



**RADISSON BLU HOTEL WATERFRONT:  
TOUR OPERATOR AGREEMENT TERMS AND CONDITIONS**

**THE PARTIES HAVE AGREED AS FOLLOWS:**

WHEREAS the Hotel has certain available room inventory; and

WHEREAS the Tour Operator is in the business of selling hotel rooms to third parties; and

WHEREAS the parties wish to agree on the terms on which the Tour Operator may purchase, market and resell rooms at the Hotel ("**Rooms**").

**Rights and Duties of the Tour Operator**

1. The Hotel hereby grants the Tour Operator the right to sell rooms:
  - a) to end users through web sites controlled and operated by the Tour Operator; and
  - b) to any travel agency or tour operator for non-internet based sales to end users.
2. Unless the Hotel has allocated and reserved specific rooms for sale by the Tour Operator (which shall be done in writing), all sales of rooms shall be confirmed by the Tour Operator with the Hotel by email or fax. Room sales cannot be confirmed by telephone.
3. The Tour Operator warrants that it will not sell the rooms to end users at a rate that is lower than the Hotel's retail rate.
4. The Hotel shall, if it has granted the Tour Operator credit facilities, invoice the Tour Operator, who shall pay the Hotel, the nett rate due in respect of room(s) sold by the Tour Operator (being the retail rate less the discount granted to the Tour Operator, the current rates being recorded in Schedule 2 attached to this Agreement and referred to as the "STO Rate") within 30 (thirty) days of the date of the invoice in respect thereof.
5. In the event that a guest who purchased a room from the Tour Operator books additional nights' accommodation at the Hotel directly with the Hotel, then such reservation shall be totally separate from the contract between the guest and the Tour Operator and shall constitute a new contract between the Hotel and the guest. The Tour Operator shall not be entitled to any fees or other compensation in respect of such additional accommodation booked by such guest.
6. The Tour Operator shall confirm all sales of rooms and/or cancellations and/or amendments directly with the Hotel by email or fax. Room sales, amendments and/or cancellations will not be accepted by telephone.
7. The Tour Operator acknowledges to act on its own behalf when selling the Hotel's rooms and services at standard Tour Operators Rates to any individual traveller or third party and hereby warrants that it will perform its obligations under this Agreement with promptness, due care, skill and diligence and in a workmanlike manner in accordance with the highest industry standard.
8. The Tour Operator shall issue vouchers to its customers setting out at least the guest's name, arrival date and departure date, meal plan (if applicable), the reservation number, (if applicable); these vouchers shall entitle the guest to stay at the Hotel at

**Radisson Blu Hotel Waterfront, Cape Town**

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standard Tour Operator rates ("Vouchers"). The Vouchers shall be issued upon the Hotel's receipt of payment of the standard Tour Operator Rates, and earlier only, if the Tour Operator has been granted credit facilities by the Hotel.

9. The Tour Operator shall ensure that third parties co-operating with the Tour Operator to sell the Hotel's rooms and services provide sufficient credit facilities to cover the standard Tour Operators Rates. The Tour Operator is fully liable for any Vouchers issued without prior proven payment to the Tour Operator by a third party.

#### Term and Termination

10. This Agreement shall commence on the date of its execution and shall continue until 31 October 2019 unless terminated earlier in terms of this Agreement.

#### Rates

11. All STO Rates quoted in this Agreement include Value Added Tax (VAT) levied in terms of the Value-Added Tax Act, which rate as at the date of Signature. Should the standard rate change or another tax levy be introduced during this agreement, the Hotel reserves the right to amend the quoted rate accordingly.
12. The STO rates (being the nett rates offered to the Tour Operator) are applicable to both FIT and small group reservations (Small Group Reservations constitute maximum of 9 rooms). The STO rates include accommodation, a full English breakfast, 1% (one percent) Tourism Levy and VAT. Subject to confirmation at the time of enquiry and booking.
13. The STO rates are quoted in South African currency, per day, are nett and non-commissionable.
14. Day use rooms are strictly on request and allocations depend on the availability of rooms. The rate will be 50 % (fifty percent) of the retail rate and the room must be vacated prior to 17h00.
15. Group meal rates are available upon request.

#### Child policy:

16. Baby cots can be accommodated in all rooms at no additional cost and is applicable for infants 0 (new born) -2 (two) years of age.  
Children under the age of 12 years sharing with adults do not pay for breakfast.  
Children aged 12 and under stay free in parent's room on existing bedding. Sofa beds are considered as existing bedding and only available in Business Class Rooms and Two bedroom Suites.

