

## 1. DEFINITIONS

**Accommodation Provider** means the party registered by the SATC to participate in the Campaign.

**Agent** means Naked Bookings Pty Ltd (ABN 75 169 881 430) trading as Nabooki.

**Agreement** means the agreement between the SATC and the Accommodation Provider described in clause 2.

**Application** means the application by the Accommodation Provider to participate in the Campaign made on the Application Portal and includes the rules for eligibility as set out on the Application Portal and the Accommodation Provider's Campaign Offers.

**Application Portal** means the portal on which all Accommodation Providers make an expression of interest to be included in the Campaign.

**ATDW** means the Australian Tourism Data Warehouse on which the Accommodation Provider is required to be registered prior to 30 August 2021.

**Booking Period** means the period between 23 September 2021 and 14 October 2021 (inclusive), or as otherwise determined by the SATC.

**Campaign** means the campaign developed by the SATC to support the South Australian tourism industry by offering the Rebate and encouraging consumers to undertake travel within South Australia.

**Campaign IP** means such Intellectual Property Rights, designations, slogans, logos or trademarks used by the SATC which the SATC has notified the Accommodation Provider is approved for the Accommodation Provider's use from time to time and for the purpose of the Campaign.

**Campaign Offer(s)** means the offers to be made available to the consumer upon presentation of a Great State Voucher during the Booking Period and including the value of the Rebate available to the Accommodation provider ensuring that:

- a. Great State Vouchers to the value of \$50 can be redeemed against any offer of \$50 or more for an Accommodation Provider situated in Adelaide suburbs or regions outside of postcodes 5000 and 5006;
- b. Great State Vouchers to the value of \$100 can be redeemed against any offer of \$100 or more for an Accommodation Provider situated in postcodes 5000 or 5006.

**Campaign Portal** means the portal into which the SATC's Agent will onboard Campaign Offers agreed with the Accommodation Providers to be offered for the Campaign.

**Conditions** means these terms and conditions.

**Confirmation Date** means the date the SATC sends a confirmation to the Accommodation Provider as to its successful application to participate in the Campaign.

**Corporate Identification** means the trademark (whether registered or not) which identifies the Accommodation Provider's goods or services, and which is nominated by the Accommodation Provider in writing in the Application for use in connection with the Campaign and pursuant to the terms of the Agreement.

**Great State Voucher** means the unique voucher issued to a consumer upon the draw of a trade promotion lottery providing the consumer with a discount on a Campaign Offer offered by the Accommodation Provider to the value of either \$50 or \$100, (inclusive of GST).

**GST** means the tax imposed by GST Law.

**GST Law** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all industrial and intellectual property rights including all: (a) know how, trade secrets, copyright, trademarks (whether registered or unregistered), designs, patents and any right to have confidential information kept confidential; and (b) any application or right to apply for registration of any of the rights referred to in the immediately preceding paragraph (a).

**Notice** means a notice in writing, or a consent, approval or other communication required to be in writing under this Agreement.

**Promotion Services** means the services provided by the SATC to the Accommodation Provider under this Agreement in support of the Campaign and which may include but are not limited to promotion of the Accommodation Provider as an SATC registered provider under the Campaign.

**Rebate** means a cash rebate of:

- a. \$50 (inclusive of GST) for approved Campaign Offers to the value of \$50 or more; or

- b. \$100 (inclusive of GST) for approved Campaign Offers to the value of \$100 or more.

**Rules for Eligibility** means the eligibility criteria set out on the Application Portal by the SATC which the Accommodation Provider must meet to be eligible to participate in the Campaign.

**SATC** means the South Australian Tourism Commission (ABN 80 485 623 691), a body corporate pursuant to the *South Australian Tourism Commission Act 1993 (SA)* of Level 9, 250 Victoria Square/Tarntanyangga, Adelaide South Australia 5000.

**Term** means the term of this Agreement as set out in clause 2.

**Travel Period** means the period between 23 September 2021 and 10 December 2021 inclusive.

**Unique Identifier(s)** means the unique identifying code issued to a consumer in the form of a Great State Voucher and used by the consumer in accessing a discount on accommodation via a Campaign Offer.

## **2. AGREEMENT**

- 2.1 This Agreement binds the SATC and the Accommodation Provider from the Confirmation Date and terminates on 28 February 2022, unless otherwise terminated in accordance with the terms of this Agreement.
- 2.2 This Agreement consists of: (a) these Conditions; and (b) the Application (including the Rules for Eligibility); and (c) any amendments or variations made in accordance with these Conditions. This Agreement supersedes all communications, negotiations, arrangements, and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.
- 2.3 The terms of any other document (including any document of the Accommodation Provider) that purports to form part of this Agreement is hereby excluded unless expressly confirmed in writing by the SATC as forming part of the Agreement. In case of any inconsistency between a provision of these Conditions and any provision of any other document forming part of this Agreement, these Conditions will prevail.
- 2.4 For the purpose of this Agreement, the Accommodation Provider acknowledges that the SATC's Agent is responsible for the management and administration of the Campaign, the Rebate and the Promotion Services for and on behalf of the SATC. The Agent will oversee the performance of these terms and conditions and all communication between the SATC and the Accommodation Provider must be conducted via the Agent. All instructions (if any) to the Accommodation Provider will be given by the Agent and such instructions are deemed to have been duly authorised by the SATC.

