



## CONTRACT OF AGREEMENT: DESTINATION NORTH COAST BUSINESS EVENTS REBOOT INCENTIVE FUND

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Contract Between:

**DESTINATION NORTH COAST**, Australian Business Number 92 617 918 037, of PO Box 146, Lismore NSW, 2480 (hereinafter referred to as “DNC”)

AND

**INSERT COMPANY NAME** (partner), Australian Business Number **insert ABN**, of **insert address**

The Partner and DNC are hereinafter individually referred to as a “Party” and collectively as the “Parties”. However, the Partner and DNC are each responsible for their own obligations and tasks.

This document (“Agreement”) formalises DNC’s investment in the **insert event name, insert date and location** (“Event”) through the Destination North Coast Business Events Reboot Incentive Fund (“Program”) in support of activities that are likely to establish the Event as a driver of visitation.

The aim is to increase domestic visitation to the Event’s region, increase awareness of the Event, influence a visitor’s intention to travel to the Event specifically or extend the length of stay of visitors already in the location of the Event.

### Term

The term of this Agreement starts when this Agreement is signed by both Parties and returned to DNC and ends upon DNC receiving a post Event report (i.e. no later than two (2) weeks after the last date of the Event) unless termination occurs (“Term”).

### Approved use of the funds

Funds must be expended on activities that will establish the Event as a driver of visitation and deliver a superior visitor experience. Funds must be expended and used to help offset ‘in destination’ costs associated with holding an event within the 14 Local Government areas of the North Coast region including Tweed, Byron, Ballina, Lismore, Richmond Valley, Kyogle, Clarence Valley, Coffs Harbour, Bellingen, Nambucca Valley, Mid Coast, Kempsey, Port Macquarie - Hastings, and Lord Howe Island. The costs approved for use of funds include:

- Accommodation
- Venue
- Activities
- Transport
- Theming
- Food & Beverages
- Keynote Speakers and Entertainment

## Not approved use of the funds

Funds cannot be used if a similar service can be sourced in region. The costs that are not approved for use of funds include:

- Marketing
- Charitable groups
- Consultancy costs
- Prize money
- Gifts
- Staffing costs and salaries
- Council fees
- Out of region contracts (ie. International guest speakers)

Unsatisfactory performance against the Partner Obligations and/or failure to achieve some or all of the Partner Obligations or the obligations outlined as part of the Cash Investment under this agreement may give rise to Cash Investments being withheld by DNC and/or Termination by DNC.

## Partner Obligations

The Partner must comply with the following terms and conditions and by signing the Agreement comply with such terms and conditions:

- a) Provide DNC with signed agreements with suppliers (included in application)
- b) Ensure the nominated DNC colour logo is placed on all marketing, promotional and communication collateral including but not limited to advertising (print/digital/TV/outdoor), flyers, posters, Event websites and Event programs. Use of the logo is subject to written approval by DNC prior to production and conformity to DNC brand guidelines – see Annexure A. The Partner must allow four (4) working days for approvals to [businessevents@dncnsw.com](mailto:businessevents@dncnsw.com)
- c) Provide within two (2) weeks after the last date of the Event a post Event report) to [businessevents@dncnsw.com](mailto:businessevents@dncnsw.com) which includes a summary of the Event, and Event delivery, ticketing and attendance data (including data on delegates), data on delegate spend, destination impressions and region of origin. The post Event report must also include an Event budget showing expenditure and revenue, copy of paid invoices, a summary of marketing and promotions undertaken, and a review of the activities for which funding has been provided.
- d) Provide a copy of the Event's certificate of currency for public liability insurance for a minimum of \$20 million to [businessevents@dncnsw.com](mailto:businessevents@dncnsw.com)
- e) Offer DNC a full-page colour advertisement in the Event program (if any), or other space as mutually agreed in writing.
- f) Offer DNC integration into the Event's social media and digital channels - a minimum of one (1) post on the Event's social media accounts to contain hashtags #meetinsw #northcoast #eventsprofs #EventHereThisYear. Social media posts are subject to prior written approval by DNC prior to publication and conformity to DNC social media guidelines. The Partner must allow four (4) working days for approvals.
- g) Include destination and tourism content on the Event website (travel, accommodation, attractions) which can be provided by DNC
- h) Provide pre-approved access to photographs and footage for DNC and its tourism and media partners to use for marketing and promotional purposes. Rights are given to DNC and its tourism and media partners to edit with no further approvals required. Use of photographs and footage is on the following basis: worldwide, royalty free, free of charge and in all media whether now known or later devised in perpetuity.
- i) Each Party represents and warrants to the other Party that any material given (photos, logos, information, offers) is accurate and comprehensive, is not defamatory, slanderous, misleading or deceptive and is true and correct.