If booked room-rate includes breakfast, no additional surcharge applies. For meals, children can choose from the regular menu and order a reduced portion (minimum half size) for half the price.

No additional/extra beds are available in Standard Rooms.

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### **Standard**

These rooms do not have sleeper sofas and cannot accommodate an extra bed.

In the event of 1(one) adult sharing with 1 (one) child under 12 (twelve) years (in a Standard or Superior room) the single STO rate will apply for the Adult.

### **Premium Room**

These rooms can accommodate a max. Of 1 (one) child aged 12 (twelve) to 17 (seventeen) years or 2 (two) children under the age of 12 (twelve) years free of charge on a sleeper sofa if sharing with two full paying adults.

In the event of 1 (one) adult sharing with a child under 12 (twelve) years in a Business Class room, the single STO rate will apply for the adult and a maximum of two children under the age of 12 (twelve) years will be accommodated free of charge. Thereafter the double STO rate will apply.

### **Family Room**

The rate for the Two Bedroom suites includes accommodation for a max. of 4 (four) adults including 4 (four) English breakfasts. In addition 2 (two) children under the age of 12 (twelve) years can be accommodated free of charge on a sleeper sofa.

The Hotel reserves the right to amend the rates provided for in this Agreement at any time at its sole discretion.

## **Group Reservations**

17. Group reservations must be placed with the reservation office of the Hotel in writing. The Standard Tour Operator Rate in this contract can be used for Small Group Reservations to a maximum of 9 (nine) Rooms, thereafter the hotels Groups and Conventions rate will apply and will be quoted to you on your request for Proposal (but is subject to confirmation at the time of booking.)
18. The Hotel offers the following facilities:
  - Hospitality Desk
  - Luggage Storage
  - Separate Check- in Desk
  - Welcome Drink on Arrival

These are subject to availability and must be finalized with the hotel at least 30 days prior to arrival.

19. The Hotel will grant discounts in respect of bona fide groups booked on the Groups and Conventions rates (12 + rooms) as follows:
  - 12 (twelve) – 25 (twenty-five) full paying rooms – 1 (one) complimentary single room and breakfast.

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- 26 (twenty-six) – 40 (forty) full paying rooms – 2 (two) complimentary single rooms and breakfast.
- 41 (forty-one) or more full paying rooms – 3 (three) complimentary single rooms and breakfast.
- The maximum number of complimentary rooms is 3 (three).

#### Deposit & Payment: Group Reservations (All Groups)

20. Not less than 120 (Hundred Twenty) days prior to the group arrival (or upon reservation if less than 120 Hundred Twenty days), confirmation of the reservation must be received by the Hotel together with a 10 % (ten percent) deposit of the contracted value, which is non-refundable unless the Hotel determines otherwise. (The 10% (ten percent) deposit is also mandatory for Tour Operators with approved credit facilities.)
21. 30 (thirty) days prior to the group's arrival (or upon reservation if less than 30 (thirty) days), the full rooming list, estimated time of arrival and payment of the contracted value (or full contracted value if reservation is being made then) must be received by the hotel.
22. The Hotel shall have the right to cancel reservations where no deposit or other prepayment is received within the period required herein.

#### Cancellations: Group Reservations (All Groups)

23. All cancellations must be received by the Hotel in writing.
24. The Tour Operator may cancel 10 % (ten percent) of the rooms without penalties during the period of 60 (sixty) to 31 (thirty one) days prior to the arrival of the group. For any room cancelled over the 10 % (ten percent) limit, a cancellation fee of 10 % (ten percent) of the full contracted value will be charged.
25. Any rooms subsequently cancelled (that is, during the period of 30 (thirty) days or less prior to the arrival of the group) will be charged for in full for the entire contracted period.
26. The accommodation charges of guests who fail to arrive ("no shows") will be charged in full for the entire contracted period.

