

SATC LETTERHEAD

<title> <first name> <last name>
<position>
<organisation name>
<organisation postal address 1>
<organisation postal address 2>
<organisation postal address 3>

Dear <title> <first name> <last name>

Letter of Agreement

I am pleased to advise that your application dated <insert date> for an Experience Nature Tourism Fund grant of \$<insert amount> (GST exclusive) ("**Application**") is successful.

As outlined in your Application and the Experience Nature Tourism Fund Program Guidelines, on receipt of this letter you are a party to a grant agreement ("**Agreement**"). You must contact us immediately if your circumstances have changed and you are no longer able to carry out your project.

This Agreement is a binding agreement between <organisation name> ABN <organisation ABN> ("**Business/you**") and the South Australian Tourism Commission (ABN 80 485 623 691), a statutory corporation established pursuant to the *South Australian Tourism Commission Act 1993 (SA)* ("**Commission/we**").

The Agreement includes:

- this Letter of Agreement;
- the Grant Details (Attachment 1);
- the Grant Terms and Conditions (Attachment 2);
- the Acquittal Form (Attachment 3);
- the Payment Schedule (Attachment 4);
- the Reporting Requirements (Attachment 5);
- your Application; and
- the Experience Nature Tourism Fund Program Guidelines applicable on the date you submitted your Application.

If you have any queries regarding this Agreement, please do not hesitate to contact Chelsea Clack, Manager Infrastructure and Investment, Destination Development, by telephone 08 8463 4646.

Yours faithfully

Stephanie Rozokos
Interim Chief Executive | Finance and Business Services

Date: / /

Enclosure. **Attachment 1: Grant Details**
 Attachment 2: Grant Terms and Conditions
 Attachment 3: Acquittal Form
 Attachment 4: Payment Schedule
 Attachment 5: Reporting Requirements

Attachment 1 - Grant Details

Item 1	Business	<insert name> <insert ACN> <insert address> Where trustee: <insert name of trust>
Item 2	Agreement Expiry Date	<insert Mon 30/06/2025 or Wed 31/12/2025>
Item 3	Business's ABN	Business has an ABN: <Yes/No> <insert ABN > Registered for GST: <Yes/No>
Item 4	Contact Persons	Commission: <insert contact details> Business: <insert contact details>
Item 5	Project	Project Title: <project title> Project Number: <project number> Project Description: As set out in the Project Details, Project Plan, Marketing and Strategic Alignment, Visitation and Job Retention/Creation sections of your Application. Project Stream: <insert Stream One or Stream Two> Project Start Date: <project start date> Project End Date: <insert Fri 30/06/2023 or Sun 31/12/2023>
Item 6	Reports and Meetings	Reports: The Business must provide the Reports on the due dates referred to in Attachment 5 – Reporting Requirements. Meetings: The Parties will meet at the times as agreed in writing between the Parties to discuss any issues in relation to the use of the Grant for the Project.
Item 7	Grant Amount	\$(insert) (GST exclusive)
Item 8	Business Cash Contribution	<insert sum>

Item 9	Payment Details	As per Attachment 4 – Payment Schedule
Item 10	Tax Invoice Issuing Party	<input checked="" type="checkbox"/> Business
Item 11	Grant Reconciliation Date(s)	<insert Sat 30/09/2023 or Sun 31/03/2024>
Item 12	Insurances	Insurance in respect of the whole of its assets and undertakings (including but not limited to the assets acquired by the Business with the Grant) with a reputable insurer, against all such risks as are usually insured against by persons and companies pursuing a business enterprise of the same or a similar nature, for the full replacement cost of those assets and undertakings.
Item 13	Notice Period for Termination for Convenience	30 days
Item 14	Form of Funding Acknowledgement	<p>During the Term, the Business must:</p> <ul style="list-style-type: none"> • acknowledge the Government of South Australia, the Grant and the Experience Nature Tourism Fund in any advertising, publicity or promotional material relating to the Project; and • include a hyperlink to the relevant Government of South Australia website (https://tourism.sa.gov.au/support/experience-nature-tourism-fund) in any Australian announcement or media release by the Business relating to the Project;.

Attachment 2 - Grant Terms & Conditions

AGREED TERMS

1. TERM

This Agreement commences on the Commencement Date and continues until the Agreement Expiry Date, unless terminated earlier.

2. CONTACT PERSONS

The persons named in Item 4 of Attachment 1 as the Contact Persons are the first point of contact between the Parties and are responsible for overseeing the effective administration of the Agreement including variations and extensions.

3. APPLICATION OF GRANT

The Business must use the Grant solely for the Project.

