

# Marriott International – Affiliate Operating Agreement

This Agreement supplements the Terms and Conditions entered into between you and PerformanceHorizon Group (“PHG”) as they apply to your application and participation as an Affiliate in the Affiliate Program of Marriott International, Inc. (“Marriott”) and Marriott.com (together with any other Marriott-owned websites) (collectively, the “Program”). As used in this Agreement, “we” or “Marriott” means Marriott International, and “you” means the applicant party. The “Sites” means Marriott’s Web sites as related to the respective Campaign including, but not limited to, the US Marriott Site ([www.Marriott.com](http://www.Marriott.com)) and any other Marriott-owned Web sites, whether existing as of the date you began to participate in Marriott’s Affiliate program or in the future, created by Marriott to sell related services or merchandise as defined and outlined in Section 7. All capitalized terms that are not specifically defined in this Agreement shall have the same meaning as defined in the PHG Terms and Conditions. If there are any conflicts between this Agreement and the PHG Terms and Conditions, the terms of this Agreement shall govern.

By submitting the Application, you hereby ACCEPT AND AGREE to all of the terms and conditions set forth in this Agreement as they may be revised or amended by Marriott from time to time. This Agreement will become binding when your Application is accepted by Marriott.

## 1. Program Terms and Conditions.

Your participation in the Program shall be governed by Marriott’s Program Terms listed in the PHG console, and the terms and conditions of this Agreement (collectively, the “Program Terms”). The Program Terms are accessible through the PHG console under Admin→Campaign→Campaign Details. We may update these Program Terms at any time without prior notice to you and you will make updates immediately according to any revisions to these guidelines.

You agree this license can be revoked at any time for any or no reason upon notice by Marriott to you (regardless of termination of this Agreement) and you agree upon receipt of such notice immediately to cease using all Marriott Links.

## 2. Application and Enrollment in the Program.

You must submit a completed Program application via the program’s signup tunnel to begin the enrollment process. We will evaluate your application and notify you of your acceptance or rejection within a reasonable timeframe. We may reject your application if, in our sole discretion, we determine for any reason that your site or marketing practices do not comply with the Program Terms, or are otherwise unsuitable for the Program. As part of the Application you must submit the principal address of your Web site upon which you desire to place the Marriott Links (as defined in Section 4). You represent and warrant that: (i) the information submitted in the Application is truthful and accurate; (ii) the person submitting the Application is at least 18 years old; (iii) in the event you are an entity, the person submitting the Application has the full right, power and authority to enter into this Agreement on behalf of such entity; and (iv) the execution of this Agreement by such person, and the performance by you of your obligations and duties hereunder, do not and will not violate any agreement to which you are a party or by which you are otherwise bound.

## 3. Your Web site.

You may promote Marriott and all of “the Marriott Campaigns” (as defined in Section 7) only by means of your approved Web site(s) (“Approved Web site”). Marriott reserves the right to approve all content appearing on your Approved Web site which describes Marriott, or relates to Marriott. If you want to

promote Marriott through another Web site other than the Approved Web site you shall provide written notice to Marriott's affiliate email address "affiliatemanager@marriott.com". Upon Marriott's written approval you shall amend or add the Web site under Settings→Publisher within the PHG console.

### **3.1 Responsibility for Your Web site.**

You will be solely responsible for the development, operation, and maintenance of, and all costs associated with, your Web site, and for the accuracy, timeliness and appropriateness of all content posted on your site. We disclaim all liability for these matters. Further, you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, attorneys' fees) relating to the development, operation, maintenance, and content of your site. You agree that your Web site shall not engage in any of the unsuitable web site activities listed in Section 3.2, and you understand and agree that Marriott may, at its sole discretion, correct or reverse commissions and/or terminate you from the Affiliate Program entirely for any violations of these or any other terms of this Agreement.

