under the various packages.

### 5.2 Pricing

INNkeeper shall be responsible for paying for the services as follows:

- (i) Lite Package: The cost for the Lite Package is \$129 per month.
- (ii) Basic Package: The cost for the Basic Package is \$399 per month.
- (iii) Premium Package: The cost for the Premium Package is \$599 per month.

### 5.3 Website Content

#### 5.3.1 Existing Website Content

- (i) INNkeeper understands that any current website content will no longer be accessible upon the wire on of their new Website *Powered by INNstight* and it is their responsibility to archive or retain any existing data on their current server if they wish to retain such data for future use.

#### 5.3.2 Free Custom Design

(i) INNkeeper understands that INNstight.com will custom design the Standalone Website in a responsive HTML framework utilizing client feedback and the latest design standards, however some elements of the custom design HTML may be shared across multiple customers of INNstight.com.

## 5.4 Website Ownership

### 5.4.1 Website Domain

(i) Upon receipt of the Termination Notice, in the case if INNkeeper did not previously own the Website Domain and INNkeeper wishes to claim ownership of the Domain for their Property's Website, INNkeeper will be required to purchase the Domain from INNstight.

a. The purchase price of the Domain will be determined by INNstight.

b. Upon purchase of the Domain by INNkeeper from INNstight, INNstight will transfer Domain registration to INNkeeper's desired domain registrar within 30 days of the transfer of Domain ownership.

(ii) If INNkeeper is the original owner of the Domain, INNstight will transfer Domain registration to INNkeeper's desired domain registrar within 30 days of Termination.

a. If INNkeeper fails to facilitate transfer of Domain within 30 days of termination, INNkeeper will thereby forfeit ownership of the Domain to INNstight.

### 5.4.2 Website Content

(i) INNstight will create new content to describe the INN leveraging existing information found on the Internet and provided by the INNkeeper. INNstight.com will retain all copyright privileges on any content that is unique and created by INNstight including website design, property descriptions and any logo or photography created by INNstight.

(ii) INNstight agrees to cooperate with INNkeeper on transitioning the INNkeeper's original archived Existing Website Content files, if made available by INNkeeper, to another website hosting company within 14 days of termination.

(iii) All Standalone Website content and software code shall remain the property of INNstight upon termination and INNkeeper acknowledges that their Standalone Website *Powered by INNstight* will not operate without a valid subscription to the software service.

## 6. REPRESENTATIONS AND WARRANTIES

6.1 The INN represents and warrants to INNstight.com that for the term of this Agreement:

(i) the INNkeeper has all necessary rights, power and authority to use, (sub)license and have INNstight.com make available on the Websites the Intellectual Property Rights as set out or referred to in the INN Information made available on the Websites;

(ii) the INNkeeper holds and has all permits, licenses and other governmental authorizations necessary for conducting, carrying out and continuing its operations and business, and

(iii) a Guest will not be able to find a lower rate for identical accommodations with identical booking restrictions through any other distribution channel.

## 7. INDEMNIFICATION AND LIABILITY

7.1 Each Party (the "Indemnifying Party") shall be liable towards, and compensate, indemnify and hold the other Party (the "Indemnified Party") harmless for and against any direct damages, losses (excluding any loss of production, loss of profit, loss of revenue, loss of contract, loss of or damage to goodwill or reputation, loss of claim or any special, indirect or consequential losses and/or damages), liabilities, obligations, costs, claims, claims of any kind, interest, penalties, legal proceedings and expenses (including, without limitation, reasonable attorneys' fees and expenses) actually paid, suffered or incurred by the Indemnified pursuant to:

(i) a breach of this Agreement by the Indemnifying Party, or

(ii) Any claim from any third party based on any alleged infringement of the third party's Intellectual Property Right by the Indemnifying Party.

7.2 The INN shall fully indemnify, compensate and hold INNstight.com harmless for and against any liabilities, costs, expenses, including, without limitation, reasonable attorneys' fees and expenses, damages, losses, obligations, claims of any kind, interest, penalties and legal proceedings paid, suffered or incurred by INNstight.com in connection with:

(i) all claims made by Guests concerning inaccurate, erroneous or misleading information of the INN on the Website;

(ii) all claims made by Guests concerning a stay in the INN, overbooking or inability to honor reservations;

(iii) any claims pursuant to the Lowest Price Promise which are not settled between the Guest and the INN upon check out of the Guest; and

(iv) all other claims from Guests which are wholly or partly attributable to or for the risk and account of the INN (including claims related to (lack of) services provided or product offered by the INN) or which arise due to tort, fraud, willful misconduct, negligence or breach of contract (including the Guest Reservation) by or attributable to the INN in respect of a Guest or its property.

