

DINING CASHBACK SEAFOOD RETAILER TERMS AND CONDITIONS

1. DEFINITIONS

“**Agreement**” means the agreement between the SATC and a Provider described in clause 2.

“**Applicant**” means a seafood retailer lodging an Application in the Application Portal.

“**Application**” means the application made by an Applicant on the Application Portal to participate in the Campaign and includes the Rules for Eligibility as set out on <https://tourism.sa.gov.au/diningcashback>

“**Application Portal**” means the form by which all Applicants make an Application to participate in the Campaign.

“**Campaign**” means the campaign developed by the SATC to support the coastal hospitality industry and seafood by offering the Reimbursement to encourage consumers to dine at coastal businesses and buy from South Australian seafood retailers impacted by the Algal Bloom.

“**Campaign IP**” means such Intellectual Property Rights, designations, slogans, logos or trademarks used by the SATC which the SATC has notified the Providers are approved for their use from time to time and for the purpose of the Campaign.

“**Conditions**” means these terms and conditions.

“**Confirmation Date**” means the date the SATC sends a confirmation to the Provider as to its successful Application to participate in the Campaign.

“**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).

“**Promotion Services**” means the services provided by the SATC (or SATC’s Agent) to the Provider under this Agreement in support of the Campaign and which may include but are not limited to promotion of the Provider as an SATC registered provider under the Campaign.

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

“**Purchase Period**” means the period between Monday 10 November - Tuesday 31 March 2026 (inclusive).

“**Reimbursement**” means a cash reimbursement to consumers of 50% cash back and up to \$50 (inclusive of GST) for eligible transactions.

“**Rules for Eligibility**” means the eligibility criteria set out on <https://tourism.sa.gov.au/diningcashback> by the SATC which an Applicant 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.

“**SATC’s Agent**” means Waivpay Ltd (ABN 29 630 927 105), trading as WAIVPAY.

“**Tax Invoice**” has the meaning attributed to it in the GST Law.

“**Term**” means the term of this Agreement as set out in clause 2.1.

2. AGREEMENT

2.1 This Agreement binds the SATC and the Provider from the Confirmation Date until 31 March 2026, unless otherwise terminated in accordance with the terms of this Agreement.

2.2 This Agreement consists of: (a) these Conditions; (b) the Application (including the Rules for Eligibility); and (c) any amendments or variations made in accordance with these Conditions. This Agreement

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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 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 the case of an 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 Provider acknowledges that the SATC's Agent is also involved in the management and administration of the Campaign, the Reimbursement and the Promotion Services for and on behalf of the SATC. The SATC's Agent will oversee the performance of these Conditions and all communication between the SATC and the Provider to be conducted by SATC. All instructions (if any) to the Provider will be given by the SATC's Agent and such instructions are deemed to have been duly authorised by the SATC.

3. PARTICIPATION IN CAMPAIGN

- 3.1 For the purpose of this clause, the Provider acknowledges and agrees that the SATC will provide the Promotion Services to the Provider in accordance with the following process:
- (a) the SATC will receive and review Application(s) made by an Applicant to participate in the Campaign. All Applications will be assessed according to the Rules for Eligibility;
 - (b) upon review of the Application, the Applicant will be advised by the SATC of its successful or unsuccessful registration to participate in the Campaign. The SATC's decision on this matter is final; and
 - (c) if successful, all information provided in the Application, including any personal information of the successful Applicant, will be shared with the SATC's Agent for the Promotion Services and the authorised representative of the Applicant consents to the sharing of this information by submitting an Application.
- 3.2 Providers will cooperate with the SATC and use best endeavours to accommodate the SATC's reasonable requests regarding participation in the Campaign.
- 3.3 Providers may be provided with marketing collateral by the SATC to market the Campaign.
- 3.4 Providers must provide purchasers with a valid Tax Invoice on request.

4. REIMBURSEMENT

- 4.1 The consumer will be required to pay the Provider their full transaction amount via the Provider's approved payment methods. The consumer can then claim the Reimbursement, which will not involve the Provider.
- 4.2 Providers can request from the SATC's Agent a redemption summary report for the Campaign at any point during the Campaign.