### **3.2 Web site Requirements.**

In order to qualify for the Affiliate Program and receive commissions, your Web site must:

- Be relevant and professional:
  - Have a professional look-and-feel compatible with Marriott's Sites;
  - Employ logical navigation that is not confusing or misleading to the user;
  - Not contain broken images or links;
  - Not include areas that are under construction;
- Not display or provide content that:
  - is offensive to the communities served by your Web site, including but not limited to blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity or post any obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable content;
  - contains pornographic material, graphics or content perceived as offensive, defamatory, libelous, obscene, abusive, inflammatory or controversial, including that of a sexual, violent or political nature (including nudity in content or ads);
- Not feature or promote:
  - discrimination of any type, i.e., by imposing any race, sex, religion, nationality, disability, sexual orientation, or age-based criteria;
  - activities involving unusual or extreme risk to life or the environment;
  - illegal or criminal activities;
- Not sell, promote, or advertise in any manner (including through the use of hyperlinks):
  - any products or services that are unlawful in the location at which the content is posted or received;
  - gambling activities, alcohol, tobacco, or any illegal or controlled substance;
- Not violate intellectual property of Marriott or any third party, including through:
  - the use of unauthorized links, domain names, HTML tags, or content containing "Marriott" or any other trademarks owned by Marriott, and any variations, or misspellings thereof;
  - infringing in any way or violate any copyright, patent, trademark, service mark, trade name, trade secret or other intellectual property right of Marriott or any third party;
- Not post any content that holds Marriott open to public scorn or ridicule;
- Not provide site visitors reservation capability outside of the Sites or advertise discounted or specially negotiated Marriott room rates;
- Not introduce viruses, worms, harmful code and/or Trojan horses on the Internet;
- Adhere to Data Privacy by:

- Not using tracking technology that enables correlation of tracking data with personally identifiable information collected independently by Affiliates from Marriott customers;
- Not posting or disclosing any personally identifying information or private information about children or any third parties without obtaining their consent in a legally sufficient way (or their parents consent in case of a minor);
- Not require a password or contain other means of restricted access to your site. If you have a member-based site that requires login you agree to provide Marriott with a test login prior to being approved to the Affiliate Program.

#### **4. Linking With and Use of Marriott Links.**

In the event your Application is accepted by Marriott, you may use (to the extent provided in Section 6) the electronic graphic artwork, text and corresponding links (collectively the “Marriott Links”) found within the Creative section of the PHG console as necessary to participate in the Affiliate Program.

The Creative section within the PHG console will provide the Marriott Links that will allow you the opportunity to earn a commission. It is the Marriott Links that will make it possible to track and report all of the Qualified Transactions (as defined in Section 7) acquired through your Web site, provided that cookies have not been disabled on the web browser being used to link to the Respective Site. It is your responsibility to integrate the Marriott Links into your Web site properly in accordance with the instructions available, and Marriott shall not be liable to you with respect to your failure properly to integrate the Marriott Links into your Web site, including to the extent such failure may result in any reductions of amounts that would otherwise be paid to you under this Agreement.

In order to qualify for the Program and receive commissions, your Links must comply with the following requirements:

- Links placed on your Web site may take the form of text links, graphics, banners, buttons, data feeds, and advanced links that Marriott will make available to you. Links may also include promotions provided to Affiliates by Marriott through PHG. The content of all Links shall be provided by Marriott.
- We may make available to you through PHG HTML Banners and data feeds that may permit site visitors to navigate directly to individual areas on Marriott’s Sites.
- For any search functionality on your Web site using Marriott trademarks, (i) Marriott Links must always appear at the top of the list; (ii) any Link that contains Marriott in the title must connect the user directly back to Marriott’s Sites; and (iii) such Link must be supplied to you by Marriott. Marriott will provide guidelines to use when linking to the Sites and using our trademarks and other intellectual property.
- You agree not to modify any Marriott Links in any way without the express written permission of Marriott.

#### **5. Marketing.**

##### **5.1 Notification of Changes.**

If you are accepted as an Affiliate, you agree to notify us via [affiliatemanager@marriott.com](mailto:affiliatemanager@marriott.com) of any material changes to the content or structure of your Web site(s), or the activities utilized by your marketing program within seven (7) calendar days of such change(s).

