

## 1. DEFINITIONS

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

**Agreement** means the agreement between the SATC and the Tour Operator described in clause 2.

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

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

**ATDW** means the Australian Tourism Data Warehouse on which the Tour Operator is required to be registered prior to 16 August 2021.

**Booking Period** means the period between 16 September 2021 and 14 October (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 and tourism experiences 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 Tour Operator is approved for the Tour Operator'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 Experiences Voucher during the Booking Period and including the value of the Rebate available to the Tour Operator ensuring that:

- a) Great State Experiences Vouchers to the value of \$100 can be redeemed against any offer of \$100 or more; or
- b) Great State Experiences Vouchers to the value of \$200 can be redeemed against an offer of \$200 or more, and the offer must be for a multi-day experience.

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

**Conditions** means these terms and conditions.

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

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

**Great State Experiences 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 Tour Operator to the value of either \$100 or \$200 (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 Tour Operator under this Agreement in support of the Campaign and which may include but are not limited to promotion of the Tour Operator as an SATC registered provider under the Campaign.

**Rebate** means a cash rebate of:

- (a) \$100 (inclusive of GST) for approved Campaign Offers to the value of \$100 or more; or
- (b) \$200 (inclusive of GST) for approved Campaign Offers for multi-day hosted tours and experiences with a value of more than \$200.

**Rules for Eligibility** means the eligibility criteria set out on the Application Portal by the SATC which Tour Operators 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.

**Tour Operator** means the party named in the Application and approved and registered by the SATC on the Campaign Portal

**Travel Period** means the period between 17 September 2021 and 28 November 2021 inclusive.

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

## **2. AGREEMENT**

- 2.1 This Agreement binds the SATC and the Tour Operator 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 Tour Operator) 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 Tour Operator 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 Tour Operator must be conducted via the Agent. All instructions (if any) to the Tour Operator 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 Tour Operator acknowledges and agrees:
  - 3.1.1 the SATC will provide the Promotion Services to the Tour Operator in accordance with the following process:
    - (a) the SATC will accept and review Applications made by a Tour Operator 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 Tour Operator 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 Tour Operator, will be sent to the SATC's Agent for the Promotion Services;
    - (d) the SATC's Agent will engage with Tour Operator to:

- (i) finalise Campaign Offers and on board all Tour Operators by no later than 15 September 2021 – which date is final and cannot be extended;
- (ii) obtain and onboard the Tour Operator'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 Tour Operator in order to manage and administer the Campaign, Rebate and Promotion Services;
- (iv) make a selection as to which consumer payment option the Tour Operator will accept on the Campaign Portal. Payment options are limited to integrating the Tour Operator's supported payment gateway account in 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 Tour Operator will allow all consumers with a Great State Experiences Voucher to book the Campaign Offers with the Tour Operator 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 Tour Operator might apply.
- 3.4 The Campaign Offers must be approved by the Tour Operator within the timeframe stated by the Agent in order to be finalised and uploaded to the Campaign Portal by no later than 5pm on 15 September 2021 and available for consumer booking on 16 September 2021 for the term of the Booking Period.

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

- 4.1 Where the Tour Operator does not elect to adopt a Pre-Payment method, upon a consumer making a booking with the Tour Operator using the Campaign Portal, the consumer will be referred directly to the Tour Operator to complete payment for the experience and the payment must include a deduction for the value of the Great State Experiences Voucher valid for the Campaign Offer.
- 4.2 Where the Tour Operator does adopt a Pre-Payment method, upon a consumer making a booking with the Tour Operator using the Campaign Portal, the consumer will be automatically directed to the Tour Operator's Pre-Payment method and will complete the payment for the booking minus a deduction for the value of the Great State Experiences Voucher.
- 4.3 The Tour Operator will receive a daily booking summary containing all bookings scheduled with the Tour Operator for that day.
- 4.4 The SATC will, via its Agent, reconcile completed bookings every Monday for bookings completed and checked in by the Tour Operator in the previous 7 days. Using this reconciliation, the SATC, via its Agent, will make payment of all Rebates for Great State Experience Vouchers redeemed during that reconciliation period. The Tour Operator should receive payment of its Rebate for the Great State Experiences Voucher within no more than 30 days of the consumer's experience and travel booking being completed. For the purpose of this clause a completed booking refers to the completion of an experience or travel by the consumer during the Travel Period in accordance with a booking made with the Tour Operator during the Booking Period.
- 4.5 The Tour Operator 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 Tour Operator in its terms and conditions and by no later than the close of the Travel Period, change or cancel a booking with the Tour Operator. Where a booking is cancelled by a consumer using the Manage Booking function, the Tour Operator agrees that the consumer can rebook the same tour on a different date within the travel period unless otherwise specified in the Tour Operator's terms and conditions.
- 4.6 The Tour Operator 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 Tour Operator without a cancellation. To be clear, where a booking is made, and a consumer does not complete the tour or experience, the Tour Operator is not eligible for the Rebate.
- 4.7 The Tour Operator acknowledges and agrees that, once a consumer has travelled, the Tour Operator 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 Tour Operator 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 Tour Operator's participation in the Campaign on the conditions set out in this clause 5 and the Tour Operator 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 Tour Operator 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 Tour Operator are subject to the written approval of the SATC, with such approval to not be unreasonably withheld. The Tour Operator 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 Tour Operator 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 TOUR OPERATOR**

- 6.1 The Tour Operator 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 Tour Operator'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 Tour Operator 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 Tour Operator 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 Tour Operator. 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 Tour Operator's participation in the Campaign.

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

- 8.1 The Tour Operator 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 Tour Operator to arrange for the records described in clause 8.1 to be audited at the Tour Operator's expense. The SATC may specify the minimum qualifications to be held by a person appointed to conduct the audit.
- 8.3 The Tour Operator 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 Tour Operator 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 Tour Operator's participation in the Campaign. The SATC or Agent will not be responsible for acts, omissions or defaults of the Tour Operator, invitees, guests, directors, officers, and anyone acting on behalf of the Tour Operator.

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

- 10.1 The Tour Operator 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 Tour Operator, 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 Tour Operator 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 Tour Operator: (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 Tour Operator 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 Tour Operator as a result of the Tour Operator'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 Tour Operator.

## **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 Tour Operator'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 Tour Operator 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 Tour Operator 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 Tour Operator to help the SATC personalise its services to the Tour Operator if the Tour Operator 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 Tour Operator'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 Tour Operator 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 Tour Operator 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 to 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)*.