- j) If there is an event which may bring DNC into disrepute, the Partner must advise DNC as soon as possible.
- k) Provide DNC on request delegate numbers.
- l) Recognition during the Event of DNC's support in speeches and media releases.
- m) The Partner represents and warrants to DNC that it has adequate finances to hold the Event and will underwrite the Event costs.
- n) The Partner must conduct a diligent Event risk assessment and have evidence of other safety documentation and relevant permits and licences for the Event, including a COVID-19 Safety Plan. This must be provided to DNC upon request.
- o) The Partner must comply with relevant Public Health Orders in place.
- p) Each Party represents and warrants to the other Party that any material given (photos, logos, information, offers) is accurate and comprehensive, is not defamatory, slanderous, misleading or deceptive and is true and correct.
- q) If there is an event which may bring DNC into disrepute, the Partner must advise DNC as soon as possible. Failure to rectify this can form grounds of Termination of this agreement by DNC.

### DNC Obligations

#### Funding

DNC will provide AUD\$5,000 (exclusive of GST) ("the Funds") payable as follows:

- i) \$3,500 (exclusive of GST) 65% of total payable upon:
  - a) This Agreement being executed by both Parties and returned to DNC;
  - b) DNC has received a certificate of currency for public liability insurance
- ii) \$1,500 (exclusive of GST) 35% of total payable upon receipt of the post Event Report. Should delegate numbers fall significantly below expectation, Destination North Coast reserves the right to withhold the final payment.

DNC will provide AUD\$10,000 (exclusive of GST) ("the Funds") payable as follows:

- i) \$6,500 (exclusive of GST) 65% of total payable upon:
  - a) This Agreement being executed by both Parties and returned to DNC;
  - b) DNC has received a certificate of currency for public liability insurance
- ii) \$3,500 (exclusive of GST) 35% of total payable upon receipt of the post Event Report and confirmation on reaching the threshold of 100 delegates. Should delegate numbers fall significantly below expectation, Destination North Coast reserves the right to withhold the final payment.

DNC will provide AUD\$15,000 (exclusive of GST) ("the Funds") payable as follows:

- i) \$10,000 (exclusive of GST) 65% of total payable upon:
  - a) This Agreement being executed by both Parties and returned to DNC;
  - b) DNC has received a certificate of currency for public liability insurance
- ii) \$5,000 (exclusive of GST) 35% of total payable upon receipt of the post Event Report and confirmation on reaching the threshold of 150 delegates. Should delegate numbers fall significantly below expectation, Destination North Coast reserves the right to withhold the final payment.

Payment will be made to the Partner within 30 days once the above conditions have been satisfied and on provision of a valid tax invoices which have been issued by the Partner to DNC in accordance with the above requirements.

As per the Federal Governments Grant Funding Policy. If the event is not executed by the 31<sup>st</sup> May 2022 all funding will be returned to Destination North Coast.

## **ANNEXURE A - GENERAL TERMS AND CONDITIONS**

### **Confidentiality**

- a) The Parties agree that any information they provide to each other in relation to this Agreement (“**Confidential Information**”) will be treated with strict confidence during and after the Term.
- b) If the Confidential Information is required by an external party, it may only be provided where the Parties agree in writing on the extent to which and to whom the Confidential Information may be disclosed. The Party disclosing the Confidential Information to the external party shall bind the external party to the same confidentiality obligations as required under the Agreement.