## 5.2 Marketing Practices.

- i. In order to promote the Marriott Campaigns, you may engage in the following marketing practices that involve:

- **Loyalty Programs.**

You may promote the Marriott Campaigns by means of Loyalty, Rebates, and Cash Back Programs. If you offer special incentives through a loyalty program you need to declare so in your application before applying to Marriott's Affiliate Program.

**Restrictions:** You are not allowed to promote any of the Marriott brands via toolbars, browser add-ons, software and/or applications.

- **Password Protected Sites.**

If you have a member-based site that requires login you agree to provide Marriott with a test login prior to promoting Marriott and the Marriott Campaigns through that site.

- **Email Marketing.**

You may use integrated email marketing, meaning emails that promote Marriott along with other news or advertiser offers, to promote the Marriott Campaigns or your participation in the Program. You may not use standalone emails to promote solely Marriott Campaigns without prior written approval by Marriott.

- **Social Media Marketing.**

You may use social media applications to promote Marriott, including through blogs, forums, newsgroups, message boards, chat rooms, or through similar Internet resources. You may do so only to refer prospects directly to Marriott, not as a means of representing Marriott.

**Social Media Guidelines:** The Social Media Guidelines apply to an affiliate's use of social media advertising or other forms of online targeted advertising offered by companies like: Facebook, LinkedIn, Foursquare, RenRen, etc.

- Affiliates may not create social media accounts (such as Facebook Fan pages, Twitter accounts, etc) that include Marriott trademarks.
- 'Like' or 'share' button functionality should not be used by affiliates to promote Marriott hotel content within the affiliates website or mobile site without Marriott's permission.
- A hashtag is a tag used on the social network Twitter as a way to annotate a message (Ex: #yourhashtag), and are commonly used to show that a tweet, a Twitter message, is related to an event or conference. Retweeting, using Marriott's hashtags, or public messaging Marriott's social forums (twitter handles, blogs, walls) should not be done by affiliate websites, or their owned social media forums, without Marriott's permission.

- **Marriott Deals/ Promotions/ Sweepstakes.**

You may promote special deals, promotions, and sweepstakes for the Marriott Campaigns, provided that these deals are publicly available, were provided by Marriott's Affiliate Program, and that you use the special Marriott Links provided by Marriott's Affiliate Program.

- **Discounts.**

You may not promote a higher percentage discount (%) than Marriott's current promotion without the prior written permission of Marriott. If you have a rebate or cash-back site, you must clearly indicate so in your advertising. Example: If Marriott runs an affiliate promotion of 10% off and you give 2% cash-back, your ad must say "10% Off + 2% cash-back on Marriott Stays." instead of "12% Off Marriott Stays."

- **Organic Search Marketing (SEO).**

You may optimize your site for SEO. If you have a dedicated Marriott Merchant page on your site, you may use Marriott trademark terms in your title tag, however only in combination with your own site name, and with the prior written approval by Marriott.

If you optimize your Meta tags you have to make it clear that your site is not the official Marriott.com Site or any of the Sites; Description Tags have to reflect that. You may NOT use "Official Site" in combination with Marriott's trademark terms;

**Examples:**

- **Title Tag**

Examplesite.com – Marriott Hotels - or - Examplesite.com – Book a Marriott hotel now

Restrictions: This title tag must never contain the words "official site", and must always include the Examplesite.com brand name.

- **Meta Description Tag**

Find travel deals for Marriott at Examplesite.com.

**Restrictions:** This title tag must never contain the words "official site" and must always include the Examplesite.com brand name, and may never infer that the user is at a Marriott site.

- ii. In order to qualify for the Affiliate Program and receive commissions on the Marriott Campaigns, you may NOT engage, unless expressly set forth below, in:

- **Acting as a Reseller.**

You may not act as a reseller of Marriott Products. The Marriott Affiliate Program is not a reseller program. As an affiliate, you are authorized to refer prospects directly to the Sites; you are not authorized to buy and resell our Products.

- **Interference with the Sites.**

- Tactics that obstruct or interfere with the presentation of the Sites in any way when a user is referred from your site (e.g., through the use of frames or pop-ups);
- Interference with a referral of a potential customer or visitor to the Sites.