4. FUNDING AND INVOICING

4.1 If the Tax Invoice Issuing Party is the Business, the Business may invoice the Commission for payment in respect of the Grant after the Commencement Date.

4.2 The Commission will pay the Grant in the amounts and at the times specified in Attachment 1 upon receipt of a Tax Invoice.

4.3 The Business must ensure that it can properly account for the Grant received under the Agreement.

4.4 If specified in Item 8 of Attachment 1, the Business must contribute a Business Cash Contribution during the Term to be applied toward the Project only and will provide information to the Commission in relation to this contribution as requested from time to time, acting reasonably.

5. DELAY

5.1 If the Business becomes aware of the possibility of a delay, which may prevent the Business from discharging an obligation under this Agreement, the Business must promptly notify the Commission in writing of:

- (a) The detail and likely extent of the delay and the Business's proposed strategies to manage the consequences of the delay; and
- (b) Any request for an extension of time where such a request is necessary and reasonable in the circumstances.

5.2 Without limiting the discretion to the Commission, the Commission may consent to a request for an extension of time provided that:

- (a) The Business uses its best endeavours to minimise the delay and recover lost time;
- (b) Where requested by the Commission, the Business provides a plan indicating in detail the steps the Business proposes to take to minimise the impacts of the delay; and
- (c) The Business complies with such other conditions imposed as part of the Commission's consent.

6. PROJECT ASSETS

6.1 The Business must not Deal With any real or personal property in relation to which the Grant has been applied by the Business without the prior written consent of the Commission, which shall not be unreasonably withheld.

6.2 If at any time prior to the Agreement Expiry Date the Business Deals With any real or personal property in relation to which the Grant has been applied (referred to in this clause 6.2 as "the Property"):

- (a) the Commission may by notice in writing given to the Business demand that the Business pay to the Commission a monetary amount (not exceeding the Grant amount) which is equivalent to the monetary payment or value received by or to be paid to or for the benefit of the Business in connection with the assignment, transfer, conveyance, sale, disposal or removal of the Property; and

6.3 the Business must then pay to the Commission the amount demanded by the Commission within the time stipulated by the Commission for payment.

7. GST

7.1 Subject to clause 7.2, the Business represents that:

- (a) the ABN shown in Attachment 1 is the Business's ABN; and
- (b) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth).

7.2 If the Business is not registered for GST, then GST must not be charged on supplies made under this Agreement.

8. REPAYMENT OF UNALLOCATED FUNDS (STREAM ONE)

8.1 At the end of the Term, if the Business has not expended all of the Grant, it must:

- (a) notify the Commission of the unexpended amount; and
- (b) repay all of that amount to the Commission within 30 days of the end of the termination or expiry of this Agreement..

9. PROVISION OF INFORMATION

9.1 The Business must provide those reports and other documents and must attend meetings, as specified in Item 6 of Attachment 1.

9.2 If the Commission reasonably suspects that the Grant is not being used for the Project, it may request additional information from the Business.

9.3 The Business must immediately inform the Commission of any significant changes to the nature and/or scope of the activities conducted by the Business which would impact on the Project under this Agreement.

10. FINANCIAL REPORTING AND AUDITING

10.1 The Business must provide an Acquittal Form in relation to the expenditure of all funds under this Agreement using the form available at <https://satc-d365-portal-01.powerappsportals.com/entf/>.

- (a) certifying that the Grant has been properly spent, in accordance with the requirements of the Agreement;
- (b) signed by two persons authorised by the Business's board of management (or equivalent); and
- (c) within three months of the end of each Financial Year during the Term or other dates as may be specified in Item 11 of Attachment 1 ("Grant Reconciliation Date(s)").

10.2 The Business agrees the Commission may direct that the financial accounts of the Business be audited at the Commission's cost, and the Commission may specify the minimum qualifications that must be held by the person appointed to conduct the audit.

10.3 If the audit discloses that the Business has applied the Grant for a purpose other than the Project then the Business will be required to reimburse the Commission the costs of the audit and clause 19.1 will apply.

11. INSPECTION

11.1 The Business must allow any officer or person authorised by the Commission on the giving of reasonable notice, to enter the premises of and to inspect the operations of the Business (including equipment, premises, accounting records, documents, and information) and interview the Business's Personnel on matters pertaining to the operations and reporting obligations of the Business under this Agreement.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 As between the Business and the Commission, all Project Intellectual Property shall vest in the Business upon creation.