## **3. REGISTER TO PARTICPATE**

- 3.1 For the purpose of this clause, the Accommodation Provider acknowledges and agrees:
- 3.1.1 the SATC will provide the Promotion Services to the Accommodation Provider in accordance with the following process:
- (a) the SATC will accept and review Applications made by an Accommodation Provider on the Application Portal to participate in the Campaign. All Applications will be assessed according to the Rules for Eligibility;
  - (b) upon review of the Application, the Accommodation Provider will be advised by the SATC of its registration to participate in the Campaign or not. The SATC's decision on this matter is final;
  - (c) all information provided in the Application, including any personal information of the successful Accommodation Provider, will be sent to the SATC's Agent for the Promotion Services;
  - (d) the SATC's Agent will engage with Accommodation Provider to:
    - (i) finalise Campaign Offers and on board all Accommodation Providers by no later than 19 September 2021 – which date is final and cannot be extended;
    - (ii) obtain and onboard the Accommodation Provider's terms and conditions relevant to the Campaign Offers, including any terms and conditions relevant to cancellations or change of bookings;
    - (iii) obtain all necessary financial details of the Accommodation Provider in order to manage and administer the Campaign, Rebate and Promotion Services;

- (iv) make a selection as to which consumer payment option the Accommodation Provider will accept on the Campaign Portal. Payment options are limited to integrating the Accommodation Provider's supported payment gateway account in the Agent's portal (Pre-Payment method), or otherwise using own private method to obtain and finalise payment.
- 3.2 In exchange for the Promotion Services, the Accommodation Provider will allow all consumers with a Great State Voucher to book the Campaign Offers with the Accommodation Provider via the Campaign Portal.
- 3.3 The Campaign Offers will remain open for booking during the Booking Period for travel during the Travel Period, subject to any block out dates that the Accommodation Provider might apply.
- 3.4 The Campaign Offers must be approved by the Accommodation Provider within the timeframe stated by the Agent in order to be finalised and uploaded to the Campaign Portal by no later than 5pm on 22 September 2021 and available for consumer bookings by no earlier than 9am on 23 September 2021 for the term of the Booking Period.

#### **4. RECONCILIATION AND REIMBURSEMENT**

- 4.1 Where the Accommodation Provider does not elect to adopt a Pre-Payment method, upon a consumer making a booking with the Accommodation Provider using the Campaign Portal, the consumer will be referred directly to the Accommodation Provider to complete payment for the booking and the payment must include a deduction for the value of the Great State Voucher valid for the Campaign Offer.
- 4.2 Where the Accommodation Provider does adopt a Pre-Payment method, upon a consumer making a booking with the Accommodation Provider using the Campaign Portal, the consumer will be automatically directed to the Accommodation Provider's Pre-Payment method and will complete the payment for the booking minus a deduction for the value of the Great State Voucher.
- 4.3 The Accommodation Provider will receive a daily booking summary containing all bookings scheduled with the Accommodation Provider for that day.
- 4.4 The SATC will, via its Agent, reconcile completed bookings every Monday for bookings completed and checked in by the Accommodation Provider in the previous 7 days. Using this reconciliation, the SATC, via its Agent, will make payment of all Rebates for Great State Vouchers redeemed during that reconciliation period. The Accommodation Provider should receive payment of its Rebate for the Great State Voucher within no more than 30 days of the consumer's booking being completed. For the purpose of this clause a completed booking refers to the completion of travel and stay by the consumer during the Travel Period in accordance with a booking made with the Accommodation Provider during the Booking Period.
- 4.5 The Accommodation Provider acknowledges that the Campaign Portal contains a "Manage Booking" function. The Manage Booking function allows a consumer to view booking details, and within any defined cancellation periods set by the Accommodation Provider in its terms and conditions and by no later than the close of the Travel Period, change or cancel a booking with the Accommodation Provider. Where a booking is cancelled by a consumer using the Manage Booking function, the Accommodation Provider agrees that the consumer can rebook, subject to availability, the same accommodation on a different date within the Travel Period unless otherwise specified in the Accommodation Provider's terms and conditions.
- 4.6 The Accommodation Provider acknowledges and agrees that it is not eligible to claim or receive the benefit of a Rebate unless and until the consumer has completed its booking with the Accommodation Provider without a cancellation. To be clear, where a booking is made, and a consumer does not complete the stay, the Accommodation Provider is not eligible for the Rebate.
- 4.7 The Accommodation Provider acknowledges and agrees that, once a consumer has travelled, the Accommodation Provider is responsible for marking a consumer's booking as complete within the Campaign Portal.

