

## MARKETING COOPERATION AGREEMENT

This Marketing Cooperation Agreement is between Orlando/Orange County Convention and Visitors Bureau, Inc. d/b/a Visit Orlando (“**Visit Orlando**”) and **Company** (as defined in Exhibit A). Visit Orlando and Company are together the “**Parties**” or singularly a “**Party**”.

### BACKGROUND

The Parties intend to cooperatively promote and market their products, services, and marketing message; or promote tourism to the central Florida area; or both; through marketing activities that may include print media, electronic media, events and the like.

The Parties intend to remain independent of each other. The Parties intend to share the costs and administration of the marketing activities.

### AGREED TERMS

#### 1) DUTIES

- a) Visit Orlando and Company shall carry out the duties and obligations described in Exhibit A.
- b) Unless otherwise stated in Exhibit A, Company is primarily responsible for identifying, negotiating and executing marketing agreements with media agents, media vehicles, or similar third parties and otherwise carrying out the activities identified in the Campaign Details section of Exhibit A (“**Campaign**”), with all relevant material agreements being approved by Visit Orlando prior to execution by Company.
- c) The total value of the Campaign, including the costs of marketing and all other activities conducted by Company as part of the Campaign, shall be set forth on Exhibit A. Exhibit A shall also identify the portion of the total Campaign value to be borne by Visit Orlando and the portion of the total Campaign value to be borne by Company.
- d) Company shall provide Visit Orlando with proofs of all advertisements, promotional materials, promotional videos, swag, collateral and the like for approval prior to commitment. Visit Orlando shall, in its sole discretion, review and approve, or disapprove, same prior to publication.
- e) Company shall designate in Exhibit A, a single primary contact responsible for Company’s duties under this agreement. The contact shall have sufficient authority to make most decisions required under this agreement without resort to secondary authority.

#### 2) PAYMENT

- a) Visit Orlando shall reimburse Company for a portion of the fees and costs Company expends as agreed to in Exhibit A.

- b) As a condition precedent to reimbursement, Company shall supply both proof of performance and proof of payment as Visit Orlando may reasonably specify for each Campaign expense, as well as Campaign metrics as set out in Exhibit A (“**Metrics**”).
- c) Company shall not accept any kick-backs, finders fees, gifts, rebates, private emoluments, or the like in connection with the Campaign that are not disclosed to Visit Orlando. In the event any such payments are made to Company, Company will disclose the payment to Visit Orlando and will split the payment with Visit Orlando in the same proportion as the fees and costs of the Campaign are split as set out in Exhibit A. Nothing in this § (c) shall prevent Company from carrying out its responsibilities with respect to adding value as set out in Exhibit A.

### 3) TERM

- a) This agreement is effective as of the date of last signature below.
- b) This agreement continues until Company provides acceptable proof of performance of all Company duties to Visit Orlando as well as the required Metrics, upon which it will terminate.
- c) The Campaign will commence on the start date set out in Exhibit A (“**Start Date**”) and will end on the end date set out in Exhibit A (“**End Date**”) with the required milestones as set out in Exhibit A.

### 4) CONFIDENTIALITY

- a) The terms of this agreement are confidential. In addition, the Parties each may provide to the other certain confidential information. When the providing Party designates information as confidential, or if the receiving Party has a reasonable basis to believe that information is confidential or should be treated as confidential, then the receiving Party shall maintain its confidentiality by not disclosing that information. Information designated confidential or reasonably implied to be confidential will only be used in a manner consistent with the reason for its being provided to the receiving Party.
- b) Regardless of the designation of information as confidential, information exchanged by the Parties shall not be considered confidential when it (i) is publicly known; (ii) is received from another source who can lawfully disclose such information without a duty to maintain its confidentiality; (iii) is already known by the receiving Party prior to receiving such information from the disclosing Party; or (iv) is independently developed, each of (i) through (iv) without breach of this agreement. Further, information shall not be deemed confidential, regardless of designation, when required to be disclosed by federal, state or local law, regulation or rule, or because of directive, subpoena or order issued by an authority possessing competent jurisdiction to require its disclosure. The Parties may share confidential information with their affiliates, related entities and/or professionals hired to provide services to a party so long as they agree to maintain the confidentiality of the information. Notwithstanding the foregoing, Visit Orlando may in its sole discretion release this agreement to government entities when required to do so by contract.

