

RESELLER LICENCE AGREEMENT

BETWEEN

SOUTH AUSTRALIAN TOURISM COMMISSION

-AND-

[INSERT NAME OF RESELLER]

DRAFT

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DRAFT

AGREEMENT

BETWEEN

SOUTH AUSTRALIAN TOURISM COMMISSION (ABN 80 485 623 691) a statutory corporation pursuant to the *South Australian Tourism Commission Act 1993* (SA) of Level 9 250 Victoria Square/Tarntanyangga, Adelaide SA 5000

("SATC")

AND

[insert name] [insert ABN] [insert address]

("Reseller").

IT IS AGREED:

1. **INTENT**

- 1.1 SATC has developed the TDU Products and is the owner of the Intellectual Property Rights in those TDU Products.
- 1.2 The Reseller has responded to SATC's expression of interest to become a reseller of TDU Products and the Reseller has successfully met SATC's Qualitative Criteria for appointment as a reseller.
- 1.3 SATC has accepted the Reseller's offer to become a reseller of TDU Products subject to SATC and the Reseller executing this Agreement.

2. **DEFINITIONS**

In this Agreement unless a contrary intention is evident:

- 2.1 "**Agreement**" means this document, the Reseller Licence Agreement which includes any Schedule, Annexure or other document incorporated by reference into this document.
 - 2.2 "**Approved Purpose**" means the purpose specified in Item 7 of the Schedule.
 - 2.3 "**Business Day**" means any day other than a Saturday, Sunday, or public holiday in South Australia.
 - 2.4 "**Business Hours**" means from 8.00am to 6.00pm on a Business Day.
 - 2.5 "**Commencement Date**" means the date this Agreement takes effect, as specified in Item 2 of the Schedule.
 - 2.6 "**Confidential Information**" means information which is clearly identified either as confidential information, or is by its nature confidential, or by the circumstances in which it is disclosed is confidential, but does not include this Agreement.
 - 2.7 "**Designations**" means the reseller designations as detailed in Item 4 of the Schedule.
 - 2.8 "**End User**" means the Reseller's customers to whom Reseller resells the Value Added Products, or the final recipient and user of any Value Added Products. End Users may use Value Added Products for Personal Use only.
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- 2.9 “**Force Majeure**” means the following events or circumstances:
- 2.9.1 fire, flood, earthquake, elements of nature, acts of God, malicious damage, epidemic, explosion, sabotage, riot, civil disorder, rebellion or revolution;
 - 2.9.2 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:
 - (a) did not cause; and
 - (b) cannot prevent, control or influence, and the effect of which prevents that party from complying with any of its material obligations under this Agreement.
- 2.10 “**Gross Purchase Price**” means the annual price paid by the Reseller to SATC for TDU Products purchased under clause 7.1.
- 2.11 “**GST**” means the goods and services tax payable under the GST Act.
- 2.12 “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 2.13 “**Intellectual Property Rights**” means all rights in and to any copyright, trademark, trading name, design, patent, know how (trade secrets) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field and any application or right to apply for registration of any of these rights and any right to protect or enforce any of these rights, as further specified in clause 6.
- 2.14 “**Notice**” means a written note (or email), given and effective in accordance with clause 34 of this Agreement.
- 2.15 “**Order**” means an electronic order from the Reseller for the TDU Products made available under this Agreement on the form of order provided by SATC at [<https://tourdownunder.com.au/>].
- 2.16 “**Party**” means a person who has executed this Agreement, as further defined in clause 3. The details of the Parties are specified in Item 1 of the Schedule.
- 2.17 “**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.
- 2.18 “**Personal Use**” means use for a person’s personal purposes.
- 2.19 “**Price**” means the recommended retail price of the TDU Products as set out in Item 5 of the Schedule.
- 2.20 “**Qualitative Criteria**” means SATC’s requirements for Resellers, as detailed in SATC’s 2023 advertisement for “2024 Santos Tour Down Under – Approved Travel Specialist Expression of Interest”.
- 2.21 “**Product Updates**” means updates to TDU Products which improve their accuracy and completeness.
- 2.22 “**Purchase Rebates**” means an amount calculated in accordance with Item 9 of the Schedule which is payable by SATC to the Reseller under clause 12.
- 2.23 “**Reseller**” means the Party to this Agreement who develops a Value Added Product for the purpose of distribution, sale, or trade of the Value Added Product to an End User.
- 2.24 “**Reseller’s Representative**” means the person named in Item 1 of the Schedule.
- 2.25 “**Reseller Advertising Materials**” mean any written, visual audio, or audio-visual content (including any digital, film or hard copy materials) provided to SATC by or on behalf of the Reseller for use under this Agreement in any advertising, marketing or promotional activities.
- 2.26 “**Reseller Logos**” means the logos specified in Item 12 of the Schedule or as varied by the Reseller from time to time.
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- 2.27 “**SATC Images and Video Materials**” means the images and video materials (or other electronic or digital recordings) belonging to SATC or any other such images and materials as identified by SATC as being SATC Images and Video Materials.
- 2.28 “**SATC Logos**” means the logos specified in Item 11 of the Schedule or as varied by SATC from time to time.
- 2.29 “**SATC’s Representative**” means the person named in Item 1 of the Schedule;
- 2.30 “**TDU**” means the Tour Down Under cycling race in and around Adelaide, South Australia, organised by SATC.
- 2.31 “**TDU Product**” means:
- 2.31.1 only those specified in Item 5 of the Schedule;
 - 2.31.2 in the form stated in Item 6 of the Schedule; and
 - 2.31.3 updated from time to time by Product Updates, in accordance with clause 15.
- 2.32 “**Term**” means the period beginning on the Commencement Date and ending on the Termination Date and, where the context requires, any Further Term granted under clause **Error! Reference source not found.**
- 2.33 “**Termination Date**” means:
- 2.33.1 the date or latest date stated in Item 3 of the Schedule; or
 - 2.33.2 if the Agreement is terminated earlier in accordance with clause 24, that date; or
 - 2.33.3 if the parties enter a Further Term, the expiry date of the same.
- 2.34 “**Value Added Product**” means any use made of the TDU Products by the Reseller, including:
- 2.34.1 any service which incorporates a TDU Product, in whole or in part; and
 - 2.34.2 the development of a new product that enhances, adds value, adds to, or personalises a TDU Product, or parts thereof.

