

***This document is a SAMPLE only and is provided as an indicative example of the terms and conditions that may be included in Attachment 2 of a regional event sponsorship agreement for successful applicants. The actual terms and conditions may differ and be tailored to suit the specific circumstances. A complete version of the sponsorship agreement (contract) detailing other obligations, attachments and execution requirements will be prepared by the SATC and provided to successful applicants.***

## ATTACHMENT 2 - SPONSORSHIP TERMS & CONDITIONS

### 1. Definitions

1.1 In this Sponsorship Agreement:

- (a) **“Change of Control”** means the Recipient is the subject of a takeover by or merger with another company or if there is a change of either the legal or beneficial shareholding or the effective control of the ownership or management of the Recipient.
- (b) **“Event”** means the Event specified in Attachment 1.
- (c) **“Force Majeure”** means the following events or circumstances:
  - (i) fire, flood, earthquake, elements of nature, acts of God, malicious damage, epidemic, explosion, sabotage, riot, civil disorder, rebellion or revolution;
  - (ii) any change of law, executive or administrative order or act of either general or particular application of any government, or of any official acting under the authority of that government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, which that party:
  - (iii) did not cause; and
  - (iv) cannot prevent, control or influence, and
  - (v) the effect of which prevents that party from complying with any of its material obligations under this Sponsorship Agreement.
- (d) **“Intellectual Property”** means any patent, copyright, trademark, trade name, design, trade secret, know how, semi-conductor, circuit layout or other form of intellectual property right whether arising before or after the execution of this Sponsorship Agreement and the right to registration and renewal of those rights;
- (e) **“Insolvency Event”** means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within twenty one (21) days, a failure to comply with a statutory demand, the appointment of a liquidator or provisional liquidator, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.
- (f) **“Recipient”** means the person or entity who is receiving sponsorship to stage the Event, as described in Attachment 1.
- (g) **“Personal Information”** means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- (h) **“Recipient’s Personnel”** means any employees, agents, contractors and any other person employed or engaged by the Recipient to perform this Agreement;
- (i) **“SATC”** means the South Australian Tourism Commission.
- (j) **“Sponsorship”** means the sponsorship specified in Agreement.
- (k) **“Sponsorship Funding”** means the cash contribution to be provided to the Recipient by the SATC specified in Attachment 1.
- (l) **“Sponsorship Purpose”** refers to the purpose of the Sponsorship specified in Attachment 1.
- (m) **“Sponsorship Rights”** refers to the rights granted by the Recipient to the SATC set out in Attachment 3.

### 2. Term

2.1 This Agreement starts on the Commencement Date specified in Attachment 1 and ends automatically and without notice on the Expiry Date specified in Attachment 1 (“Term”), unless terminated earlier in accordance with Clause 5.1.

### 3. Sponsorship and Rights

3.1 The Recipient must use the Sponsorship Funding only for the Sponsorship Purpose.

3.2 In consideration of the Recipient granting the Sponsorship Rights and subject always to the Recipient complying with its obligations under this Agreement, the SATC must pay the Sponsorship Funding in the manner specified in the Payment Schedule in Attachment 1, except as otherwise provided in this Agreement.

3.3 If the Recipient does not achieve the Key Performance Indicators (if any), it will not be entitled to the full sponsorship amount as detailed in this

Agreement and SATC will negotiate the final agreed sponsorship amount with the Recipient. SATC holds the ultimate right to determine the amount paid acting reasonably and in consideration of the extent to which the Key Performance Indicators were achieved.

3.4 The parties acknowledge and agree that the Sponsorship is intended to produce the Outcomes specified in Attachment 1.

3.5 Nothing in this Agreement is to be taken to limit the SATC's discretion to determine whether and how any program or project of the SATC is to be conducted, except if and to the extent that the SATC gives an express undertaking in that regard.

#### **4. GST**

4.1 Subject to clause 4.2, the Recipient represents that:

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

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

#### **5. Termination**

5.1 Without limiting any rights and remedies available to the SATC at law or under this Agreement, if the Recipient fails to comply with this Sponsorship Agreement at any time, cancels or abandons the Event, or becomes subject to an Insolvency Event or a Change of Control, the SATC may:

- (a) require the Recipient to repay any unexpended portion of the Sponsorship within 30 days of a written demand from the SATC;
- (b) withhold funds not already paid;
- (c) withhold future sponsorships from the Recipient ; and/or
- (d) terminate this Sponsorship Agreement.

5.2 The SATC may review any decision made pursuant to this clause if the Recipient is able to satisfy the SATC that it has complied with the conditions of this Agreement.