#### Payment and Cancellations: FIT Reservations (**under 9 rooms**)

27. 14 (fourteen) days prior to arrival, full prepayment of all accommodation costs shall be made to the Hotel by the Tour Operator unless credit facilities have been granted to the Tour Operator, in which event such costs shall be invoiced to the Tour Operator. The Hotel reserves the right to request payment more than 14 (fourteen) days in advance in the case of long stays or high occupancy.
28. If arrival is within 14 (fourteen) days of reservation, prepayment must reach the Hotel 3 (three) working days from the date of placing the reservation by way of bank transfer.
29. Any prepayment will only be refunded subject to the reservation being cancelled 14 (fourteen) days prior to arrival during summer and 7(seven) days prior to arrival during winter. Cancellations within 7(seven) days and no shows will be charged at the rate of 80% (eighty percent) of the contracted value.

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30. See special notes in SCHEDULE 3 pertaining to Peak Season Payment and Cancellation Policy.

#### Invoicing Procedure and Payment Terms

31. Credit arrangements are on application only and shall be entirely in the discretion of the Hotel. The Hotel may at any time on written notice withdraw any un-utilised credit provided to the Tour Operator. If credit facilities have been granted the Tour Operator may only debit costs up to the maximum amount (if any) stipulated on the credit application form. The credit limit may be reduced by either the Hotel or the Tour Operator. The Hotel shall at its sole discretion and without prejudice to any of its rights or remedies in terms hereof and at law, be entitled to refuse to debit any further amounts to the Tour Operator's account if the Tour Operator exceeds its credit limit.
32. If no credit arrangements have been granted by the Hotel, all FIT and group reservations will be on a prepayment basis or by EFT for the full contracted value of the booking in accordance with the above provisions of this Agreement.
33. The Hotel shall send the invoice to the Tour Operator's postal address as per the credit application form most recently signed and agreed upon.
34. The Tour Operator will settle the invoice in full no later than 30 (thirty) days after the date of the invoice, following the payment details on the Hotel's invoice.
35. Amounts due under this Agreement which are not paid when due shall bear interest at the lesser of four percent per month on the maximum rate of interest permitted by the law. All payments made by the Tour Operator shall be allocated first to interest, then to costs, including all default administration charges and legal costs, and finally towards the reduction of the outstanding amount from time to time, unless the Hotel determines otherwise.

#### General

36. The Tour Operator shall provide proof of any payment to the Hotel.
37. Payment for any items or changes generated by the guest that are not covered by the Voucher shall be invoiced to and paid by the guest directly to the Hotel.
38. Failure by the Tour Operator to adhere to any of the booking or payment deadlines set out herein shall entitle the Hotel to automatically release the rooms concerned without notice to the Tour Operator.
39. Failure on the part of the Tour Operator to comply timeously or at all with any of the terms and conditions herein contained shall entitle the Hotel, in its sole discretion and regardless of booking requirements and/or payments already received, to cancel or refuse to accept any or all of the Tour Operator's bookings, unless satisfactory arrangements are made by the Tour Operator and confirmed in writing by the Hotel.
40. The Hotel reserves the right to alter its deposit policy and to amend the cancellation clauses during special events, long stays or high occupancy.
41. Arrival and departure times are as follows:
  - Check-in time is 15h00
  - Check-out time is 12h00

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Requests for early arrival or late check-out must be made directly with the Hotel and is subject to availability.

Every effort will be made to accommodate any such request, but the Hotel reserves the right to levy a charge.

#### Duty of Care

42. The Hotel represents to fully comply with all applicable fire and safety regulations' the Hotel pursues regular controls of its technical installations and customer protection processes to ensure highest safety and hygiene standards. The Hotel undertakes to provide reasonable advance notification to the Partner of any refurbishment or renovation taking place to the Hotel's property which may impact the guest stay experience.

#### Intellectual Property

43. The Tour Operator expressly recognizes that it does not obtain without the express prior written approval of the Hotel, any rights to Hotel's or The Radisson Hotel Group's materials, trademarks, brand names, logos and signs, nor any other information, data, databases, software, design, name or any other material provided/developed and owned by the Hotel or the Radisson Hotel Group ("IPR"). The Tour Operator shall not use, without the Hotel's prior written approval, any materials in any radio, television, or internet marketing or advertising including with regards to the internet the use of the materials in conjunction with paid listings in search engines, meta tags, keywords, links and any other means intended to influence the results for internet searches invoking the materials. Any breach of this clause shall entitle the Hotel to terminate this Agreement immediately without prejudice to any other rights or remedies that it may have against the Tour Operator.