### **Intellectual Property**

- a) DNC grants the Partner a revocable, non-exclusive, non-transferable, royalty-free licence to use certain DNC logo(s), images and footage in connection with the Event.
- b) The Partner grants DNC a non-exclusive, non-transferable, royalty-free licence to use certain Partner’s logo(s), images and footage in connection with the Event to be promoted via the DNC LinkedIn
- c) A Party must not use any logos, images and footage of the other Party without the prior written consent of the other Party (which may be given or withheld in its absolute discretion). Consent must be obtained at least four (4) business days prior to use.
- d) Subject to clause (e), nothing in this Agreement transfers any right, title or interest in any pre-existing logos, images and footage of a Party.
- e) All Intellectual Property (which for the purpose of this Agreement means all intellectual property rights in Australia and overseas, including but not limited to patents, copyright, registered designs, trade or service marks, business or company names) in any work arising from or created, produced or developed by or on behalf of DNC and/or the Partner, whether alone or jointly with others in relation to the Event, will immediately upon creation or performance vest absolutely in and will remain the sole and exclusive property of DNC.
- f) The Partner consents to, and must ensure each of its employees and contractors consents to DNC doing anything in respect of Intellectual Property rights assigned or licensed to DNC under this Agreement which would otherwise breach the moral rights of the affected party granted to it by the *Copyright Act 1968* (Cth).

### **Execution**

- a) This Agreement may be signed in any number of counterparts electronically and those counterparts together make one document. Scanned copies are acceptable.
- b) Unless this Agreement expressly provides otherwise, each Party is responsible for its own costs and expenses associated with all matters relating to this Agreement and all transactions arising from this Agreement.
- c) This Agreement states all the express terms of the Agreement between the Parties in respect of its subject matter; and supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### **Termination**

- a) Either Party may terminate this Agreement by notice in writing if:
  - i) The other Party commits a material breach of this Agreement and the breach is not capable of remedy or the defaulting Party does not remedy the breach within 14 days of receipt of a written notice from

- the non-defaulting Party specifying the breach and requiring the breach to be remedied.
- ii) The other Party is insolvent or ceases or threatens to cease carrying on business or is unable to pay its debts when they fall due or an application for its winding up or dissolution is passed or a receiver, administrator or liquidator or provisional liquidator is appointed to such Party.
- b) In the event of termination, the defaulting Party must repay to the other Party all payments made or such part of the payments as so demanded by the other Party together with other benefits to make up the loss (if any additional benefits are available); and must make such repayment within seven (7) days of the date of such demand or within such longer period as specified by the other Party. Furthermore, all rights and licences granted cease and any property must be returned to the rightful Party.
  - c) In addition to clause (b) above, if DNC terminates this Agreement as a result of the Event not proceeding as a result of the Partner committing a material breach under clause (a)(i) above, any cash contribution towards the Event provided by DNC must be returned in full by the Partner within 30 days of the date of termination.

### Dispute Resolution

- a) Except in the case of urgent injunctive relief, neither Party will initiate legal action against the other without the Parties having firstly attempted to resolve the dispute as follows:
  - (i) that Party must give the other Party notice in writing of the dispute providing a specified time, being at least 14 days, to resolve the problem.
  - (ii) If the dispute is not resolved after the nominated time, it may be escalated by
    1. referring the dispute to a senior representative from the other Party; and
    2. if the dispute is not resolved within 14 days from such referral then by referring the dispute to mediation to be conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC's then current mediation rules and guidelines, within seven (7) days of the date of the last meeting to resolve the dispute as set out in paragraph (a)(ii)(1).

### Indemnity

- a) The Partner indemnifies DNC against any loss, action, proceeding, demand, prosecution, judgment, damage, cost, expense, fine, penalty or liability claimed against or incurred by DNC arising out of:
  - (i) any action by the Partner or the Partner's employees, servants and agents;
  - (ii) any breach by the Partner or the Partner's employees, servants and agents of this Agreement;
  - (iii) the Event; or
  - (iv) any claims by any third party that any Intellectual Property produced or created by the Partner in connection with the Event constitutes:
    1. defamation, passing off or a contravention of any provision of the *Competition and Consumer Act 2010* (Cth) or comparable State/Territory legislation or any other Commonwealth or State/Territory legislation; or
    2. infringement by the Partner of any third party Intellectual Property rights.

### Assignment

- a) The Partner must not assign, sub-contract or otherwise deal with its rights or obligations under this Agreement, except with the prior written consent of DNC.

### Force Majeure

- a) A Party ("**Affected Party**") will not be liable for any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay is caused, directly or indirectly by a Force Majeure circumstance. A Force Majeure circumstance means:
  - (i) an act of God, fire, lightening, earthquake, explosions, flood, subsidence or other natural disaster, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock outs

- or other industrial disputes of any kind not relating solely to the Affected Party, currency restriction, embargo, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the Party seeking relief; and
- (ii) any other event which is not within the reasonable control of the Affected Party (which in the case of the Agreement includes the reasonable control of its subcontractors).
- b) The Affected Party must promptly advise the other Party of the details of a Force Majeure circumstance, and its likely effect on the Affected Party's obligations under this Agreement; and take all steps reasonably necessary to recommence performance and minimise the delay caused by the Force Majeure circumstance.