7.3 Save as otherwise provided for in this Agreement, the maximum liability of one Party to any other in aggregate for all claims made against such Party under or in connection with this Agreement in a year shall not exceed the aggregate commission received or paid by such Party in the preceding year or USD \$100,000 (whichever is higher), unless in the event of tort, fraud, willful misconduct, gross negligence, deliberate non-disclosure or deliberate deception on the part of the liable Party, in which event the limitation of liability is not applicable for such liable party. Each Party agrees and acknowledges that none of the limitations of liability set out in Section 6 shall apply to any of the indemnifications described in Section 6.2 or for any third party liabilities.

7.4 In the event of a third party claim, each Party shall act in good faith and use their commercially reasonable efforts to consult, cooperate and assist each other in the defense and/or settlement of such claim, whereas the indemnifying Party shall be entitled to take over a claim and assume the defense in consultation and agreement with the indemnified Party and with due observance of both Parties' interests, and neither Party shall make any admission, file any papers, consent to the entry of any judgment or enter into any compromise or settlement without the prior written consent of the other Party, which shall not unreasonably be withheld, delayed, or conditioned.

7.5 In no event shall any Party be liable to any another Party for any indirect, special, punitive, incidental or consequential damages or losses, including loss of production, loss of profit, loss of revenue, loss of contract,

loss of or damage to goodwill or reputation, loss of claim, whether such damages are alleged as a result of a breach of contract, tort or otherwise. All such damages and losses are hereby expressly waived and disclaimed.

7.6 Each Party acknowledges that remedies at law may be inadequate to protect the other Party against any breach of this Agreement and without prejudice to any other rights and remedies otherwise available to the other Party; each Party shall be entitled to injunctive relief and specific performance.

## 8. TERM, TERMINATION AND SUSPENSION

8.1 Unless otherwise agreed to in writing, this Agreement shall commence on the Effective Date and be effective for one (1) year. This Agreement shall continue thereafter indefinitely until terminated in writing by either Party. Either Party, however, may terminate this Agreement at any time by giving the other Party at least thirty (30) days' written notice of termination.

8.2 Either Party may terminate this Agreement without providing notice and with immediate effect in case of:

(i) a material breach by the non-terminating Party of any term of this Agreement (e.g. delay of Commission payment, insolvency, violation of the Lowest Price Promise and posting false or misleading information on the Website; or

(ii) a bankruptcy filing by either Party.

8.3 INN sight.com is entitled to immediately suspend its services (including the display of or availability of INN or the relevant reservation tool on the Website) in the event:

(i) the INNkeeper fails to pay Subscription and/or Commission Fees on or before the due date;

(ii) the INNkeeper posts incorrect or misleading INN Information on the Property Management System;

(iii) the INNkeeper fails to maintain Information on the Extranet resulting in over-bookings at the INN;

(iv) the INNkeeper fails to accept a reservation at the price shown on a reservation;

(v) the INNkeeper overcharges one or more guests;

(vi) the INNkeeper charges a guest's credit card prior to arrival of the guest without an express agreement from the guest (a guest provides express agreement if they select a non-refundable or an advance purchase room type);

(vii) INN sight.com receives one or more legitimate and serious complaint(s) from one or more Guest(s) who made reservations with the INN;

(viii) misuse of the guest review process by any behavior that results in a review appearing on the Websites that is not an honest expression of a real stay by a real guest at the INN;

(ix) inappropriate or unprofessional behavior towards INN sight.com staff; or

(x) the INNkeeper refuses to agree to any reasonable revision to any term of this Agreement.

8.4 After termination, the INN shall honor outstanding reservations for Guests as of the date of termination and shall pay all commissions, plus interest if applicable, due on those reservations in accordance with the terms of this Agreement.

8.5 Parties agree that termination or suspension of the INN's listing on the Website does not affect the rights and obligations of the other parties (vis-à-vis each other) under this Agreement.