- 12.2 The Business grants to the Commission and the State of South Australia (including its emanations, agencies, and instrumentalities) ("**State**") a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right to sub-licence) to reproduce, publish, communicate to the public, adapt, modify, or otherwise use the Grant Agreement Material.
- 12.3 If any Grant Agreement Material that is a copyright work contains information over which a third party (including the Business's personnel and subcontractors) has 'Moral Rights' (as defined in the *Copyright Act 1968* (Cth)), the Business must ensure that it has in place all necessary consents sufficient to allow the State to deal with the Grant Agreement Material in accordance with this Agreement.
- 12.4 The Business warrants that:
- it is entitled to use for the Project and for the purposes of meeting its obligations under this Agreement, all Background Intellectual Property and Project Intellectual Property ("**Warranted Materials**"); and
 - it has the right to grant the licence in clause 12.2.
- 12.5 If the Business breaches either of the warranties in clause 12.4, and as a result of the breach of that warranty, a third party claims the Commission or State's use of all or part of the Warranted Materials infringes its Intellectual Property Rights, the Business must, in addition to its obligations under clause 16 and to any other rights that the Commission and/or the State may have against it, promptly, at the Business's expense:
- use its best efforts to secure the rights for the Commission and/or the State to continue to use the affected Warranted Materials as permitted under clause 12 free of any claim or liability for infringement; or
 - replace or modify the affected Warranted Materials so that the Commission and/or State's use of them as permitted under this clause 12 does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.
- 13. CONFIDENTIAL INFORMATION**
- 13.1 Subject to this clause 13, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.
- 13.2 A Party may disclose Confidential Information belonging to the other Party:
- to an employee, agent, or adviser of that Party, on a "need to know" and confidential basis;
 - as required by law or a court order;
 - in accordance with any Parliamentary or constitutional convention;
 - for the purposes of prosecuting or defending proceedings.
- 13.3 The Parties may mutually agree to disclose Confidential Information.
- 14. PRIVACY**
- 14.1 To the extent it applies to the Business, the Business must comply with the *Privacy Act 1988* (Cth) ("**Privacy Act**") and the Australian Privacy Principles established under that Act in undertaking its obligations under this Agreement including in relation to all Personal Information received created or held by it for the purposes of this Agreement.
- 14.2 The Business must promptly notify the Commission if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
- 14.3 For the purposes of this clause, "**Personal Information**" has the same meaning as in the Privacy Act.
- 15. PUBLICITY**
- 15.1 The Business will acknowledge the Grant by the Commission in any advertising, publicity or promotional material relating to this Agreement in the manner specified in Item 14 of Attachment 1.
- 15.2 The Business will participate in promotional or publicity activity in relation to this Agreement as is reasonably required by the Commission.
- 15.3 The Business and the Commission must use their best endeavour to mutually agree on the content of any public announcements or media releases about this Agreement.
- 15.4 If due to urgent circumstances or due to the nature and timing of the media request, it is not possible to provide prior notice of an announcement or media release to the other Party, then the Party making the announcement or media release must notify the other Party and provide a summary of the announcement or a copy of the media release as soon as possible after making the announcement or media release.
- 16. INDEMNITY**
- 16.1 The Business indemnifies (and must keep indemnified) the Commission, the State, its officers, employees and agents (referred to in this clause as "**those indemnified**") from and against all Losses sustained or incurred by those indemnified and arising out of or as a consequence of:
- any Claim against the Commission, the State, its officers, employees, or agents in relation to any act or omission of the Business, its officers, employees, agents, or related bodies corporate in connection with this Agreement or the Project;
 - the exercise of any Intellectual Property Rights (including the Grant Agreement Material, Background Intellectual Property or Project Intellectual Property) or other rights licensed or granted in accordance with this Agreement, including any Claim that any act in relation to the Grant Agreement Material, Background Intellectual Property or Project Intellectual Property infringes the Intellectual Property Rights of any third party;
 - a negligent, reckless, wilful, or unlawful act or omission of the Business, its employees, agents, or other persons acting on its behalf or under its direction in the conduct of the Project;
 - the breach by the Business of any obligation under this Agreement; or
 - the breach of any representation or warranty given by the Business under this Agreement.
- 16.2 The Business's liability to indemnify those indemnified under this clause 16 will be reduced proportionally to the extent that any negligent, reckless, wilful, or unlawful act or omission on the part of those indemnified directly caused the relevant Loss.
- 17. INSURANCE**
- 17.1 The Business must effect and maintain the insurance specified in Item 12 of Attachment 1 for not less than the amount specified in Item 12 of Attachment 1 during the Term.
- 18. DISPUTE RESOLUTION**
- 18.1 Subject to clause 18.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.
- 18.2 Either Party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute.
- 18.3 Within seven days or such other period as may be agreed by the Parties, the Contact Persons must meet and use reasonable endeavours to resolve the dispute.
- 18.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.
- 19. DEFAULT AND TERMINATION**
- 19.1 If the Business does not apply any part of the Grant for the Project, or if the Business materially fails to comply with this Agreement at any time, the Commission may upon giving written notice to the Business:

- (a) acting reasonably, require the Business to repay either the whole or a portion of the Grant (whether expended or not) within 14 days of a written demand from the Commission;
 - (b) withhold funds not already paid;
 - (c) withhold future funding from the Business; and/or
 - (d) terminate this Agreement.
- 19.2 The Commission may terminate this Agreement without cause by giving the Business the period of notice specified in Item 13 of Attachment 1.

20. EFFECT OF ENDING THIS AGREEMENT

- 20.1 Any termination or expiry of this Agreement does not affect any accrued right of either Party.
- 20.2 Despite termination or expiry of this Agreement, this clause 20 and clauses 8, 9, 10, 11, 12, 14, and 19 will survive.

21. CONTRACT DISCLOSURE

- 21.1 The Commission 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.
- 21.2 Nothing in this clause derogates from:
 - (a) the Business's obligations under any provisions of this Agreement; or
 - (b) the provisions of the *Freedom of Information Act 1991* (SA).

22. COMPLIANCE WITH LAWS AND POLICIES

- 22.1 The Business must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.
- 22.2 The Business must comply with any policies notified by the Commission in writing at the Commencement Date.

23. GOVERNING LAW AND JURISDICTION

- 23.1 This Agreement is governed by the laws in the State of South Australia.
- 23.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

24. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

25. NO ASSIGNMENT

- 25.1 The Business must not assign, encumber, or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Commission.
- 25.2 Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Commission and all of the Commission's rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

26. MODIFICATION

No addition to or modification of any provision of this Agreement will be binding upon the Parties unless agreed by the Parties in writing.

27. SEVERANCE

- 27.1 Each word, phrase, sentence, paragraph, and clause of this Agreement is severable.
- 27.2 Severance of any part of this Agreement will not affect any other part of this Agreement.

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.

29. NO FURTHER OBLIGATION

- 29.1 The Business acknowledges that the Grant represents a one-off contribution by the Commission towards the Project, and the Business agrees any request for subsequent funding will require a new application to the Commission. The Commission is under no obligation to agree to pay any subsequent funding to the Business.
- 29.2 The Business acknowledges the Commission will not be liable to reimburse the Business for any losses or cost over runs that may result from the operation of this Agreement or the carrying out of the Project.

30. BUSINESS AS TRUSTEE

- 30.1 If the Business is acting as trustee of a trust, then in relation to this Agreement:
 - (a) the Business is liable both personally and in its capacity as a trustee of that trust;
 - (b) it must not assign, transfer, mortgage, charge, release, waive, encumber, or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Agreement);
 - (c) it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
 - (d) it represents and warrants that:
 - (i) such trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of that trust;
 - (iii) as trustee it has the power to enter into and perform its obligations under this Agreement;
 - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (v) it either has no conflict of interest affecting it as trustee (and/or its directors, if any) or such conflict is otherwise overcome by the terms of the relevant trust Agreement; and
 - (vi) no breach of the relevant trust Agreement exists or would arise.

31. INTERPRETATION

- 31.1 In this Agreement (unless the context requires otherwise):
 - (a) a reference to any legislation includes:
 - (i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and
 - (ii) any modification, consolidation, amendment, re-enactment, or substitution of that legislation;
 - (b) a word in the singular includes the plural and a word in the plural includes the singular;
 - (c) a reference to two or more persons is a reference to those persons jointly and severally;
 - (d) a reference to dollars is to Australian dollars;
 - (e) a reference to a Party includes that party's administrators, successors and permitted assigns.

32. DEFINITIONS

In this Agreement:

- (a) **"Acquittal Form"** means a notice of financial acquittal in the form specified in Attachment 3.
- (b) **"Background Intellectual Property"** means any Intellectual Property Rights developed independently of