3. **INTERPRETATION**

- 3.1 In this Agreement, unless the contrary intention appears:
- 3.1.1 words importing the singular include the plural and vice versa and words denoting a given gender include all other genders;
 - 3.1.2 reference to a person or third party includes an individual, the estate of an individual, a partnership, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
 - 3.1.3 references to any person or to any Party to this Agreement will include that person’s or Party’s personal representatives, executors, administrators, predecessors, successors and permitted assigns;
 - 3.1.4 reference to a Party includes that Party’s board members, officers, employees, sub-contractors, agents, and invitees;
 - 3.1.5 where any word or phrase is given a defined meaning, any other part of speech or grammatical form of such word or phrase has a corresponding meaning;
 - 3.1.6 headings and bold print are for convenience only and do not affect interpretation;
 - 3.1.7 a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules, and other statutory instruments for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them;
 - 3.1.8 a reference to any agreement or document is a reference to that agreement or document as amended, supplemented, or replaced from time to time;

- 3.1.9 where a Party to this Agreement is more than one person, they are jointly and severally liable under the terms of this Agreement;
- 3.1.10 if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 3.1.11 references to time are to Australian Central Standard Time or Australian Central Daylight Time, in Adelaide, South Australia;
- 3.1.12 where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- 3.1.13 references to currency are to Australian currency unless otherwise stated;
- 3.1.14 when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the directly preceding Business Day in the place where that act is to be done;
- 3.1.15 any Schedule, Annexure or document entered into pursuant to this Agreement whether executed at the time of entering into this Agreement or later during the Term of this Agreement, is incorporated into and forms part of this Agreement; and
- 3.1.16 no decision, exercise of discretion, judgment or opinion or approval of any matter mentioned in this Agreement or arising from it, will be deemed to have been made by SATC, unless in writing and at its sole discretion, except where otherwise expressly provided in this Agreement.

4. **CONTRACT ADMINISTRATION**

- 4.1 The Parties appoint the persons named in Item 1 of the Schedule as their respective Representatives. Each Representative has authority to:
 - 4.1.1 exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement; and
 - 4.1.2 bind his or her party in relation to any matter arising out of or in connection with this Agreement.
- 4.2 A Notice served on a Representative is taken to be Notice to that Representative's party.
- 4.3 The Reseller must comply with all reasonable instructions given by SATC's Representative.
- 4.4 Either party may change its Representative, by giving written notice to the other.

5. **GRANT OF LICENCE**

SATC grants to the Reseller a personal, revocable, non-transferable, non-exclusive licence to use, value-add, and on-sell the TDU Products specified in Item 5 of the Schedule, for the Approved Purpose for the Term, in accordance with the terms of this Agreement.