- **Forced Clicks.**

You may not use any HTML code, IFRAME, JavaScript, or other systems to cause a user's computer to invoke a Marriott Link, or to otherwise set a tracking cookie on a user's computer, except at a user's specific request by specifically clicking on a link to Marriott's Sites from your Web site, in one of the specific ways set out under the Permissible Program Links section, above. You may not cause your Web site to invoke Program Links automatically, e.g. via pop-ups or pop-unders, as users enter, browse, or exit your Web site. You may not cause your web page to invoke Program Links in hidden, invisible, or minimally visible windows

- **Spyware and Adware.**

- You may not use tracking technology (such as spyware) that enables correlation of tracking data with personally identifiable information;
- You may not use any kind of adware.

- **Toolbar, Software, and/or Application Downloads.**

You may not use any toolbar, software, and/or application downloads to promote Marriott or your participation in the Program. This includes, without limitation, the following:

- Programs that set invoke affiliate links and set affiliate cookies automatically, without user knowledge at the time of link invocation;
- Programs that set invoke affiliate links and set affiliate cookies without the user first having visited the affiliates site;
- Programs that open extra windows displaying, linking to, or framing Marriott's Sites, or that open or frame Marriott's Sites in any hidden, invisible, or minimally visible window

- **Paid Search (PPC).**

The defined Marriott Paid Search Policy and Trademark Terms will be maintained in the PHG console in the "Campaign Details" section and may be updated and modified by Marriott at any time.

Marriott will not pay commissions to affiliates who violate these paid search rules and trademark terms and may correct or reverse commissions retroactively for such violations as well as remove affiliates entirely from the network. You may not use Marriott trademarks or brands in any manner that, in our sole judgment, may diminish or in any way negatively impact them or their effectiveness.

Specifically, when engaging in Paid Search (PPC) activities, you may NOT:

- Place Marriott ads in search engines based on the purchase of Marriott trademark terms, derivatives, or misspellings thereof;
- Place Marriott ads in search engines identified as restricted by Marriott; The list of restricted search engines will be maintained in the PHG console in the "Campaign Details" section;
- Place Marriott ads in search engines based on the purchase of competitive brand keyword terms (e.g.: Hilton hotel), used alone or in conjunction with any other word or

phrase; You agree to implement Marriott's Negative Keyword list, including the Protected Keywords, and Non-compete Keywords.

**Protected SEM Bidding Keywords:** You are expressly prohibited from bidding on Protected Keywords, as well as any variations or misspellings thereof, or confusingly similar terms in any search engines. You must include these in your negative keyword list at the highest level possible (ex. campaign level) and on all search engines you utilize.: AC Hotels, AC Hoteles, AC Hotels by Marriott, Autograph, Autograph Collection, Autograph Collection by Marriott, Bulgari, Courtyard, Cortyard, Court Yard, Courtyard by Marriott, Delta Hotels, Delta Hotels and Resorts, Edition, Edition Hotels, Execustay, Execustay by Marriott, Fairfield, Fairfield Inn, Fairfield Inn and Suites, Fairfieldinn, Fairfield Suites, Gaylord, Gaylord Hotels, Grande Lakes, Horizons, Grand Residences, JW, JW Marriott, JW Marriott Hotel, Marriott, Marriott.com, Mariot.com, Marriot.com, Mariott.com, Mariot, Mariott, Marriot, Marriott Rewards, Marriott Conference Centers, Marriott Executive Apartments, Marriott Executive Residences, Marriott Grand Residence Club, Marriott Hotel, Marriott Hotels, Marriott Marquis, Marriott Suites, Marriott Vacation Club, Marriott Vacation Club International, Moxy, Moxy Hotels, Protea, Protea Hotels, QuickGroup, Renaissance, Renaissance, Renaissance Hotels, Residence Inn, Residence Inn by Marriott, The Residence Inn, ResidenceInn, Ritz Carlton, The Ritz-Carlton, RitzCarlton, Ritz-Carlton Club, SpringHill Suites, SpringHill, Spring Hill Suites, Springhil Suite, Stellaris, Town Place Suite, TownePlace Suite, TownePlace Suites, Townplace, TownePlace, Vacation Club, Vacations by Marriott