5.3 SATC reserves the right to terminate the Agreement (without cause) with no liability at any time up to 90 calendar days prior to an Event. In this event and without affecting any other rights that the SATC may have on the termination of this Agreement, the Recipient is required to return to SATC any portion of the Sponsorship Fees that have not been expended or contractually committed to by the Recipient (in accordance with this Agreement) within 30 days of the termination of this Agreement. The Recipient must be able to substantiate any expended, committed and/or reasonable costs arising from the termination to SATC's satisfaction. SATC will not be liable to the Recipient for any further payments of the Sponsorship Fee or provision of the In-Kind Sponsorship and the SATC will have no other liability to the Recipient relating to the termination.

#### **6. Cancellation, Postponement and Modification of the Event**

##### **6.1 Cancelled Event**

- (a) The Recipient must immediately notify SATC in writing if it cancels or abandons the Event during the Term (and reasons for the same).
- (b) SATC may elect to terminate this Agreement upon notice of a cancelled or abandoned Event.
- (c) Where the Recipient cancels or abandons an Event for whatever reason, the Recipient will refund SATC any Sponsorship Fees already paid to the Recipient by SATC, within 30 days (or other period nominated by SATC) unless otherwise agreed in writing by SATC.
- (d) The Recipient will have no liability to provide any Sponsorship Rights in respect of the cancelled Event and the SATC will not be liable to the Recipient for any further payments of the Sponsorship Fees nor any liability to the Recipient relating to termination of this Agreement (if such course is elected by SATC).

##### **6.2 Modified or Postponed Event**

- (a) In respect of a modified or postponed Event, the Recipient must notify the SATC in writing of any variations to the Event that will impact the Recipient's ability to deliver the Event as anticipated, including the ability to meet any of the Key Performance Indicators or Sponsorship Rights, and the parties may negotiate in good faith as to a varied scope and, if applicable, a proportionate reduction of Sponsorship Funding to be agreed in writing and signed by both parties. If the parties cannot agree to a varied scope of the Agreement, then the Government Party, in its sole discretion, may elect to terminate this Agreement immediately by giving written notice to the Recipient of the termination.
- (b) Where the Recipient elects to postpone and reschedule the Event, any Sponsorship Funding paid by SATC as at the postponement date, will at sole discretion of SATC, either be refunded in full to SATC or credited towards the rescheduled date.

#### **7. Repayment of Unexpended Sponsorship**

7.1 If, at the end of the Sponsorship Period the Recipient has not expended all of the Sponsorship, then the Recipient must notify the SATC of the unexpended amount and must repay that amount to the SATC within 30 days after the end of the Sponsorship Period or otherwise, within 30 days of a written demand by the SATC.

#### **8. Provision of Information**

8.1 The SATC will need to be satisfied the Recipient is using the Sponsorship for the Sponsorship Purpose and complying with this Sponsorship Agreement. The SATC will need to be able to make an informed assessment of the Recipient's ongoing financial position and of the overall effectiveness of the Sponsorship.

8.2 To enable this, the Recipient must provide any information requested by the SATC or its auditors or financial advisers (including documents, records, management accounts, financial statements, annual reports, and the information and reports listed under the section entitled 'Reports, Meetings and Information' in Attachment 1).

8.3 In addition, the Recipient must provide timely advice to the SATC of:

- (a) any significant changes to the nature and/or scope of the Event; or
- (b) any change to the authorised scope of the Sponsorship Purpose or the Outcomes.

## **9. Financial Statements and Auditing of Financial Accounts**

9.1 Unless otherwise required by the SATC, the Recipient must prepare financial statements at the end of each financial year during the Sponsorship Period, or if the Sponsorship Period is less than one year, at the end of the Sponsorship Period.

9.2 The Recipient must ensure the financial statements are prepared in accordance with Australian Accounting Standards, are signed by an appropriate authorised senior officer of the Recipient's organisation and are submitted to the SATC.

9.3 The SATC may direct that the Recipient's financial accounts be audited at the Recipient's cost, and the SATC may specify the minimum qualifications which must be held by the person appointed to conduct the audit.

## **10. Inspection**

10.1 The Recipient must allow any officer or person authorised by the SATC to enter the Event premises to inspect the Event operations (including equipment, premises, accounting records, documents and information) and interview the Recipient employees and Event staff (including persons working on a volunteer basis) on matters pertaining to the Recipient's operation and your reporting obligations under this Sponsorship Agreement.

## **11. Rules and Legislation**

11.1 The Recipient must:

- (a) comply with all legislation, regulations or industry codes applicable to the Sponsorship and the Sponsorship Purpose and with any constitution or rules which govern the Recipient's operations; and
- (b) obtain and maintain all consents, approvals, licences and permits necessary and required to enable the Recipient to deliver the Event and comply with any conditions attached to any licences or consents issued in connection with the Event (including regarding health and safety and crowd security measures at the Event venue).