6. **INTELLECTUAL PROPERTY RIGHTS**

- 6.1 The Reseller only acquires the right to use the TDU Products in accordance with this Agreement, during the Term. The Reseller does not acquire any rights of ownership in the TDU Products.
- 6.2 Intellectual Property Rights over and for the TDU Products will always remain with SATC unless otherwise identified (e.g., third party copyright owner). SATC retains the right to distribute, market and sell the TDU Products to any other person on such terms and conditions as SATC deems fit.

7. **RESELLER OBLIGATIONS**

- 7.1 To the extent that SATC makes TDU Products available for resale, the Reseller may place Orders online through SATC's ordering tool.
- 7.2 Each Order to SATC must include the specific TDU Products being ordered, the End User's name, address, phone number and email address, fees, and any other special instructions.
- 7.3 The Reseller must use commercially reasonable efforts to market and promote use of the TDU Products.
- 7.4 The Reseller must, at its own cost, comply with all regulations, restrictions and conditions imposed by any legislation for the use of, access to, storage of or dealing with the TDU Products or Value Added Products. This includes, but is not limited to, the requirements of clause 18.
- 7.5 The Reseller must not permit itself or any other person to, distribute, sell, transmit, licence, hire, let, trade or expose for sale any TDU Product or Value Added Product, other than as expressly provided for in this Agreement.
- 7.6 The Reseller close must:
 - 7.6.1 comply throughout the Term with all warranties and representations made in its response to SATC's 2023 request for "2024 Santos Tour Down Under – Approved Travel Specialist Expression of Interest";
 - 7.6.2 always act ethically in connection with this Agreement and in accordance with good corporate governance practices;
 - 7.6.3 act in good faith always towards SATC and provide assistance and co-operation as practicable, on request by SATC;
 - 7.6.4 not demean, defame, or otherwise denigrate SATC;
 - 7.6.5 comply with all State and Commonwealth laws relevant to this Agreement;
 - 7.6.6 use its best endeavours to ensure that none of its employees or clients, cause the Reseller to breach this Agreement; and
 - 7.6.7 notify SATC if any of the details in Item 1 of the Schedule change.

8. **RISK**

- 8.1 Risk (but not title) in the TDU Products delivered to the Reseller passes to the Reseller on delivery.
- 8.2 The Reseller acknowledges and agrees that:
 - 8.2.1 it uses the TDU Products at its own risk; and
 - 8.2.2 subject to clause 20, neither SATC nor its board members, officers, employees, or agents, will be liable for any loss or damage occasioned to the Reseller by provision of the TDU Products under this Agreement, or use of it by the Reseller, End Users, or third parties; and
 - 8.2.3 SATC is released from any claim for any such loss or damage.