**Protected SEM Bidding Keywords:** We ask you not to bid on Non-Compete Keywords, as well as any variations or misspellings thereof, or confusingly similar terms in any search engines. Please include these in your negative keyword lists in all your search engines: 6 continents, Amerisuite, amersuites, candle wood, candlewood, Conrad, Crowne Plaza, Doubletree, Embassy Suites, four seasons, Hampton, hawthorn, hawthorne, Hilton, Holiday Inn, holidayinn, Homewood, Hyatt, indigo, inter continental, Intercontinental, quinta, Sheraton, six continents, st regis, st. regis, Starwood, stay bridge, Staybridge, w, westin, wyndham, days inn, omni, Fairmont, Radisson, garden inn, interclub, Microtel, pacifica, red lion, ramada, cendant, amerihost, howard johnson, wingate, knights inn, summerfield suites, homestead, country inn, waldorf astoria, aloft, meridian, home2, hotel indigo, andaz

**Recommended SEM Bidding Keywords:** Hotel, travel, lodging, reservations, resort, inn, specials, offers, motel, spa, golf, skiing, booking, getaway, weekend, city break, beach hotel, vacation, package, vacation package, business travel, luxury hotel, suite, hotel search, online hotels, online travel, travel provider, travel site, hotel site, holiday, extended stay, family hotel, pet friendly hotel

This is not an exhaustive list of Marriott's Paid Search and Trademark Terms. In the event of any discrepancy between this Section and the applicable and most current version of the "Campaign Details" listed in the PHG console, the "Campaign Details" shall control solely with respect to "Campaign Details" rules; all other Sections of these Affiliate terms shall at all times remain in effect.

## **6. Limited License to Use Marriott Links.**

For the term of this Agreement, we grant you a nonexclusive, revocable license to (i) access our Sites through the Links solely in accordance with the Program Terms; (ii) use Marriott's logos, trade names, trademarks, images, messages and similar identifying material (the "Licensed Materials"), for the sole purpose of promoting the Marriott Campaigns (associated with the Marriott Links that are accessible through the PHG console) to assist in generating online transactions, and for identifying you as a participant in the Affiliate Program.

You may not modify the Licensed Materials or any associated code (e.g. HTML) in any way. Except as expressly granted in this Agreement, the Affiliate shall have no other rights of any kind in regards to the Sites, Marriott's services, the Marriott Campaigns, Marriott images, messages, codes, trade names and trademarks, and all other intellectual property of Marriott. You acknowledge that all use of the Marriott Links by you inures solely to the benefit of Marriott, and agree not to use the Marriott Links in a manner that is, or otherwise include materials on your Web site that are, disparaging of Marriott. Under no circumstances will anything in this Agreement be construed as granting by implication, or otherwise, a license to any of Marriott's intellectual property or proprietary technology other than the use of the Licensed Materials, code and the linkage to Marriott Web site, in accordance with the terms of this Agreement.

You will remove any outdated Marriott Links immediately upon our request. We may update these guidelines at any time without prior notice to you and you will make updates immediately according to any revisions to these guidelines.

You agree this license can be revoked at any time for any or no reason upon notice by Marriott to you (regardless of termination of this Agreement) and you agree upon receipt of such notice immediately to cease using all Marriott Links.

## **7. Marriott Campaigns; Qualified Transactions; Policies and Pricing.**

We will pay you commissions on certain transactions generated on the Sites that constitute "Qualifying Transactions" as defined for each Campaign. For a transaction to constitute a "Qualifying Transaction", the customer must follow an affiliate campaign link in the format specified by Marriott to the Respective Site.

We reserve the right to reject transactions that do not comply with the Program Terms. Credit for a transaction is attributed to the most recently clicked Affiliate link. Marriott cannot accept responsibility for users who may delete or not otherwise accept cookies used to track return visits to the Sites within the allotted time frame and cannot be held to honor commissions for such untracked return visits.

All of these transactions collectively constitute "The Marriott Campaigns".