#### Warranties by the Tour Operator and Consumer Protection Act

44. The Tour Operator warrants that (i) it will comply with all applicable laws and regulations, including laws and regulations relating to consumer protection such as the Consumer Protection Act, 68 of 2008 ("CPA") and (ii) it has in place, and will maintain in place and will comply with all the necessary licenses, certificates, authorizations, permits, approvals and consents that are required in terms of any applicable laws.
45. The Tour Operator acknowledges that the Hotel may be held liable by guests in terms of the CPA by virtue of the fact that guests may be classified as "consumers" in terms of the CPA. The Tour Operator warrants that it has familiarized itself with the provisions of the CPA and undertakes that it shall render every reasonable assistance to the Hotel to enable the Hotel to comply with its obligations under the CPA. To this end the Tour Operator undertakes to furnish each guest or each reservation with a copy of the Hotel's conditions of stay prior to arrival at the Hotel.



## Indemnity

46. The Tour Operator shall hold harmless and shall indemnify the Hotel in respect of any loss, liability, obligation, damage, claim, demand, suit, action, deficiency, penalty, tax, levy, fine, judgment, settlement, cost, expense, legal fees and disbursements or liability incurred or suffered by the Hotel where such is caused otherwise than by the performance of the Hotel's duties under this Agreement.

## Confidentiality

47. Each party agrees to keep confidential during the term of this Agreement and for a period of 2 (two) years thereafter all information provided by one party to the other in relation to this Agreement including, without limitation, this Agreement and its terms, and Partner rates.
48. Notwithstanding the foregoing, the following shall not amount to a breach of confidentiality if the receiving Party can prove that the information:
- is the public domain at the time it was disclosed or has entered the public domain through no breach by the receiving Party of this obligation hereunder;
  - is already known to the receiving Party, without restrictions, at the time of disclosure, as evidenced by written records of the receiving Party;
  - is disclosed with the prior written approval of the disclosing Party;
  - is independently developed by the receiving Party without any use of any confidential information;
  - is disclosed generally to third parties by the disclosing Party without restrictions on use of disclosure by the third party whose direct or indirect source is not the disclosing Party; becomes known to the receiving Party, without restrictions, from a source other than the disclosing Party, without breach of this Agreement by the receiving Party and otherwise not in violation of the rights of the disclosing Party; or
  - is disclosed pursuant to the order or requirement of a court, administrative agency, or the governmental body or pursuant to law or regulations of a stock exchange provided however, that the receiving Party shall provide the disclosing Party with prompt written notice of such disclosure requirement to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure; provided that, if only a portion of the confidential information falls within any one of these exemptions, the remainder shall continue to be subject to this Agreement.

## Breach

49. The Tour Operator shall be in breach of its obligations under this Agreement if (i) it fails to pay punctually any amount due and payable to the Hotel; (ii) it commits any other breach of any of the terms of the Agreement and fails to remedy such breach within a period of 5 (five) business days from the date of written notification to that effect from the Hotel, or commits an act of insolvency or becomes insolvent or bankrupt or goes into liquidation or has an administration or administrative receiver appointed over its affairs; or (iii) a final judgment against the Tour Operator remains unsatisfied for thirty (30) days or longer without being discharged, vacated, reserved or stayed. If

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the Tour Operator is a consumer for purposes of the CPA and this Agreement is subject to section 16 (fixed term agreements), the aforementioned 5 (five) business day period shall be extended to 20 (twenty) business days.

50. If the Tour Operator is in default as contemplated above, or should the Hotel be otherwise entitled in law, the Hotel shall, without prejudice to any other rights that it may have at law or in terms of this Agreement be entitled to suspend or terminate any credit facilities or cancel this Agreement on written notice to the Tour Operator or to claim specific performance in terms of this Agreement.
51. If the Hotel cancels or purports to cancel this Agreement then any outstanding amount payable to the Hotel shall immediately be due and payable by the Tour Operator to the Hotel.
52. The Tour Operator shall be liable and hereby agrees to pay to the Hotel or its legal representatives on demand all tracing fees, legal costs on an attorney and own client scale (or such scale as a court or other dispute resolution body or forum may impose) and collection commissions payable by the Hotel in respect of any action or proceedings which may be instituted against the Tour Operator in terms of or arising out of the Agreement.

#### Notices

53. All notices shall be in writing in English and may be delivered personally or by fax, or recognized courier service such as Federal Express or DHL. Notices by fax shall be deemed delivered and received upon transmission provided that the original is delivered as set forth above. Notices by expedited delivery shall be deemed delivered and received on the second day immediately succeeding the date on which the notice was given to the expedited delivery company. Notices shall be delivered to the address set out at the beginning of this Agreement.
54. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the above clause.