9. **SATC GRANT OF RIGHTS**

- 9.1 SATC grants to the Reseller a revocable, non-exclusive, non-transferable licence during the Term to use:
 - 9.1.1 the Intellectual Property Rights in the SATC Logos and the SATC Images and Video Materials only to enable the Reseller to fulfil its obligations under this Agreement in the manner set out in this Agreement; and
 - 9.1.2 the Designations.
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- 9.2 Nothing in this Agreement shall confer upon the Reseller any right to trade under any name included in the SATC Logos or SATC Images and Video Materials or any right to apply for the registration or reservation of any such name, logo, image or video.
- 9.3 The Reseller agrees that in using the SATC Logos and the SATC Images and Video Materials, the Reseller must:
- 9.3.1 act at all times to protect the value in the SATC Logos and the SATC Images and Video Materials and ensure SATC's rights and reputation are not damaged or infringed in any way by the Reseller's use;
 - 9.3.2 ensure the SATC Logos, SATC Images and Video Materials and the Designations shall only be applied to, or associated with the Benefits or advertising or promotional material approved by SATC;
 - 9.3.3 observe SATC's reasonable directions as to the disposition and manner of use of the SATC Logos, SATC Images and Video Materials and the Designations in general or in a particular instance;
 - 9.3.4 not make any change to the design or content of the SATC Logos or SATC Images and Video Materials; and
 - 9.3.5 not jeopardise SATC's rights to the SATC Logos or the SATC Images and Video Materials by improper use of the SATC Logos or the SATC Images and Video Materials.
- 9.4 No later than five Business Days prior to using, releasing, publishing, producing, broadcasting, televising or erecting any Reseller Advertising Materials proposed to be used, released, published, produced, broadcast, televised or erected under or arising out of this Agreement by or on behalf of the Reseller, the Reseller will submit to the person nominated from time to time by SATC full details of and artwork for the proposed Reseller Advertising Materials for approval. SATC may grant or refuse approval of any Reseller Advertising Materials in its absolute discretion and on any terms it thinks fit.
- 9.5 The Reseller must ensure that all its Reseller Advertising Materials:
- 9.5.1 complies with SATC's brand guidelines, if any (as issued and updated by SATC from time to time) and all applicable laws; and
 - 9.5.2 is accurate and is in no way misleading or misrepresentative.
- 9.6 The Reseller may only use, release, publish, produce, broadcast, televise or erect any Reseller Advertising Materials if SATC has provided its prior written approval of that material.
- 9.7 SATC will use all reasonable endeavours to respond promptly to any request for approval of any Reseller Advertising Materials by the Reseller, but will not be liable for any delay in providing such response. If SATC does not approve the Reseller Advertising Materials or the proposed use (acting reasonably) the Reseller will revise the proposed Reseller Advertising Materials or use, or if requested by the Reseller, the parties will meet in good faith to attempt resolve any issues raised by SATC.
- 9.8 SATC may at any time impose additional conditions on the Reseller's use of the SATC Logos, SATC Images and Video Materials or the Designations.
- 9.9 The Reseller shall not, at any time during or after this Agreement, assert or claim any interest in or do anything that may adversely affect the validity of the SATC Logos or the SATC Images and Video Materials. Upon expiration or termination of this Agreement, the Reseller shall immediately remove and cease to display all advertising related to the TDU Products, the SATC Logos and/or the SATC Images and Video Materials. The Reseller also shall not register, use, advertise, or display any trademark, trade name, or product designation which is, in whole or in part, similar to or confusing with the SATC Logos or with any other trademarks owned by or licensed to SATC.
- 9.10 The Reseller acknowledges that SATC is the sole owner of the SATC Logos and SATC Images and Video Materials (and that which incorporates the same) and any Intellectual Property Rights brought into existence by SATC prior to the Commencement Date.
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- 9.11 All Intellectual Property Rights in any artwork, signage, or other promotional materials produced under this Agreement including (but not limited to) that which incorporates the Designations, the SATC Logos and SATC Images and Video Materials, is and remains the property of SATC.
- 9.12 The Reseller will not knowingly do or cause or permit anything to be done which may endanger or damage SATC's rights in and ownership of SATC's Logos and SATC Images and Video Materials.

10. **RESELLER GRANT OF RIGHTS**

The Reseller grants to SATC a revocable non-exclusive non-transferable royalty-free licence during the Term to use the Intellectual Property Rights in the Reseller Logos (and such other Intellectual Property Rights provided by the Reseller for the purposes of this Agreement) to enable SATC to promote the TDU and the Reseller's services supplied under or in connection with this Agreement.

11. **PAYMENTS**

- 11.1 The Reseller agrees to pay SATC the Price for each TDU Product purchased.
- 11.2 The Price payable under this Agreement will be reviewed prior to each Review Date, to determine the new prices payable from the next Review Date. Those new amounts will be payable from the relevant Review Date until the day before the next Review Date, if there is one, or until the expiration of the Term.
- 11.3 SATC will, without time being of the essence, give to the Reseller a notice specifying any new Price.
- 11.4 The Reseller is solely responsible for determining the fees the Reseller charges to End Users, invoicing End Users, and collecting such fees.

12. **REBATE**

- 12.1 SATC will pay to the Reseller Purchase Rebates, the amount of which will be determined in accordance with Item 9 of the Schedule.
- 12.2 The Parties agree that the amount of Purchase Rebates payable by SATC under the Agreement will be based upon the Gross Purchase Price of the TDU Products by the Reseller under this Agreement.
- 12.3 The Reseller will not be eligible for any other payments, discounts or other fees for the purchase of TDU Products.
- 12.4 In the event that Purchase Rebates are due, SATC will issue payment of such refund based on the Order information provided by the Reseller as requested under clause 7.2.
- 12.5 SATC will issue an Order summary detailing Purchase Rebates owed by SATC within 45 days after the conclusion of each TDU during the Term.
- 12.6 SATC need not make a payment for Purchase Rebates under or in connection with this Agreement until the Reseller provides a tax invoice for the Purchase Rebates specified in clause 12.5.
- 12.7 SATC must make payment of a correctly rendered invoice within 30 days after receiving the invoice.
- 12.8 For the purposes of clause 12.7, an invoice is correctly rendered if:
- 12.8.1 it is correctly addressed and calculated in accordance with this Agreement;
 - 12.8.2 it relates only to Orders that have been placed by the Reseller in accordance with this Agreement; and
 - 12.8.3 it is a valid tax invoice in accordance with GST Act.