- c) Within ten days of the termination of this agreement, all confidential information shall be returned to the disclosing party. Should returning such information be impracticable, then the receiving Party shall destroy the information and provide written confirmation of its destruction to the disclosing Party. Nothing in this agreement shall require the receiving Party to return or destroy confidential information when prohibited by applicable law or regulation.
- d) The receiving Party shall maintain all confidential information in a manner no less secure than it maintains its own confidential information, but in any event, no less secure than commercially reasonable taking into account the nature and sensitivity of the information, the damage that would arise (including without limitation, reputational damage) should such confidential information be improperly disclosed, and the cost of remediating a breach of confidentiality, including without limitation, the cost of notice, litigation arising from a breach and third-party damages, if any.
- e) In the event of a data breach or similar event where Visit Orlando's data or other confidential information in the possession of Company is improperly accessed or obtained, used, lost, or becomes the subject of malware or ransomware, the Parties shall reasonably cooperate to remediate such event and provide notice as and if required by applicable law, rule or regulation. Company shall bear the cost of remediation, notice, defense and indemnity. Insurance coverage limits by Company's insurer shall not serve to limit Company's liability. Visit Orlando shall have the right to control its own defense and to choose its own counsel. Likewise, Visit Orlando shall have the right to control all communication and notices that may be useful, necessary or required related to or arising from such an event, at Company's cost. Company shall promptly notify Visit Orlando, but in any event, in less than seventy-two hours following discovery of such an event as generally described in this section.

## 5) TERMINATION

- a) This agreement may be terminated as follows:
  - i) Either Party may terminate if the other fails to perform an obligation under this agreement within ten (10) days of a written notice (which may be email) to cure;
  - ii) Either Party may terminate immediately if the other Party is insolvent or files or has filed against it any proceeding in federal or state court seeking insolvency protection or debtor relief;
  - iii) Either Party may terminate immediately if the other Party infringes the intellectual property of the terminating Party or a third party, or acts in excess of the limited intellectual property license afforded to it under this agreement;
  - iv) Either Party may terminate immediately if the other Party's reputation falls into disrepute or becomes inconsistent with the image or reputation of the terminating Party; and,

- v) Visit Orlando may terminate for convenience on 30 days written notice (which may be by email).
- b) Termination pursuant to sections 5(a)(i)-(iv) will entitle the terminating Party to recover its damages; however, nothing in this agreement will prejudice the rights of the Parties to also seek temporary or permanent equitable relief. In the event of termination pursuant to section 5(a)(v), Visit Orlando's payment contemplated by Exhibit A and Section 2 will be presumed to be *pro rata* to the effective date of termination.