#### **5. LICENCE BY THE SATC**

- 5.1 The SATC grants to the Accommodation Provider a limited, non-exclusive, royalty free licence for the Term to use the Campaign IP solely in relation to and for the purpose of promoting the Accommodation Provider's participation in the Campaign on the conditions set out in this clause 5 and the Accommodation Provider accepts this licence.

- 5.2 The SATC may use or license others to use the Campaign IP as the SATC sees fit and in its sole discretion either alone or in conjunction with any other logos, names, or trademarks.
- 5.3 The Accommodation Provider accepts that the Campaign IP is the sole and exclusive property of the SATC and that all Intellectual Property Rights and all goodwill arising from the use of the Campaign IP will accrue to and be the sole and absolute property of the SATC.
- 5.4 All proposed uses of the Campaign IP by the Accommodation Provider are subject to the written approval of the SATC, with such approval to not be unreasonably withheld. The Accommodation Provider must not attempt to register any logo, trademark, name, design or mark similar to or capable of being confused with the Campaign IP and the Accommodation Provider must observe such requirements with respect to the Campaign IP as the SATC may from time to time reasonably direct in writing.

## **6. LICENCE BY THE ACCOMMODATION PROVIDER**

- 6.1 The Accommodation Provider grants to the SATC a limited, non-exclusive, royalty free licence for the Term to use the Corporate Identification for the purpose of promoting the Accommodation Provider's participation, goods and services in the Campaign on the conditions set out in this clause 5 and the SATC accepts this licence.
- 6.2 The Accommodation Provider may use or license others to use the Corporate Identification as it sees fit and in its sole discretion either alone or in conjunction with any other logos, names, or trademarks. The SATC accepts that the Corporate Identification is the sole and exclusive property of the Accommodation Provider and that all Intellectual Property Rights and all goodwill arising from the use of the Corporate Identification will accrue to and be the sole and absolute property of the Accommodation Provider. The SATC must not attempt to register any logo, trademark, name, design or mark similar to or capable of being confused with the Corporate Identification.

## **7. PROMOTION SERVICES**

- 7.1 The SATC may in its sole discretion: (a) use the Corporate Identification or other Intellectual Property Rights specified in clause 6; and (b) conduct advertising or promotion in relation to the Accommodation Provider's participation in the Campaign.

## **8. RECORD KEEPING AND AUDIT**

- 8.1 The Accommodation Provider must maintain reasonable, up to date and accurate records relating to the number of bookings made for the Campaign Offer, the value of the bookings and the number of completed bookings or cancellations during the Travel Period.
- 8.2 The SATC may direct the Accommodation Provider to arrange for the records described in clause 8.1 to be audited at the Accommodation Provider's expense. The SATC may specify the minimum qualifications to be held by a person appointed to conduct the audit.
- 8.3 The Accommodation Provider will otherwise provide the SATC with information about and reports on the factors set out in clause 8.1 when requested by the SATC.

## **9. RELEASE AND INDEMNITY**

- 9.1 To the extent permitted by law, the Accommodation Provider indemnifies, releases and forever discharges SATC & SATC's Agent from all liability for claims, loss, damage, costs or expenses howsoever arising from or in connection with the Campaign and the Accommodation Provider's participation in the Campaign. The SATC or Agent will not be responsible for acts, omissions or defaults of the Accommodation Provider, invitees, guests, directors, officers, and anyone acting on behalf of the Accommodation Provider.

## **10. OBLIGATION TO MAINTAIN INSURANCE**

- 10.1 The Accommodation Provider must, at its own cost, have and maintain valid and enforceable insurances that a reasonably prudent organisation would take out covering the services of the Accommodation Provider, including without limitation the services the subject of the Campaign Offers.

## **11. UNFORESEEN EVENTS**

- 11.1 The SATC is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control, including but not limited to communicable disease, border control or quarantine restrictions, acts of God, natural disasters, acts of war, weather, riots and strikes outside its organisation or decisions or acts of Government.
- 11.2 The parties acknowledge that the purpose of the Campaign is to drive expenditure in tourism industry businesses by boosting bookings for travel and experiences across South Australia during the Booking and Travel Periods which have suffered a significant downturn as a result of travel restrictions caused by the Covid-19 pandemic. If at any time the Government of South Australia is required to or takes steps to enforce restrictions, including without limitation travel or lock down restrictions, then upon notice to the Accommodation Provider the SATC may opt to cancel, modify or delay the Campaign as necessary with such notice to be effective immediately.