13. GST

- 13.1 Words or expressions used in this clause that are defined in the GST Act have the same meaning given to them in the GST Act.
- 13.2 Unless otherwise stated, any consideration specified in this Agreement does not include any amount for GST.
- 13.3 If a supply under this Agreement is subject to GST, the recipient of the supply must pay to the supplier an additional amount equal to the amount of consideration multiplied by the applicable GST rate.
- 13.4 The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.
- 13.5 If the additional amount differs from the amount of GST payable by the supplier, the Parties must adjust the additional amount accordingly.
- 13.6 If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the Party is entitled to an Input Tax Credit.

14. ALTERATION OF NATURE AND CONTENT OF THE TOUR DOWN UNDER PRODUCTS

SATC reserves the right to alter, correct or amend the nature and content of the TDU Products from time to time and will (subject to any more immediate requirements under clauses 18), notify the Reseller in writing, at least 7 days prior to any alteration or amendment being made. The alteration or amendment will form part of the TDU Products.

15. TOUR DOWN UNDER PRODUCT UPDATES

- 15.1 SATC will, subject to the provisions of this Agreement, provide the Reseller with Product Updates, in the manner stated in Item 8 of the Schedule, during the Term. The Product Updates will form part of the TDU Products, immediately on their provision.
- 15.2 SATC will be under no obligation to supply Product Updates other than as stated in this clause 15.

16. OUT OF SCOPE

- 16.1 The Reseller agrees and acknowledges that:
- 16.1.1 full responsibility for obtaining and for the consequence of use of any other thing necessary to make use of the TDU Products, remains with the Reseller; and
 - 16.1.2 SATC gives no assurance or guarantee of the number of sales or Orders which the Reseller may receive or expect to place, in relation to TDU Products licensed under this Agreement. The Reseller is responsible for making its own assessment of the potential market for the same.

17. CONFIDENTIALITY

- 17.1 Subject to this clause 17, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.
- 17.2 A Party may disclose Confidential Information belonging to the other Party:
- 17.2.1 to an employee, agent or adviser of that Party ("**Authorised Person**"), on a "need to know" and confidential basis;
 - 17.2.2 as required by law or a court order;
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- 17.2.3 in accordance with any Parliamentary or constitutional convention;
 - 17.2.4 to the Australian Competition and Consumer Commission (ACCC) if the party reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Services under this Panel Agreement; or
 - 17.2.5 for the purposes of prosecuting or defending proceedings.
- 17.3 If requested by SATC the Reseller must procure Authorised Persons to execute a confidentiality undertaking in favour of SATC.
- 17.4 The Parties may mutually agree to disclose Confidential Information.
- 17.5 This clause 17 will survive termination of this Agreement.

18. **PRIVACY**

- 18.1 The Reseller must:
- 18.1.1 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#sthash.s76QhRX6.dpuf>) ("IPPs") as if the Reseller 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
 - 18.1.2 allow SATC to undertake, and cooperate with any audit or investigation which SATC deems necessary to verify that the Reseller is complying with the IPPs.
- 18.2 The Reseller must promptly notify 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.
- 18.3 This clause 18 will survive termination of this Agreement.

19. **PUBLICITY**

The Reseller must not make or permit to be made a public announcement or media release about any aspect of this Agreement unless SATC first gives the Reseller its written consent.

20. **DISCLAIMERS AND RELEASE**

- 20.1 To the extent permitted by law, SATC will in no way be liable to the Reseller or anyone else for any loss or damage, however caused (including through negligence) which may be directly or indirectly suffered in connection with the use of the TDU Product. This general disclaimer is not restricted or modified by any of the following specific disclaimers.
- 20.2 To the extent permitted by law and except where consumer guarantees imposed by Division 1 of Part 3-2 of the Australian Consumer Law are applicable, no warranty, condition, undertaking or term, (whether express or implied), as to the condition, quality, reliability, accuracy or completeness, performance, merchantability, or fitness for purpose of any TDU Product is given or assumed by SATC.
- 20.3 Pursuant to section 64A of the Australian Consumer Law, this clause 20.3 applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic, or household use or consumption. To the extent permitted by law, SATC's liability for failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law, other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law, is hereby limited to:
- 20.3.1 in the case of goods, at SATC's option, any one or more of the following:

- (a) the replacement of the goods or the supply of an equivalent product;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring an equivalent product; or
- (d) the payment of the cost of having the goods repaired; or

20.3.2 in the case of services, at SATC's option;

- (a) the supply of the services again; or
- (b) the payment of the cost of having the services supplied again.