## 6) PROTECTION OF INTELLECTUAL PROPERTY

- a) Visit Orlando grants to Company from the Start Date to the End Date a non-exclusive, revocable, limited, royalty-free, and non-transferable license to use (i) Visit Orlando's trademarks, service marks, trademarks, and the like specifically designated by Visit Orlando in Exhibit A (collectively, "**Visit Orlando Marks**") and Visit Orlando's images, photographs, videos, and other copyrightable materials specifically designated by Visit Orlando in Exhibit A (collectively "**Visit Orlando Materials**", and together with the Visit Orlando Marks, the "**Visit Orlando IP**"), solely as necessary for use in the Campaign. Company shall use Visit Orlando IP in accordance with any trademark or other usage guidelines that Visit Orlando may communicate to Company from time to time. Consistent with sections 1(b) and 1(d), Company shall submit examples of all proposed uses of the Visit Orlando IP to Visit Orlando for Visit Orlando's prior written approval in each instance. All uses of the Visit Orlando Marks, and all goodwill associated therewith, will inure solely to the benefit of Visit Orlando. Company shall not use, register, or attempt to register any mark that is infringing, confusingly similar to or incorporates any of the Visit Orlando Marks. Company acknowledges and agrees that Visit Orlando retains exclusive ownership and rights in the Visit Orlando IP.
- b) Company shall provide to Visit Orlando all customer profiles, contact information, and other customer information obtained, developed and/or collected by Company through the Campaign ("**Campaign Data**"). Company assigns all right, title, and interest in the Campaign Data, as well as any other intellectual property developed by Company for the Campaign, and any derivatives of both, to Visit Orlando. Company shall obtain all necessary consents for the transfer and assignment of Campaign Data to Visit Orlando including without limitation consent to market to identified individuals. Company shall comply with all laws and regulations applicable to Campaign Data, including but not limited to the EU's General Data Protection Regulation.
- c) Other than as specified in the Exhibit A and sections 6(a) and 6(b), the Parties each retain exclusive ownership and rights in their intellectual property, including without limitation, their trademarks, service marks, and commercial symbols as well as all associated moral rights. Further, Company stipulates and agrees that the Visit Orlando Marks are valid, incontestable and not subject to collateral attack with the USPTO, or any other similar body.

## 7) EXCLUSIVITY

- a) Unless otherwise specified in Exhibit A, Company shall not engage in activities that are in competition with Visit Orlando during the term of this agreement.
- b) Unless otherwise specified in Exhibit A, Visit Orlando may continue to carry out its mission as it sees fit which may be in competition with Company.

## 8) INDEPENDENCE

- a) The actions to be taken under this agreement by Company and Visit Orlando shall be independent of the other and not taken as an employee, agent, partner, joint venture, subsidiary or parent of the other. The Parties acknowledge that they are independent entities, are not attorneys-in-fact of the other, are not agents of the other, and are not allowed to incur any obligation on the other's behalf. The Parties shall not hold the other out as an agent, legal representative, partner, subsidiary, joint venture or employee of the other and shall not indicate or suggest that they are related or the same entities.
- b) Except as generally required to carry-out the purpose and timing of the actions set-out in Exhibit A, each Party shall control the conditions, time, details, and means by which it performs its obligations under this agreement.
- c) Neither Party shall have the right to inspect the work of the other except solely for the purpose of determining whether the work is being completed according to Exhibit A.
- d) Neither Party is eligible for and shall not receive any employee benefits from the other Party. Each Party is solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to its business.

## 9) INDEMNIFICATION

- a) Company shall defend, indemnify and hold harmless the Visit Orlando Indemnified Parties, from and against all claims, suits, fines, liabilities, damages, losses and cost, including but not limited to, reasonable attorneys' fees, arising indirectly or directly, in part or solely by Company's conduct, including but not limited to damage to the property or injury to a person. Company covenants and warrants that it and all of its agents, vendors, servants, employees, and contractors will use due care and diligence in all of their activities and operations authorized by this Agreement. In addition, Company will defend, indemnify and hold harmless the Visit Orlando Indemnified Parties against any action, claim, or damages related or arising from (i) Company's alleged violation of the intellectual property rights of a third party, and (ii) marketing ads, offerings or services provided by Company including without limitation their associated contracts.
- b) For purposes of this section, "**Visit Orlando Indemnified Parties**" means Visit Orlando, its predecessors, successors and assigns, its directors, officers, agents, employees, contractors and subcontractors, and the directors, officers, agents and employees of each of them.