## **12. TERMINATION BY SATC**

- 12.1 The SATC may immediately terminate this Agreement by notice in writing if the Accommodation Provider:
- (a) fails to comply with these Conditions and such breach cannot be remedied or cannot be remedied within 7 days of a notice requiring it to do so;
  - (b) assigns or purports to assign any of its rights or obligations under these Conditions in breach of the Agreement; or
  - (c) in the reasonable opinion of the SATC, acts dishonestly in its dealings with the SATC under the Campaign.
- 12.2 Unless otherwise agreed in writing by the SATC, if this Agreement is terminated pursuant to this clause 12 then the Accommodation Provider forfeits all rights to any Rebate which otherwise would have been payable under this Agreement from the date of the termination.
- 12.3 The termination of this Agreement pursuant to this clause does not preclude the SATC from enforcing any rights it may have against the Accommodation Provider as a result of the Accommodation Provider's actions including, in particular, the right to claim damages for breach of this Agreement or at law, or a claw back of amounts already paid by the SATC to the Accommodation Provider.

## **13. MISCELLANEOUS**

- 13.1 The SATC may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from: (a) the Accommodation Provider's obligations under any provisions of this Agreement; or (b) the provisions of the *Freedom of Information Act 1991 (SA)*.
- 13.2 The SATC requires personal information from the Accommodation Provider for a range of purposes, including but not limited to:
- (a) providing the Promotion Services and issuing the Rebate;
  - (b) conducting market research and analysis that helps the SATC improve and customise its products and services;
  - (c) sending the Accommodation Provider customer service emails and reminders;
  - (d) preventing or detecting unlawful or dishonest behaviours, to protect the SATC's legal rights or as otherwise permitted by law;
  - (e) ensuring the security of SATC's operations;
  - (f) creating a profile about the Accommodation Provider to help the SATC personalise its services to the Accommodation Provider if the Accommodation Provider has consented to SATC marketing;
  - (g) sharing that personal information with:
    - (i) third parties who supply goods and services to the SATC, including but not limited to the Agent and any other third parties subcontracted by the SATC to provide the Promotion Services for this Campaign;
    - (ii) government departments, agencies or other authorised bodies where permitted or required by law. The SATC will manage the Accommodation Provider's personal information pursuant to the SATC's Privacy Policy Statement which can be found here <https://tourism.sa.gov.au/privacy-statement>. The Privacy Policy Statement sets out how the SATC collects, holds, uses, and discloses personal information in relation to the Accommodation Provider for the purposes listed above.
- 13.3 Any terms and conditions of this Agreement that by their nature or otherwise reasonably should survive termination, cancellation or other expiry of this Agreement shall survive any termination, cancellation, or

other expiry of this Agreement. Such terms and conditions include but are not limited to the terms and conditions set out in clauses 9 (Release and Indemnity) and 13 (Miscellaneous).

- 13.4 The Accommodation Provider must not make any public reference (including but not limited to undertaking interviews with journalists from radio stations, television stations and newspapers) to the Campaign or any aspect of this Agreement without first obtaining the SATC's consent.
- 13.5 Where any part of this Agreement is determined by a court to be unenforceable, invalid, illegal or void, that part may be severed. Severance of a part of this Agreement will not affect any other part of it. Where a word, phrase, sentence, paragraph, clause or other provision of this Agreement would be otherwise unenforceable, illegal or void, the effect of that provision will, so far as possible, be limited and read down so that it is not unenforceable, illegal or void.
- 13.6 No failure to exercise nor delay in exercising any right, power or remedy by the SATC operates as a waiver.
- 13.7 SATC reserves the right to modify or amend the Agreement, in whole or part, at any time without notice.
- 13.8 Any Notice from one party to another must be in writing and be signed by an officer who is authorised to sign and legally bind that party.
- 13.9 Addresses for Notices are set out in the Application.
- 13.10 Any Notice will be properly given or served by a party if that party: (a) delivers it by hand and is taken be received immediately; (b) posts it by mail to the address listed in the Application or to another address as notified in writing by the relevant party and is taken to be received on the third business day after the date of posting; (c) transmits it by facsimile to the facsimile number as notified in writing by the relevant party and is taken to be received on the date of the transmission if the sender has a clear confirmation report of delivery; or (d) transmits it by electronic mail to the email address listed in the Application or to another email address as notified in writing by the relevant party and is taken to be received on the date of the email if that is before 5pm on a business day, or otherwise on the next business day.
- 13.11 This Agreement will be governed by and construed in accordance with the laws of South Australia, and the parties submit to the exclusive jurisdiction of that State.
- 13.12 Nothing in this Agreement derogates from the powers of the Auditor-General under this *Public Finance and Audit Act 1987* (SA).