20.4 This clause 20.4 applies where any act, statute, rule, or regulation (other than Division 1 of Part 3-2 of the Australian Consumer Law and regulations made in relation thereto) ("**other law**") implies in this Agreement any term, condition, warranty, right or obligation ("**implied term**"), and the other law avoids or prohibits a provision in a contract excluding or modifying the application of, exercise of or liability under such implied term. To the extent permitted by law, the liability of SATC for any breach by it of such implied term is limited, at SATC's option, to any one or more of the remedies referred to in clauses 20.3.1 or 20.3.2 above.

21. **LIMITATION OF LIABILITY**

21.1 The Reseller agrees that, subject only to clause 20.3, in no circumstances will SATC be liable for damages, including indirect, special, incidental or consequential damages (including loss of existing or anticipated revenue) in connection with or arising out of the use of any TDU Product or otherwise in connection with this Agreement, even if SATC has been advised of the possibility of such damages.

21.2 The Reseller agrees that, subject only to clause 20.3, the liability of SATC for all claims, in aggregate, which it may have against SATC relevant to any TDU Product (whether for breach of this Agreement, for negligence or otherwise), will be limited to the amount paid or payable by the Reseller to SATC during the first 12 months' duration of this Agreement.

22. **INDEMNITY**

22.1 The Reseller indemnifies and must keep indemnified SATC and its employees from and against all costs, losses, damages, expenses (including legal expenses) or other liabilities suffered or incurred by SATC or its employees arising out of or in respect of this Agreement as a consequence of:

22.1.1 any negligence, wrongful act or omission or breach of duty of or by the Reseller;

22.1.2 any breach by the Reseller of any of the provisions of this Agreement; or

22.1.3 any breach of a warranty given by the Reseller under this Agreement.

22.2 This clause 22 will survive termination of this Agreement.

23. **INSURANCE**

23.1 The Supplier must effect and maintain the policies of insurance specified in Item 10 of the Schedule for not less than the amounts specified Item 10 of the Schedule.

23.2 The policies of insurance referred to in clause 23.1 must be held until the expiry of the Agreement.

24. **DEFAULT AND TERMINATION**

24.1 Either Party may terminate this Agreement by giving the other Party at least 30 days' Notice.

- 24.2 If the Reseller fails to perform any of its obligations under this Agreement, then SATC may:
- 24.2.1 give the Reseller a Notice describing the default and requiring the Reseller to remedy the default within 14 days; and
 - 24.2.2 immediately (without notice) suspend part or all the Reseller's access to the TDU Products, until such time as the Reseller remedies the default.
- 24.3 SATC may terminate the Agreement immediately by Notice to the Reseller, if:
- 24.3.1 the Reseller fails to remedy a default after being given 14 days' Notice;
 - 24.3.2 anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Reseller to another person or third party;
 - 24.3.3 there is any change in control of the Reseller within the meaning of the *Corporations Act 2001* (Cth);
 - 24.3.4 the Reseller is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed; or
 - 24.3.5 the Reseller fails to comply with clause 6, 7, 9, 10, 11, 12, 13, 17, 18, 19, and 22 of this Agreement.

25. **OBLIGATIONS WHEN AGREEMENT ENDS**

- 25.1 The expiration or termination of the Agreement does not affect any rights, liabilities, or obligations of the Parties because of anything occurring before the expiration or termination.
- 25.2 On termination of this Agreement the Reseller must immediately:
- (a) cease to use all TDU Products; and
 - (b) in every other respect co-operate with SATC as it may reasonably require, to minimise any loss, damage, or inconvenience to SATC and its customers resulting from the expiration or termination of the Agreement.
- 25.3 The Reseller must provide to SATC written certification specifying that clause 25.2 has been complied with, within 30 days of the Termination Date.
- 25.4 This clause 25 will survive the termination of this Agreement.

26. **MODIFICATION**

Any modification of this Agreement must be in writing and signed by an authorised representative of each party.

27. **FORCE MAJEURE**

- 27.1 Neither party is liable for any delay in performing, or failure to perform, its obligations pursuant to this Agreement (other than an obligation to pay money). If the delay or failure is due to Force Majeure.
- 27.2 If a party is delayed in performing, or fails to perform, its obligations (other than an obligation to pay money) due to Force Majeure, the performance of that party's obligations will be suspended.
- 27.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

28. **CONFLICT OF INTEREST**

The Reseller must disclose in writing to SATC all actual and potential conflicts of interest that exist, arise, or may arise (either for the Reseller or the Reseller's Personnel) while performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

29. **ACTING ETHICALLY**

The Reseller must conduct itself in a manner that does not invite, directly or indirectly, 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 SATC's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

30. **COMPLIANCE WITH LAWS**

The Reseller must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.