5. LICENCE BY THE SATC

- 5.1 The SATC grants to the 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 a Provider's participation in the Campaign on the conditions set out in this clause 5, and the 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 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 use of the Campaign IP by a Provider can only be in the forms approved by the SATC e.g. as set out in an Industry Guide. The 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 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 PROVIDER

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6.1 The 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 Provider's participation, goods and services in the Campaign on the conditions set out in this clause 6, and the SATC accepts this licence.

6.2 The 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.

6.3 The SATC accepts that the Corporate Identification is the sole and exclusive property of the 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 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 (and the SATC's Agent) 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 Provider's participation in the Campaign.

8. RELEASE AND INDEMNITY

8.1 To the extent permitted by law, the Provider indemnifies, releases and forever discharges SATC (and SATC's Agent) from all liability for claims, loss, damage, costs or expenses howsoever arising from or in connection with the Campaign and the Provider's participation in the Campaign. Neither the SATC (or the SATC's Agent) will be responsible for acts, omissions or defaults of the Provider, its directors, officers, employees, invitees or guests and anyone acting on behalf of the Provider.

8.2 The Provider's liability to indemnify under clause 8.1 will be reduced proportionately to the extent that the loss or liability indemnified was contributed to by negligence or default of the SATC or SATC's Agent.

9. OBLIGATION TO MAINTAIN INSURANCE, LICENCES AND PERMITS

9.1 The Provider must, at their own cost, have and maintain:

- (a) valid and enforceable insurances that a reasonably prudent organisation would take out to cover the services of the Provider;
- (b) all licences, permits and authorisations required to comply with all applicable legislation in performing the services of the Provider.

10. UNFORESEEN EVENTS

10.1 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.

10.2 The parties acknowledge that the purpose of the Campaign is to assist businesses impacted by South Australia's Algal Bloom, focusing on hospitality businesses in coastal regions and seafood retailers throughout the State.

11. TERMINATION BY SATC

11.1 The SATC may immediately terminate this Agreement by notice in writing if the 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.

11.2 The termination of this Agreement pursuant to this clause does not preclude the SATC from enforcing any rights it may have against the Provider as a result of the Provider's actions including, in particular, the right to claim damages for breach of this Agreement or at law.

- 12.3 The Provider may terminate this Agreement without cause by providing 5 business days' notice to the SATC in writing.

12. PRIVACY

- 12.1 The SATC requires personal information from Providers for a range of purposes, including but not limited to:
- (a) providing the Promotion Services;
 - (b) conducting market research and analysis, for example to better understand the impacts of the Algal Bloom;
 - (c) sending emails to the Provider, for example with information about the Campaign;
 - (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 Providers to help the SATC personalise its services if the 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 SATC's Agent and any other third parties subcontracted by the SATC to provide the Promotion Services for this Campaign; and
 - (ii) government departments, agencies or other authorised bodies, where permitted or required by law.

The SATC will manage a Provider's personal information pursuant to the SATC's Privacy Statement which can be found here <https://tourism.sa.gov.au/privacy-statement>. The Privacy Statement sets out how the SATC collects, holds, uses, and discloses personal information in relation to Providers for the purposes listed above.

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 Provider's obligations under any provisions of this Agreement; or (b) the provisions of the *Freedom of Information Act 1991* (SA).
- 13.2 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 8 (Release and Indemnity) and 13 (Miscellaneous).
- 13.3 Providers 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 written consent.
- 13.4 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.
- 13.5 No failure to exercise nor delay in exercising any right, power or remedy by the SATC operates as a waiver.
- 13.6 SATC reserves the right to amend the Agreement, in whole or part, acting reasonably. SATC will provide notice to the Provider by email of any updates to the Agreement. The purpose of this right to amend the Agreement is to ensure that all information in this Agreement remains correct and relevant regarding the conduct of the Campaign.
- 13.7 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. The Provider's postal and email addresses for notices are as set out in the Application. SATC's postal and email addresses for notices are: Level 9, 250 Victoria Square/ Tarntanyangga, Adelaide, South Australia 5000, diningcashback@sa.gov.au.
- 13.8 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 and is taken to be received on the third business day after the

date of posting; or (c) transmits it by email 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.

- 13.9 The Supplier must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the SATC.
- 13.10 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.
- 13.11 Nothing in this Agreement derogates from the powers of the Auditor-General under this *Public Finance and Audit Act 1987* (SA).
- 13.12 All Providers must be located in South Australia. Applications will only be considered for Applicants who meet this requirement.