#### No Assignment

55. Neither party of this Agreement may assign this Agreement without the prior written agreement of the other party.

#### Invalid Provisions

56. If any term, covenant, condition or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term, covenant, condition and provision shall be valid and be enforced to the fullest extent permitted by law.





#### Amendments to be in writing

57. This agreement may only be changed by an instrument in writing signed by the authorized representatives of both parties.

#### Entire Agreement and Language

58. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or oral, relating to the subject matter hereof.
59. The language of this Agreement shall be English. Any translation into a language other than English shall be for information purposes only.

#### Invalid Provision

60. If any term, covenant, condition or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term, covenant, condition and provision shall be valid and be enforced to the fullest extent permitted by law.

#### No Indulgences

61. No extension of time or other indulgences granted by the Hotel to the Tour Operator in respect of its obligations will constitute a waiver or novation of or otherwise affect any of the Hotel's rights to enforce strict compliance with the terms of this Agreement.

#### Applicable Law

62. This Agreement shall be governed by the laws of South Africa. All disputes arising in connection with this Agreement shall be finally settled by the courts of South Africa.

#### Interpretation Clauses

63. Should the Tour Operator at any stage change its legal status, name, address or ownership, under which the account and credit facilities have been granted, the Tour Operator undertakes to notify the Hotel in writing, by registered post, within 7 (seven) days from the date that the change became effective. The Tour Operator furthermore indemnifies the Hotel against any loss or damage, which may result from such change or from any failure on its part to notify the Hotel of such change.
64. In this Agreement any reference to –  
"**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time; "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law.

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65. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be next succeeding business day.
66. If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
67. The provisions of this Agreement shall override any terms or provisions provided or imposed by the Tour Operator.
68. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

#### Force Majeure

69. Both parties, their owners, and operators shall not be held liable for failure to perform this Agreement by either party upon the occurrence of any circumstance beyond the reasonable control of either party. Such circumstances, including but not limited to disaster, fire, strikes/labor disputes/labor unrest (except those involving Hotel employees, contractors, or agents), governmental regulation, civil disturbance, curtailment of transportation services affecting more than 40% of the attendees (to or from program destination), major civil disorders, war, terrorist acts and/or threats of violence, disease epidemics, public utility failure or World Health Organization of a travel warning restricting travel to the region where the Hotel located, acts of God, hurricanes, earthquakes, extreme weather, or any other comparable condition beyond the reasonable control of either party, their owners, or operators making it illegal or impossible for either parties to perform their obligations hereunder. If either Party becomes aware that any circumstances constituting Force Majeure have arisen or that any circumstances which may constitute Force Majeure may arise, it shall immediately notify the other party by telephone and/or by facsimile. Each Party shall nevertheless use its reasonable endeavours to alleviating the effects of such circumstances constituting Force Majeure, including agreeing upon alternative arrangements.

#### **PLEASE TAKE NOTE OF: PEAK SEASON INFORMATION**

Minimum three (3) night length of stay over the Peak December Period

The **Deposit & Cancellation Policy** in this document will be subject to the following terms and conditions for bookings that fall over the Peak Season dates:

1. All deposits are calculated on the full duration of the stay.
2. All reservations must be guaranteed in writing.
3. Should your reservation fall within our Peak Season, the hotel would require the following deposits to secure the reservation:

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- 3.1. Reservations will be required to be confirmed by latest 1 September by means of a non-refundable 50% deposit
- 3.2. Any reservations without deposits will automatically be released on the 15th September without prior notice.
- 3.3. The remaining 50% is required by no later than 31 October.
4. If full payment is not received by the due date, your reservation will be considered as un-confirmed and the accommodation will automatically be release.

Should the reservation be cancelled after **15 September** but before **15 October**, a cancellation charge of 50% of the initial booking will be charged. Any reservation cancelled after **15 October** will be subject to a 100% cancellation fee for the full duration of the stay. In the event of an in-house guest checking out prior to the guaranteed departure date, the full charge for the original stay will be applicable. All cancellations must be made in writing, without exception, and proof of cancellation must be produced with relevant cancellation number to claim a refund.

**Allocations:** All allocations will be closed out during Peak Periods as well as Mining Indaba and Africa Com.