- the Project and used by the Business for the purpose of undertaking the Project;
- (c) **“Business Cash Contribution”** means a cash contribution to be applied for the Project as set out in clause 4.4;
- (d) **“Change of Control”** means where, at any time, any person, alone or together with any Company Associate or Company Associates, ceases to, or commences to, directly or indirectly have Control of the Business;
- (e) **“Company Associate”** means a related body corporate or subsidiary of the Business within the meaning of the *Corporations Act 2001* (Cth);
- (f) **“Claim”** means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent or at law (including negligence), in equity, under statute or otherwise;
- (g) **“Confidential Information”** means information which is identified as confidential information by a Party, but does not include this Agreement;
- (h) **“Control”** has the meaning given to it in section 50AA of the *Corporations Act 2001* (Cth).
- (i) **“Deal With”** means:
- (i) sell, transfer, novate, assign, declare a trust over or otherwise dispose of or procure or otherwise dispose of or procure or effect the disposal of, any interest or right; or
 - (ii) effect a change in the beneficial interest or beneficial unit holding under a trust which has an interest or right.
- (j) **“Financial Year”** means a year commencing on 1 July and ending on 30 June;
- (k) **“Grant”** means the funds payable under this Agreement specified in Attachment 1;
- (l) **“Grant Agreement Material”** any documentation or other material in whatever form, including without limitation any reports, plans, documents, information, data, audio, photographs, videos, and the subject matter of any Intellectual Property Rights:
- (i) the Business obtains or is required to obtain, provides, or is required to provide, to the Commission under or in connection with this Agreement; or
 - (ii) which is copied or derived at any time from the material referred to in paragraph (i);
- (m) **“GST”** means the tax imposed by the GST Law;
- (n) **“Intellectual Property Rights”** means all intellectual property rights, including but not limited to:
- (i) patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i), but for the avoidance of doubt excludes moral rights and performers’ rights;
- (o) **“Loss”** means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise;
- (p) **“Machinery of Government Change”** means a change to the structure, function, or operations of the South Australian Government as a result of any government reorganisation, restructuring or other organisational or functional change;
- (q) **“Party”** means a party to this Agreement;
- (r) **“Project Intellectual Property”** means all Intellectual Property Rights developed by or on behalf of the Business in the course of undertaking the Project, including all Intellectual Property Rights in all information, material and documents written, created, or prepared by or on behalf of the Business in relation to the Project; and
- (s) **“Term”** means the period specified in Attachments 1 and 2 including any extension periods.

Attachment 3 – Acquittal Form

Note: You must complete and submit your Acquittal Form on the portal available at <https://satc-d365-portal-01.powerappsportals.com/entf/>. You can enter the required information and submit when it is complete. This Attachment is provided as a template only.

TO: SOUTH AUSTRALIAN TOURISM COMMISSION

Telephone: 08 8464 4646 **Email:** satc.entf@sa.gov.au

FROM: _____
Business Body Name

Contact Person for enquiries: _____

Address: _____

Contact Email: _____

Contact Phone: _____ Email: _____

Project number (starting with ENT22):

Project title: <project title>

Project Description: <project description>

Project Stream: <insert Stream One or Stream Two>

GRANT INCOME AND EXPENDITURE STATEMENT

Grant Amount (a): \$

Grant Expenditure (b): \$

Funds Remaining (a-b): \$

We certify that:

1. The Grant was used for the Project for which the Grant was provided.
2. All reports were submitted as required or is attached.
3. Copies of paid invoices related to the Grant Amount and financial statements (including receipts) are attached/has been submitted as required by the Agreement.
4. All Outcomes, reports and obligation have been met and completed within the terms and conditions of the Grant.

Finance Manager / Accountant:

Authorised Officer / Managing Director:

Signature

Signature

Name:

Name:

Date: / /

Date: / /

Attachment 4 – Payment Schedule

The Business must satisfy the following conditions for payment to the satisfaction of the Commission including satisfying the Payment Tranches in accordance with the table below for each payment tranche:

- (a) Submitted an invoice for the relevant tranche amount in accordance with Attachment 2 and the table below subject to invoices being submitted no earlier than 30 days before the relevant Due Date and no later than the Due Date (unless otherwise agreed by the Commission in writing); and
- (b) Submitted all Reports required at or prior to the Due Date (including, but not limited to, financial acquittals and all Reports required at or prior to the Due Date).

Due Date	Payment Tranches	Amount of Payment (excluding GST)
	Tranche 1 <insert>	
	Tranche 2 <delete if not required >	
TOTAL		

Attachment 5 – Reporting Requirements

Report Description	Due Dates
Project Completion Report <i>Note: You must submit the Project Completion Report with your Acquittal Form on the portal available at https://satc-d365-portal-01.powerappsportals.com/entf/.</i>	<insert Sat 30/09/2023 or Sun 31/03/2024>
12 Month Post Project Report <i>Note: You must submit the 12 Month Post Project Report on the portal available at https://satc-d365-portal-01.powerappsportals.com/entf/.</i>	<insert Sun 30/06/2024 or Tue 31/12/2024>