31. **GOVERNING LAW AND JURISDICTION**

31.1 This Agreement is governed by the laws in the State of South Australia.

31.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

32. **RELATIONSHIP BETWEEN PARTIES**

32.1 The Parties acknowledge and agree that nothing in this Agreement:

32.1.1 constitutes a partnership or joint venture of any kind between the Parties; or

32.1.2 constitutes any relationship of employer and employee or SATC and agent between SATC and the Reseller or between SATC and any employees, agents, sub-contractors, members, or volunteers of the Reseller.

32.2 No party has any authority to bind the other Party in any manner whatever except with the express approval by notice in writing of the other party.

33. **ASSIGNMENT AND SUB-LICENSING**

33.1 The Reseller may not assign, transfer or sub-licence its rights under this Agreement unless it has first obtained the written consent of SATC, whose consent may be withheld in its absolute discretion and subject to any conditions.

33.2 Any assignee or similar must comply with the Qualitative Criteria, prior to SATC approving any assignment, transfer, sub-licence or similar.

33.3 The Reseller remains entirely responsible for the acts or omissions of any approved sub- licensee under or in connection with this Agreement.

34. **NOTICES**

34.1 Any notice relating to this Agreement must be:

34.1.1 in writing;

34.1.2 signed by the Representative of the sender or directly from their email address; and

34.1.3 given to the other Party:

(a) by hand delivery;

- (b) by prepaid mail; or
- (c) by facsimile or email transmission.

34.2 For the purposes of delivery of notice:

34.2.1 mail must be sent to the address of the recipient Party set out in the Schedule; and

34.2.2 facsimile or email messages must be marked for the attention of the person specified in the Schedule.

34.3 If a Party changes its contact details, then it must provide written notice to the other Party within 5 Business Days.

34.4 A notice sent for the purposes of this clause will be considered received:

34.4.1 if delivered before 5.00pm on a Business Day, otherwise on the next Business Day;

34.4.2 if sent by pre-paid mail, on the third Business Day after posting; or

34.4.3 if transmitted by facsimile before 5.00pm on a Business Day and a complete transmission report is received on the day of transmission, otherwise on the next Business Day, provided that:

34.4.4 if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice; and

34.4.5 if transmitted by email before 5.00pm on a Business Day and the Sender receives a message-opened response, otherwise on the next Business Day, subject always to the sender received a message opened response.

35. **DISPUTE RESOLUTION**

35.1 Subject to clause 35.4, a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.

35.2 Either Party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute.

35.3 Within 5 Business Days or such other period as may be agreed by the Parties, representatives must meet and use reasonable endeavours to resolve the dispute.

35.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.

36. **COUNTERPARTS**

36.1 This Agreement may be executed in any number of counterparts each of which is taken to be an original. All those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.

36.2 This Agreement may be executed by all Parties by way of electronic signature, and if so, must be considered an original.

EXECUTED AS AN AGREEMENT

SIGNED by a duly authorised officer for and on)
behalf of **SOUTH AUSTRALIAN TOURISM**)
COMMISSION:)
)