### **7.1 Hotel Rooms – Qualified Transactions**

A "Qualified Transaction" is a completed stay resulting from a reservation: (i) of one or more "Commissionable Rooms" that are made available for sale to the general public by Marriott, excluding rooms offered at specially negotiated rates, where the customer is required to be affiliated with or employed by a particular company or organization to receive the special rate (e.g., corporate rate, government rate or the Marriott employee rate). Rooms offered at specially negotiated rates for Marriott Rewards members (e.g. Rewards offer discount, Rewards offer package). Rooms that are booked or upgraded and paid for using redeemed Marriott Rewards Points. Rooms booked at non-commissionable brands (Ritz Carlton, ExecuStay, BVLGARI, Grand Residences, Edition). Rooms booked at non-commissionable properties (The Cosmopolitan of Las Vegas, Autograph Collection, Riyadh Marriott, Saudi Arabia, Aspen Wye River Conference Center (Maryland), The Marriott Ranch Bed and Breakfast (Virginia), AC Hotel Lisboa, AC Hotel Carlton Madrid, AC Hotel Som, AC Hotel Nuevo Portil Golf).; (ii) made using our automated reservation system via the Site as a direct result of your promotion of Marriott Hotel Rooms by linking from one of the Marriott Affiliate Program Links on your Web site, and (iii) for which Marriott has received full payment.

Once the stay is completed, Marriott will calculate the appropriate commission as outlined in the Program Terms. Marriott will not pay commissions on any cancelled reservations or no shows. For any changes made Marriott will adjust the commission associated with the original Reservation ID according to the final sales amount excluding taxes/VAT and any other non-room related charges.



## **7.2 Vacations By Marriott – Qualified Transactions**

A “Qualified Transaction” is a purchase: (i) of any “Vacations By Marriott Package” that is made available for sale to the general public by Vacations By Marriott.; (ii) made via the Vacations By Marriott Site and any future Web sites, created by Marriott to sell related services or merchandise as a direct result of your promotion of the Vacations By Marriott Products by linking from one of the Marriott Affiliate Program Links on your Web site; and (iii) for which Vacations By Marriott has received full payment.

Once the purchase is completed, Marriott will calculate the appropriate commission as outlined in the Program Terms. Marriott will not pay commissions on cancelled orders or returns. For Returns or Exchanges Marriott will adjust the commission associated with the original Order ID according to the final sales amount.

## **7.3 Policies and Pricing**

Customers who book hotel rooms, or purchase Vacations By Marriott Packages through the Affiliate Program will be deemed to be customers of Marriott and Vacations By Marriott respectively. Accordingly, all Marriott rules, policies, and operating procedures concerning customer orders, customer service, room bookings, and purchases will apply to those customers with respect to their transactions on the Sites.

We may change our policies and operating procedures, including pricing, at any time consistent with applicable laws. Marriott, at its sole discretion, will determine the prices to be charged for hotel rooms booked and paid for under the Affiliate Program in accordance with our own pricing policies. You may not include price information on your site, unless pricing information is made available through the Marriott Links provided through PHG, or without prior written approval by Marriott. Prices and availability of Marriott hotel rooms and Vacations By Marriott Packages may vary from time to time. Marriott will use commercially reasonable efforts to present accurate information, but we cannot guarantee the availability or price of any particular hotel room.

## **8. Commissions and Payment**

### **8.1 Commissions**

You will earn Commissions based on the total number of Qualifying Transactions as set forth in the Program Terms. Commissions shall be paid on Net Sales for Qualifying Transactions. Net Sales means the amount actually paid to Marriott for Qualifying Transactions, excluding any amounts paid for sales taxes, duties, shipping and handling, or similar fees. Commissions will be adjusted downwards if (i) hotel reservations are cancelled, or Products are returned for refund at any time; or (ii) Marriott determines that a hotel stay payment or a purchase for which you received a Commission was made fraudulently including, but not limited to, the use of stolen credit cards, general charge-backs, and any other instances that cause us to credit a customer's account; or (iii) Marriott determines that a purchase for which a Commission was made involved actions you took in violation of this Affiliate Program. Marriott, at its sole discretion and upon notification to you, may prospectively change this method of compensation or add additional methods of compensation.