## 10) INSURANCE

- a) Company shall maintain insurance in amounts no less than the below requirements throughout the term of this agreement:
- i) Worker's compensation in the amounts and on the forms required by Florida or other applicable state law, and Employers' Liability insurance in an amount no less than one hundred thousand dollars (\$100,000).
  - ii) Comprehensive general liability insurance, including but not limited to contractual, products, completed operations, and personal injury in an amount no less than two million dollars (\$2,000,000) per occurrence.
  - iii) Automobile liability coverage covering owned, hired, and non-owned vehicles used. Said policy or policies shall cover loss or liability for damages in an amount, not less than two million dollars (\$2,000,000), for each occurrence for bodily injury, death or property damage.
  - iv) Cyber risk insurance covering (i) liability incurred from alleged or actual theft, dissemination, and/or use/misuse of personal or confidential information and any related forensic costs, crisis management costs, investigation costs; (ii) network security liability arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks, spoofing, and/or inability of an authorized third party to gain access to services/information, including without limitation denial of service, ransomware, wire fraud, and the like unless caused by a mechanical or electrical failure; (iii) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon; (iv) any government investigations resulting from the alleged or actual disclosure of personal or confidential information or network security liability event; and (v) non-physical business interruption. Each of the foregoing shall be in an amount of no less than two million dollars (\$2,000,000) for each occurrence.
  - v) Umbrella insurance covering at least all of the specified risks herein in an amount of no less than five million dollars (\$5,000,000).
- b) Available insurance coverage will not serve to limit liability that may arise under this agreement. Company shall name Visit Orlando and Orange County, Florida as additional insureds. Upon Visit Orlando's request, Company shall provide Visit Orlando with a certificate of insurance from Company's insurer evidencing the insurance coverage specified in this agreement. Company shall provide Visit Orlando with 30 days' advance written notice in the event of a cancellation or material change in Company's insurance policy. Except where prohibited by law, Company shall require its insurer to waive all rights of subrogation against Company and Visit Orlando.

## 11) REPORTING, BOOKS, RECORDS

- a) Company shall provide Visit Orlando with monthly or quarterly Campaign updates, the content, form, and frequency of which will be reasonably specified by Visit Orlando from time to time.
- b) The Parties expressly agree that Visit Orlando shall have, upon reasonable notice, access to all books, records and accounts of Company relating to this agreement. Company shall reasonably cooperate to provide such additional financial information relating to this agreement as reasonably requested by Visit Orlando from time to time, including but not limited to timely responses to all requests from Visit Orlando and its auditors. Such information will include those books and records as Visit Orlando may specify to permit Visit Orlando to calculate the value provided by Company.

## 12) GENERAL

- a) The Parties shall not assign this agreement or any rights or obligations hereunder, without prior written consent of the other Party.
- b) This agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings and agreements with respect to the subject matter hereof, whether written or oral. No other warranties, promises or agreements, express or implied exist between the Parties.
- c) During the term of this agreement and for a period of six months after its termination or expiration, Company shall not, directly or indirectly, solicit any person who at the time is or who at any time in the preceding six months was an employee of Visit Orlando. In the event Company breaches this prohibition, Visit Orlando shall be entitled to both injunctive relief and liquidated damages in an amount that is five times the total compensation of such employee (i.e. salary and bonus) in addition to all other relief which a court may grant.
- d) Company agrees to verify the employment eligibility of all employees hired during the contract term that will provide services to Visit Orlando through the U.S. Department of Homeland Security's E-Verify system. To the extent such employment is governed other than by the laws of the United States, then Company will comply with the laws of the applicable jurisdiction for each such employee. Regardless of the legality of such in any given jurisdiction, Company will not employ child or forced labor.
- e) Company shall comply with all applicable federal, state and local laws, ordinances, rules and regulations relating to Company's obligations under this agreement.
- f) This agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument. The Parties stipulate, agree, and acknowledge the mutual negotiation of this agreement's terms.
- g) This agreement, including and together with Exhibit A, is the sole and entire agreement of the Parties concerning the subject matter contained in this agreement, and supersedes