.....
Authorised officer signature

.....
Authorised officer name

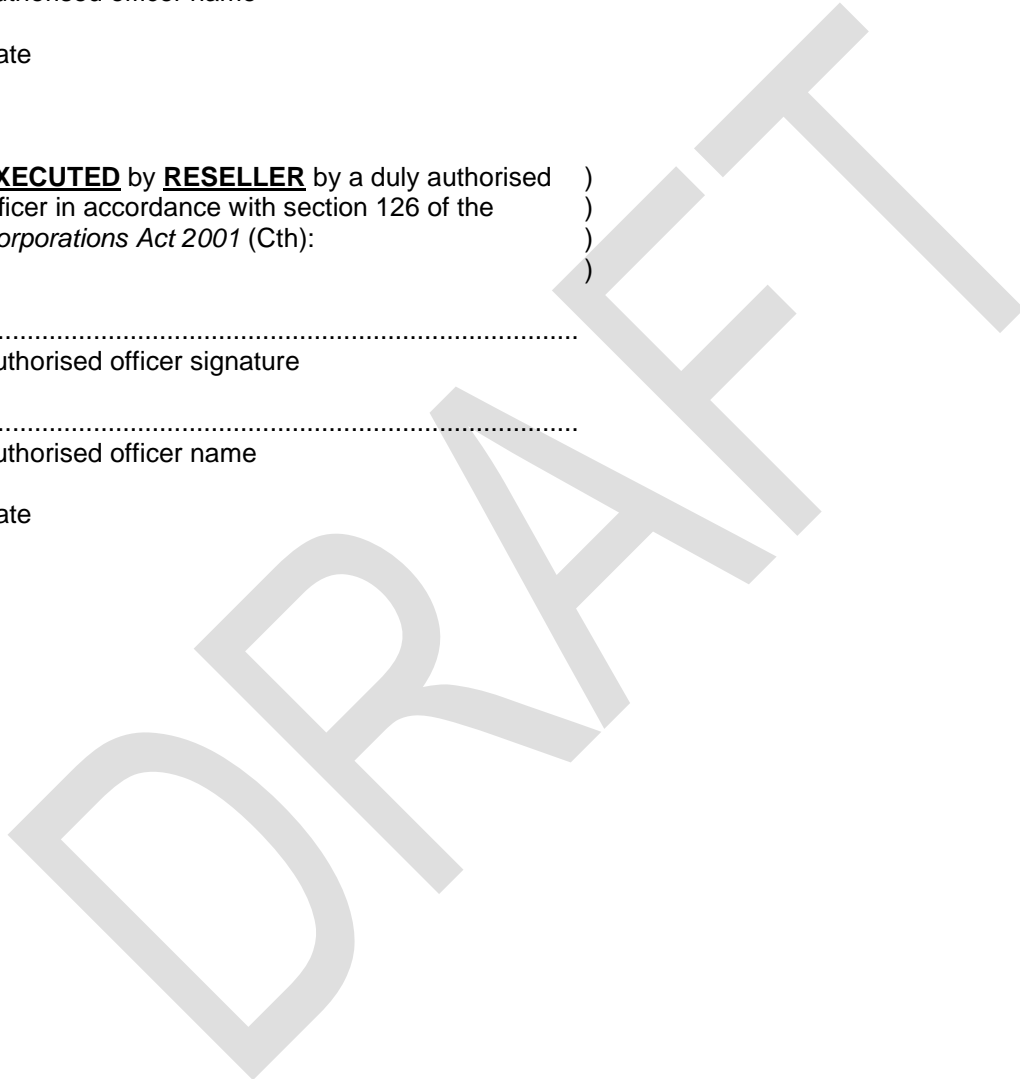
Date

EXECUTED by **RESELLER** by a duly authorised)
officer in accordance with section 126 of the)
Corporations Act 2001 (Cth):)
)

.....
Authorised officer signature

.....
Authorised officer name

Date



SCHEDULE

1. Details of Parties

	SATC	Reseller
Entity Name	South Australian Tourism Commission A body corporate pursuant to the <i>South Australian Tourism Commission Act 1993</i> (SA)	[insert name of Reseller]
ABN	80 485 623 691	[insert ABN]
Representatives	Ruby Hannam Marketing Manager	[insert position and/or name of Reseller's representative]
Address for service of Notices	GPO Box 1972 Adelaide SA 5001 Level 9 250 Victoria Square/ Tarntanyangga Adelaide South Australia 5000	[insert postal address] [insert physical address]
Telephone	08 8463 4649	[insert telephone number]
Mobile	0422 454 914	[insert mobile number]
Email Address	Ruby.Hannam@sa.gov.au	[insert email address]

2. Commencement Date

The date on which the Parties sign the Agreement, or if signed on separate days, the date of the last signature.

3. Termination Date

1 year from the Commencement Date

4. Designations

The Reseller is permitted to identify itself as a TDU "Approved Travel Specialist" solely in connection with its resale of TDU Products.

5. Description of TDU Products

Note: Insert details of TDU Products here:

TDU Product	Description	Price (exclusive of GST)

6. Format of the TDU Products

TDU Product tickets will be supplied in an online ticketing file.

7. Approved Purpose of TDU Products

The Reseller may only use TDU Products in the lawful conduct of its tour operator business to combine them into a package tour, which is sold with its own price tag to the public directly.

8. Product Updates

Product Updates of the TDU Products will be provided by SATC on September 30 in each year of the Term.

9. Purchase Rebates

Note: Add methodology for calculating Service Rebates here.

SATC will pay a Purchase Rebates on the Gross Purchase Price of TDU Products, the amount of which will be determined in accordance with the following methodology.

Gross Purchase Price (exclusive of GST)	Tier Minimum (exclusive of GST)	Purchase Rebates
\$0-\$5,000	\$0	
\$5,001-\$10,000	\$5,001	
\$10,001-\$20,000	\$10,001	

10. Insurances

Public and product liability insurance for an insured amount of \$20 million per occurrence

Workers compensation as required by law

11. SATC Logos

[insert logos]

12. Reseller Logos

[insert logos]