### **8.2 Cookie Duration**

End users referred by you will be marked with certain cookie duration as set forth in the Program Terms, provided cookies have not been disabled by the end user. Affiliates will not be compensated for any Qualifying Transaction made by an end user who can't be identified after the cookie has expired or been removed.

### **8.3 Payment of Commissions**

We will pay you commissions on a month-in-arrears basis through PHG. If a technical error that resulted in erroneous payment or reporting is found, you agree to return the misallocated funds. You are only eligible to earn commissions on sales of Qualifying Transactions occurring during the term of this Agreement. In the event overpayment is made by us, you agree to promptly remit such excess payment upon notification by us.

Marriott may choose to adjust Commissions for a particular period of time or for particular types of Marriott Campaigns. Marriott will provide you notice of such Commission changes through the PHG console. Nothing in the foregoing shall limit Marriott's ability to change the minimum Commission contained herein in accordance with Section 11. Consistent with these terms and conditions, Marriott may correct or reverse commissions, both retroactively and proactively, if it determines that you have violated the terms of this Affiliate Program.

### **8.4 Liability for Payment**

Marriott shall not be liable for any commission to you if Marriott deems that you have engaged in any fraudulent or criminal activity in connection with the Affiliate Program, or that you have otherwise violated the terms of this Affiliate Program.

## **9. Transaction Processing; Reporting.**

We will be responsible for processing transactions placed by customers who are directed to the Sites through the Links provided by Marriott. We reserve the right to reject transactions that do not comply with any reasonable requirements that we periodically may establish. We will be responsible for all aspects of transaction processing and fulfillment. Among other things, we will prepare reservation forms; process payments, cancellations and handle customer service.

Reporting capability summarizing sales activity will be available to you through PHG. The form, content, and frequency of the reporting capability are limited to that available through PHG. Marriott is not responsible for any changes that PHG may make in their reporting format, timing, or types of reporting capability available to members of PHG and the Marriott Affiliate Program. To permit accurate tracking, reporting, and fee accrual, you must ensure that the Links are properly formatted. Marriott will not be responsible for improperly formatted Links regardless of whether you have made amendments to the code or not.

## **10. Terms and Termination.**

The term of this Agreement will begin upon our acceptance of your Program application and will end when terminated by a party in accordance with this Section 10. You may terminate this Agreement at any time, with or without cause, by terminating your participation in the Marriott Affiliate Program and removing all Marriott Affiliate Program Links obtained through PHG. Marriott may terminate this Agreement for convenience upon immediate written notice to the email contact you provide within PHG. Upon termination, you shall immediately cease using, displaying or otherwise maintaining any Links.

## **11. Modification of This Agreement.**

We may modify any of the Program Terms at our sole discretion. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING OUR NOTIFICATION WILL CONSTITUTE BINDING ACCEPTANCE OF THE MODIFIED PROGRAM TERMS, AS APPLICABLE.

## **12. Limitation of Liability; Disclaimer; Indemnification.**

### **12.1 Liability.**

We will not be liable in any event for indirect, incidental, special or consequential damages (or any loss of revenue, profits, goodwill or data) arising in connection with this Agreement or the Program, whether or not foreseeable and even if we have been advised of the possibility of such damages; Provided that you shall remain liable to Marriott to the extent any disclaimed damages are claimed by a third party and be subject to indemnification pursuant to Section 11.3.

Marriott shall not be held liable in any part for failure of PHG to maintain service. In no event shall the liability of Marriott in connection with this Agreement for damages not excluded in the immediately preceding sentence exceed the amount paid or payable by Marriott to you under this Agreement within the three (3) month period immediately preceding the accrual of such claim.