## **12. Insurance**

12.1 Unless specified as "not required" in Attachment 1, the Recipient must take out and maintain for the

Sponsorship Period a policy of public liability insurance for not less than the amount specified in Attachment 1.

12.2 The Recipient must provide a copy of the certificate of insurance for the insurance policy if required by the SATC.

## **13. Acknowledgements**

13.1 The Recipient acknowledges the Sponsorship represents a one-off contribution by the SATC towards the Sponsorship Purpose, and agrees that any request for subsequent sponsorship will require a new application to the SATC. The SATC is under no obligation to agree to pay any subsequent sponsorship to the Recipient.

13.2 The Recipient acknowledges the SATC will not be liable to reimburse it for any losses or cost overruns that may result from the operation of this Sponsorship Agreement or the carrying out of the Sponsorship Purpose.

## **14. No Assignment**

14.1 The Recipient must not assign, transfer or encumber any of the Recipient's rights or obligations under this Sponsorship Agreement.

## **15. Intellectual Property**

15.1 The Intellectual Property of each party is that party's ("first party") sole and exclusive property and that by this Agreement but subject to clause 15.2, the other party acquires no right, title or interest in the intellectual property of the first party.

15.2 The Recipient grants to the SATC a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fee-free license to reproduce, adapt, communicate, publish, modify and otherwise use the Recipient's Intellectual Property for purpose of:

- (a) carrying out its obligations under this Agreement; and
- (b) marketing and promoting:
  - (i) the Event;
  - (ii) the SATC; and
  - (iii) South Australia as a tourism, events and business destination.

15.3 In undertaking the Event the Recipient must not infringe the Intellectual Property rights of any person.

## **16. Condition Subsequent**

16.1 It is a condition subsequent of this Agreement that the Recipient execute the Visual Asset Deed contained in Attachment 7, or a document sufficiently similar, in favour of the SATC for any images provided by the Recipient under this Agreement.

16.2 If the Recipient does not satisfy this clause, the SATC reserves the right to terminate the Agreement and the Recipient will immediately repay all Sponsorship Funding paid by the SATC.

## **17. Force Majeure**

17.1 A party will not be liable for any delay in or failure of performance (other than delay or failure to make a

monetary payment required under this Sponsorship Agreement) if:

- (a) such delay or failure arises from a Force Majeure Event; and
- (b) it has taken all proper precautions, due care, and reasonable alternative measures with the object of avoiding the delay or failure and of carrying out its obligations under this Sponsorship Agreement (although nothing will require a party to settle or compromise a labour dispute if to do so would in its sole discretion be contrary to its best interest); and
- (c) as soon as possible after the beginning of an occurrence which affects the ability of that party to observe or perform any of its covenants or obligations under this Sponsorship Agreement, it has given notice to each other party of the specific nature of the occurrence and, as far as possible, estimating its duration.

- 17.2 A party claiming the benefit of this clause 17 will use all reasonable endeavors promptly to overcome the effects of the occurrence in question.
- 17.3 If the affected party is materially unable to perform its obligations under this Sponsorship Agreement by reason of a Force Majeure Event for a continuous period of 30 calendar days or a cumulative period of 90 calendar days, then the other party may terminate this Sponsorship Agreement by written notice without prejudice to the terminating party.
- 17.4 Without affecting any other rights that the parties may have on termination of this Sponsorship Agreement, if the Sponsorship Agreement is terminated by SATC pursuant to clause 17.3 the Recipient must within 30 days refund to SATC any portion of the Sponsorship Fees that has been paid in advance of the Event taking place (but has not been spent or committed by the Recipient for the purposes of and in accordance with this Agreement), unless otherwise agreed in writing by the SATC. The Recipient must bear the onus of proving to SATC what has been lawfully spent or committed on the Event by producing supporting evidence such as receipts and invoices which SATC will review and, at its discretion, approve the final Sponsorship Amount it deems can be kept by the Recipient in relation to the terminated Event.

## **18. Release and Indemnity**

- 18.1 Each Party (the Indemnifying Party) releases and indemnifies, and undertakes to keep indemnified, the other party (the Indemnified Party) and its employees from and against any costs, losses, damages, expenses (including legal expenses), liabilities or other outgoings incurred by the Indemnified Party or its employees arising out or in respect of the Events, or arising out or in respect of:
  - (a) any negligence, wrongful act or omission or breach of duty by the Indemnifying Party; or
  - (b) any breach by the Indemnifying Party of any of the provisions of this Agreement.
- 18.2 The Indemnifying Party's liability to indemnify the

Indemnified Party will be reduced proportionately to the extent that the loss or liability indemnified was contributed to by negligence or default by the Indemnifying Party.

- 18.3 Each party releases the other party from liability for any economic (including loss of business, revenue or profits) or other consequential or indirect loss, damage or cost.