8.6 Upon termination and save as set out otherwise, this Agreement shall absolutely and entirely terminate with respect to the terminating Party and cease to have effect without prejudice to other Party's rights and remedies with respect to an indemnification or a breach by the other, terminating, Party of this Agreement. Sections 6, 7, 9 and 10 shall survive termination.

## 9. BOOKS AND RECORDS

9.1 The systems, books and records of INNstight.com (including Property Management System data, faxes and/or emails) shall be considered conclusive evidence of the existence and receipt by the INN of the reservations made by the Guest and the amount of Commission due to INNstight.com under this Agreement, unless the INN can provide reasonable and credible counter-evidence.

## 10. CONFIDENTIALITY

10.1 Parties understand and agree that in the performance of this Agreement, each Party may have access to or may be exposed to, directly or indirectly, confidential information of the other Party (the "Confidential Information"). Confidential Information includes Customer Data, transaction volume, marketing and business plans, business, financial, technical, operational and such other non-public information that either a disclosing party designates as being private or confidential or of which a receiving party should reasonably know that it should be treated as private and confidential.

10.2 Each Party agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party and receiving party shall not use any Confidential Information for any purpose except in furtherance of this Agreement; (b) it shall maintain, and shall use prudent methods to cause its employees, officers, representatives, contracting parties and agents (the "Permitted Persons") to maintain the confidentiality and secrecy of the Confidential Information; (c) it shall disclose Confidential Information only to those Permitted Persons who need to know such information in furtherance of this Agreement; (d) it shall use prudent methods to ensure that the Permitted Persons do not, copy, publish, disclose to others or use (other than pursuant to the terms hereof) the Confidential Information; and (e) it shall return or destroy all hard and soft copies of Confidential Information upon written request of the other Party.

10.3 Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it (i) is or becomes part of the public domain through no act or omission on the part of the receiving party, (ii) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto, or (iii) is required to be disclosed pursuant to law, court order, subpoena or governmental authority.

10.4 Parties shall use commercially reasonable efforts to safeguard the confidentiality and privacy of Customer Data and to protect it from unauthorized use or release.

## 11. MISCELLANEOUS

11.1 Neither Party shall be entitled to assign, transfer, encumber any of its rights and/or the obligations under this Agreement without the prior written consent of the other Party, provided that INNstight.com may assign, transfer, encumber any of its rights and/or the obligations under this Agreement, in whole or in part, or from time to time, to an affiliated company without the prior written consent of the INN.

11.2 All notices and communications must be in English, in writing, and sent by facsimile or nationally recognized overnight air courier to the applicable facsimile number or address set out in the Agreement.

11.3 This Agreement including the appendixes which form an integral part of this Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and replaces and supersedes all prior agreements, arrangements, offers, undertakings or statements regarding such subject matter vis-à-vis the INN).

11.4 If any provision of this Agreement is or becomes invalid or non-binding, the Parties shall remain bound by all other provisions hereof. In that event, the Parties shall replace the invalid or non-binding provision by provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.

11.5 Save as set out otherwise in this Agreement, this Agreement shall be exclusively governed by the laws of the State of California. If a dispute arises out of or relates to this Agreement or its breach, the parties agree to resort to binding arbitration. Any claim or controversy arising from this Agreement shall be settled by arbitration in accordance with the Rules of the American Arbitration Association or Judicial Arbitration and Mediation Service ("JAMS") at the election of the party filing the claim in the County of San Francisco, State of California, and the judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction. In addition to a monetary award, the Arbitrator(s)' shall have the power to order any other applicable remedy. The parties shall have the right to discovery as provided by California Code of Civil Procedure §1283.05. The prevailing party in the arbitration may be awarded its reasonable attorneys' fees and costs in the discretion of the Arbitrator.

11.6 Parties agree and acknowledge that notwithstanding this Section, nothing in this Agreement shall prevent or limit INNstight.com, Inc. in its right to bring or initiate any action or proceeding or seek interim injunctive relief or specific performance before or in any competent courts where the INN is established or registered under the laws of the relevant jurisdiction where the INN is established or registered and for this purpose, the INNkeeper waives its right to claim any other jurisdiction or applicable law to which they might have a right.

INNstight.com, Inc. is located at 2445 Ocean Avenue, San Francisco, CA 94127

For any inquiries, please contact us at [legal@innstight.com](mailto:legal@innstight.com).

INNstight.com INNkeeper Marketing Engagement Agreement

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