### **12.2. Disclaimers.**

We make no express or implied warranties or representations with respect to the Marriott Affiliate Program, hotel rooms booked or vacation packages purchased through the Affiliate Program (including, without limitation, warranties of fitness, merchantability, non-infringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, we make no representation that the operation of the Sites will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

### **12.3 Indemnification.**

You agree to defend, indemnify and hold harmless Marriott, its subsidiaries and referrals, and their respective officers, directors, agents, distributors, franchisees and employees against any loss, damage, expense, or cost, including reasonable attorneys fees (including allocated costs for in-house legal services) arising out of any claim, demand, action, suit, investigation, arbitration or other proceeding by a third party ("Liabilities") based on (i) your material breach of any covenant, duty, representation, or warranty of this Agreement, (ii) materials contained on your Web site (including any allegation that such materials infringe a third party's proprietary rights), (iii) any covenant, representation or warranty made by you regarding the Sites or Marriott's Services and Products, and (iv) any claims that are otherwise related to your Web site and the content thereon.

## **13. Confidentiality.**

### **13.1. Confidentiality Obligations.**

Each party shall hold the Confidential Information of the other in confidence and protect the same with at least the same degree of care, but no less than reasonable care, with which it protects its own most sensitive confidential information. Each party shall use the Confidential Information of the other solely in connection with the exercise of its rights and the performance of its obligations under this Agreement, and shall restrict disclosure of and access to the Confidential Information of the other to such party's Personnel that require access to such Confidential Information in connection with this Agreement. Each party shall require its personnel to comply with the obligations of confidentiality set forth herein and shall be liable for any failure by its Personnel to so comply.

### **13.2. Exceptions to Confidentiality Obligations.**

Each party's obligations pursuant to Section 13.1 shall not apply to Confidential Information of the other party that (a) was in the public domain prior to the Effective Date or subsequently came into the public domain through no fault of the receiving party; (b) was lawfully received by the receiving party from a third party free of any obligation of confidence; (c) was already in the lawful possession of the receiving party prior to receipt from the disclosing party; (d) is required to be disclosed by law, provided that the party seeking disclosure provides prior written notice of such disclosure to the other party and takes all reasonable and lawful actions to avoid and/or minimize the extent of such disclosure; or (e) the receiving party can show by a preponderance of documentary evidence was subsequently and independently developed by its employees, consultants or agents without reference to the Confidential Information of the disclosing party.

## **14. Miscellaneous.**

### **14.1 Survival.**

Sections 12 and 13 shall survive the expiration or termination of this Agreement. Additionally, to the extent this Agreement is not terminated as a result of fraud relating to the Affiliate Program by you or otherwise as a result of your breach of this Agreement, Marriott's obligation to pay Fees shall survive for so long as is necessary to account for Fees generated from Qualified Products properly registered prior to the date of termination.

### **14.2 Applicable Law; Jurisdiction.**

This Agreement will be governed by the laws of the United States and the state of Maryland, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in Maryland and you irrevocably consent to the jurisdiction of such courts.

### **14.3 Excuse.**

Neither party will be liable for, or be considered in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions which are beyond such party's reasonable control and which such party is unable to overcome by the exercise of reasonable diligence. Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulations or if any other cause beyond the reasonable control of the parties renders performance of the agreement impossible whereupon all money due to either of the parties shall be paid immediately and you shall cease to promote the Services and Products immediately.

### **14.4 Assignment.**

You may not assign this Agreement, or any right, interest or benefit under this Agreement, by operation of law or otherwise, without our prior written consent and any such assignment shall be null and void.

### **14.5 No Waiver.**

Subject to the restriction in Section 14.4, this Agreement will be binding on, inure to the benefit of, and enforceable against the parties and their respective successors and assigns. Our failure or agreement not to enforce your strict performance of any provision of this Agreement in a given instance will not constitute a waiver of our right to subsequently enforce such provision or any other provision of this Agreement.

#### **14.6. Relationship of Parties.**

The parties are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will (a) have no authority to make or accept any offers or representations on our behalf and (b) make no statement, whether on your Web site or otherwise, that reasonably would contradict anything in this Section.

#### **14.7 Acknowledgment.**

You acknowledge that you have read this Agreement and agreed to all the terms and conditions. You understand that Marriott may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement, and Marriott and its referrals and subsidiaries may operate Web sites that compete with your Web site. You further agree that this document and any invoices arising under it, constitute the complete and exclusive agreement between the parties regarding their subject matter.