## **19. Competition and Conflicts of Interest**

- 19.1 For the duration of this Sponsorship Agreement the Recipient may grant sponsorship rights to another party provided that party does not compete with the SATC or its products or services.
- 19.2 The Recipient must disclose in writing to the SATC all actual and potential conflicts of interest that exist, arise or may arise (either for the Recipient or the Recipient's Personnel) whether personal, financial, professional or otherwise, relating to or in connection with this Agreement as soon as practical after it becomes aware of that conflict.
- 19.3 The Recipient must conduct itself in a manner that does not invite, directly or indirectly, the SATC's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009* (SA)) to behave unethically, to prefer private interests over the SATC's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

## **20. Confidentiality and Privacy**

- 20.1 Subject to this Agreement, a party to this Agreement to whom Confidential Information is disclosed must not disclose the Confidential Information to any person without first obtaining the disclosing party's written consent.
- 20.2 Clause 20.1 does not prevent disclosure:
  - (a) by SATC which:
    - (i) is reasonable for SATC to make for the purpose of performing its obligations under this Agreement or monitoring the performance of the Recipient;
    - (ii) the law requires (including the Freedom of Information Act SA 1991) SATC to make; or
    - (iii) is for the purposes of prosecuting or defending any legal proceedings.
  - (b) by the Recipient which:
    - (i) it is reasonable for the Recipient to make for the purpose of performing its obligations under this Agreement or monitoring the performance of the SATC;
    - (ii) the law requires the Recipient to make; or
    - (iii) is for the purposes of prosecuting or defending any legal proceedings.
- 20.3 For the purposes of this clause 20, "Confidential Information" means information that is disclosed by or on behalf of a party to the other party which:
  - (a) is by its nature confidential or by the circumstances in which it is disclosed as



- confidential; or
- (b) is designated by the disclosing party as confidential or is identified in terms connoting its confidentiality and includes:
- (i) trade secrets;
  - (ii) information relating to the financial arrangements for the Event including the Sponsorship Funding; and
  - (iii) other commercially sensitive information of the party who supplied the information.

but does not include information which is or becomes public knowledge other than by a breach of this Agreement,

20.4 If the Recipient collects or has access to Personal Information in order to perform its obligations under this Agreement, the Recipient must:

- (a) comply with the South Australian Government Information Privacy Principles (a copy of which can be found at <http://www.dpc.sa.gov.au/documents/rendition/B17711#> Recipient.s76QhRX6.dpuf) ("IPPs") as if the Recipient were an "agency" for the purposes of the IPPs, 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; and
- (b) allow the SATC to undertake, and cooperate with any audit or investigation which the SATC deems necessary to verify that the Recipient is complying with the IPPs.

20.5 The Recipient must promptly notify the SATC 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.

20.6 The Recipient acknowledges that the SATC, its officers, employees and any other person employed or engaged by the Recipient to perform this Agreement, may use and disclose any of the information (including Confidential Information) provided by the Recipient, about the Recipient and this Agreement to the Minister, South Australian Government departments, agencies or bodies, local government (Council) and/or tourism management organisations for any purpose in connection with the administration, reporting and evaluation of this Agreement.

## **21. Media Releases and Press Statements**

21.1 The Recipient must not make any media release, press statement or public announcement in connection with the support provided by the SATC as outlined in this Agreement without the prior consent of the SATC.

## **22. Logo**

22.1 The Recipient must comply with the requirements of Attachment 4 and any conditions or restrictions advised by the SATC in relation to the use of its logo.

## **23. Special Conditions**

23.1 The Recipient must comply with the Special Conditions (if any) specified in Attachment 1.

## **24. Jurisdiction**

24.1 The laws of South Australia apply to this Agreement. Each party submits to the jurisdiction of the courts of South Australia.

## **25. Electronic Execution**

25.1 This Agreement may be executed by any and all parties by way of electronic signature, and if so, must be considered an original. This Agreement may be executed and delivered by email and the parties agree that such scanned execution and email delivery must have the same force and effect as delivery of an original document with original signatures, and that each party may use such scanned signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

## **26. Waiver**

- 26.1 Clauses and rights in this Agreement can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under this Agreement does not waive the party's rights.
- 26.2 A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights or the same rights in other circumstances.

## **27. Auditor General**

27.1 Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

## **28. Clauses to survive Termination**

28.1 In addition to this clause, the following clauses will survive termination or expiration of this Agreement – clause 5 (Termination), clause 6 (Cancellation, Postponement and Modification of the Event), clause 7 (Repayment of Unexpended Sponsorship), clause 8 (Provision of Information), clause 9 (Financial Statements and Auditing of Financial Accounts), clause 18 (Release and Indemnity), clause 17 (Force Majeure) and clause 20 (Confidentiality and Privacy).