all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

- h) In the event the terms of this agreement and Exhibit A are in conflict, then the terms of Exhibit A will control but otherwise will be read reasonably to harmonize the two documents when possible.
- i) Any notices required under this agreement must be in writing and sent to the other Party's mailing address or email address set forth in Exhibit A. If emailed, the notice shall be deemed received on the same day if the sending party receives no notice of delivery failure and the email is coupled with a copy sent via U.S. Postal Service, 1<sup>st</sup> class postage pre-paid. If only mailed, the notice must be sent certified mail, return receipt and shall be deemed received three business days after mailing. If sent via third party overnight courier, signature must be required upon receipt and the notice shall be deemed received on the date signed for.
- j) The laws of the State of Florida govern this agreement without application of Florida's conflicts of laws, rules and doctrines. Any suit arising from this agreement shall be filed exclusively in the Ninth Judicial Circuit Court in and for Orlando, Florida, or in the United States District Court for the Middle District of Florida, Orlando Division should such court have jurisdiction. The parties stipulate that venue and personal jurisdiction are proper in such courts and waive any argument of forum non conveniens.

1 The Parties waive and relinquish the right to a trial by jury. In the event of litigation or legal process arising from or related to this agreement, Visit Orlando and Company expressly submit and consent to a "bench" trial.

- k) In the event of litigation arising from or related to this agreement, the prevailing party shall be entitled to recover from the other, attorneys' fees, paralegal fees and costs through all appeals.
- l) If any portion of this agreement is declared invalid by any law, order, decree or judgment of a court having jurisdiction over the parties and/or the subject matter, this agreement will be construed as if such portion is deleted from this agreement.
- m) The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.
- n) This agreement may be executed in counterparts, each of which is deemed an original. Delivery of an executed counterpart of a signature page to this agreement by facsimile or electronic scan and email shall be as effective as delivery of a manually executed signature page.
- o) The failure of Visit Orlando to insist upon the strict performance of any term of this agreement, or Visit Orlando's failure or refusal to exercise any option, right or remedy contained herein, will not be construed as a waiver or relinquishment for the future of such term, option, right or remedy. Rather, such term, option, right, or remedy will

continue and remain in full force and effect. There will be no waiver by Visit Orlando unless explicitly set forth in writing and signed by Visit Orlando.

- p) The terms of this agreement which by their nature should survive the termination or expiration of this agreement will survive and be binding on the parties, including but not limited to sections 4 and 10.

By signing below, Visit Orlando and Company each agree that it has carefully read and fully understood this agreement, and each agrees to be bound by terms of this agreement with each signatory representing and warranting he/she has authority to sign for and bind the indicated party.

**Orlando/Orange County Convention & Visitors Bureau, Inc. d/b/a Visit Orlando**

**Company**

Signature: Keith Swider  
Print Name: Keith Swider  
Title: VP of Finance  
Date: 08/26/2020

Signature: Chris Bradshaw  
Print Name: Chris Bradshaw  
Title: Marketing Director  
Date: 08/24/2020

EXHIBIT A

Company Legal Name (“**Company**”): ATD Travel Services

Company Address (see section 12.9): 171 Wingate Square, London, UK SW4 0AN

Company Primary Contact (see Section 1.5):

Name: Chris Bradshaw Phone: 44 (0)20 3195 0627 Email: chris@atdtravelservices.co.uk

CAMPAIGN DETAILS

Start Date: January 2020

End Date: March 2020

Media Type/Sales Initiative	Media Channel	Details of Activity	Dates
<u>TV campaign</u>	<u>ITV2, ITVBe, Comedy Central, More4</u>	<u>Attraction Tickets.com brand TV campaign</u>	<u>January 2020</u>
<u>Social media campaign</u>	<u>Facebook, Instagram</u>	<u>Direct response advert featuring Orlando parks and VO</u>	<u>January – March 2020</u>

Total value of Campaign (USD): \$198,030.00

Amount paid by Company towards the Campaign (USD): \$148,030.00

Amount paid by Visit Orlando towards Campaign in the form of reimbursement to Company pursuant to the terms of this Agreement (USD): \$50,000.00

Metrics (see Section 2(b)):

- Campaign Targets – Awareness
  - o Impressions
- Campaign Targets – Return on Investment
  - o Passengers
  - o Room Nights
  - o Orlando Travel Academy Graduates