### **Warranties**

- a) Each Party represents and warrants to the other Party that it has the power to execute, deliver, provide logos, images and footage and perform its obligations under this Agreement and there is (and will be) no agreement, circumstances or understanding with any person which would prevent or adversely affect its ability to comply with its obligations under this Agreement. Neither Party has relied on any statement by the other Party not expressly included in this Agreement.

### **Privacy**

- a) The Parties must collect, use and store any personal information in relation to the Activity strictly in compliance with the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Privacy Act 1988 (Cth)*, including the Australian Privacy Principles as set out in that Act.

### **General**

- a) Audit - With five (5) days' notice to the Partner, DNC at its cost may undertake an audit of the Partner to determine the level of activity already undertaken and consequently the amount of total funds used. The Partner must cooperate with any audit and provide any auditor access to, and copies of, all relevant documents and information necessary to conduct the audit, as determined by the auditor.
- b) Governing Law and Jurisdiction - The law applicable to this Agreement will be the law of New South Wales. Any dispute hereunder will be subject to the exclusive jurisdiction of the courts of New South Wales. DNC and the Partner must comply with all applicable laws in relation to the Event including but not limited to the Privacy Act 1988 (Cth) and Privacy and the Personal Information Protection Act 1998 (NSW).
- c) Waiver - No Party to this Agreement may rely on the words or conduct of any other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.
- d) Liability - Aside from anything contained in this Agreement, in no circumstances is DNC liable to the Partner, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any increased costs or expenses, (ii) for any loss of profit, business, contracts, revenues or anticipated savings, or (iii) for any special, indirect or consequential damage of any nature. The limitations of liability in this clause (d) apply to any claim which arises under or in connection with this Agreement or the Event and will survive termination, discharge or rescission of this Agreement.
- e) Currency and tax - Unless otherwise agreed in writing via email which will be considered a variation to this Agreement, amounts in this Agreement are in Australian Dollars (AUD); and are exclusive of any applicable tax. If required under this Agreement, DNC will make payments to the Partner within 30 days of receiving a tax invoice and the Partner will make payments to DNC within 30 days of receiving a tax invoice.
- f) Public announcements - No public announcement and media release concerning the subject matter of this Agreement may be made by a Party without the prior written consent of the other Party.

- g) Relationship - The relationship between the Parties is that of independent contractors and not employer/employee, principal/agent or Partners. Nothing in this Agreement imposes any fiduciary duties on a Party in relation to any other Party. The Partner must not bind or commit to bind, or commit DNC in any way whatsoever or hold (or purport to hold) itself out as having any authority to do so except with DNC's prior written consent. The Partner must make no representations or warranties with respect to DNC except as set out on the face of authorised Event materials.
- h) Variation – A variation of any term of this Agreement must be in writing and signed by the Parties or agreed via email.
- i) Notices - All notices in connection with this Agreement must be in writing and delivered to the address of the other Party as outlined in this Agreement by hand or prepaid post.
- j) Insurance - DNC and the Partner each warrant that they have adequate levels of product and public liability insurance in relation to the Event (i.e. AUD\$20 million or equivalent).
- k) Invalidity - If any provision of this Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- l) Survival - the provisions of the "Confidentiality", "Privacy", "Termination", "Dispute Resolution", "Indemnity", "Assignment" and "General" (but only sub-clause (b)) survive the termination of this Agreement.
- m) Execution - This contract may be executed in any number of counterparts and scanned copies are valid.

**Annexure A – DNC Brand Guidelines**

Please follow the DNC brand guidelines as attached in this email.

<p><b>SIGNED</b> for <b>DESTINATION NORTH COAST</b> by a duly authorised officer in the presence of</p>  <p>_____</p> <p>Signature of authorised person    Date:</p>  <p>_____</p> <p>Name of authorised person</p>  <p>_____</p> <p>Title of authorised person</p>	<p><b>SIGNED</b> for the <b>PARTNER</b> by a duly authorised officer in the presence of</p>  <p>_____</p> <p>Signature of authorised person    Date:</p>  <p>_____</p> <p>Name of authorised person</p>  <p>_____</p> <p>Title of authorised person</p>
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