



Deed of Participation

Deed of agreement to participate in the China
Approved Destination Status (ADS) scheme

Australian Trade Commission (ABN 11 764 698 227) on behalf of the
Commonwealth of Australia ("**Austrade**")

[insert tour guide's name] ("**ADS Tour Guide**")

Deed of Participation

Contents

Details	3
Agreement	5
1. Definitions and Interpretation	5
1.1 Definitions	5
1.2 Rules of interpretation	6
2. Inconsistency	6
2.1 Agreement and the Schedules	6
2.2 Agreement and the Code	6
3. Period	6
4. The Code	7
5. Approval to participate	7
5.1 Principle	7
5.2 Approval	8
5.3 The Register	8
6. Sanctions	8
6.1 Disciplinary action	8
6.2 Fit and proper criteria	9
6.3 Procedural fairness	9
6.4 The points system	10
6.5 Clients	12
7. Investigations	12
8. Internal review	13
9. Confidentiality	13
9.1 Obligation	13
9.2 Exception	14
9.3 Confidentiality of this Agreement	14
10. Privacy	14
11. Termination	15
11.1 Termination for breach	15
11.2 Termination without cause by the ADS Tour Guide	15
11.3 Termination without cause by Austrade	16
12. Liability and Indemnity	16
12.1 Liability	16
12.2 Indemnity	16

12.3	Contribution	17
13.	Dispute Resolution	17
14.	Notices	17
14.1	Requirements	17
14.2	Deemed Receipt	18
15.	Miscellaneous	18
15.1	No agency or partnership	18
15.2	No employment relationship	18
15.3	Assignment by ADS Tour Guide	18
15.4	Costs	18
15.5	No liability for loss	19
15.6	Variation and Waiver	19
15.7	Entire agreement	19
15.8	Further steps	19
15.9	Counterparts	19
15.10	Electronic formation of contract	19
16.	Governing law, jurisdiction and service of process	20
16.1	Governing law	20
16.2	Submission to jurisdiction	20
16.3	Service of notices	20
	Signing page	21
	Schedule 1 – The Register, fit and proper, and integrity issues	22
	Schedule 2 – The points system, and investigations	24
	Schedule 3 – Internal review	27

Deed of Participation

Details

Parties	Austrade and the ADS Tour Guide	
Austrade	Name	AUSTRALIAN TRADE COMMISSION ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA (AUSTRADE)
	ABN	11 764 698 227
	Address	Level 2 Minter Ellison Building, 25 National Circuit, Forrest, in the Australian Capital Territory, Australia
	Telephone	1800 048 155
	Fax	02 6272 6960
	Email	ads@austrade.gov.au
	Attention	ADS Unit
ADS Tour Guide	Name	[insert ADS Tour Guide's name]
	ABN	[insert], applicable]
	Address	[insert]
	Telephone	[insert]
	Fax	[insert]
	Email	[insert]
Background	A	The Approved Destination Status (ADS) scheme was established in 1999 by an agreement between the Chinese and Australian governments to encourage and facilitate the travel of organised groups from the People's Republic of China (PRC) to Australia.
	B	The Australian Trade Commission was established by the <i>Australian Trade Commission Act 1985</i> .
	C	Austrade is a listed entity for the purposes of the <i>Public Governance, Performance and Accountability Act 2013 (PGPA Act)</i> .

- D Austrade is entering into this deed on behalf of the Commonwealth of Australia in accordance with section 23 of the PGPA Act.
- E Austrade is responsible for administering the ADS scheme except for immigration aspects of the scheme.
- F The Department of Immigration and Border Protection (**DIBP**) is responsible for administering immigration aspects of the ADS scheme.
- G ADS outbound tour operators (**OTOs**) are administered by DIBP and are specified in an Instrument for the purposes of paragraph 1236(6) of Schedule 1 to the *Migration Regulations 1994*.
- H ADS OTOs sell “ADS Tour Packages” within the meaning of the ADS Code of Business Standards and Ethics (**Code**).
- I ADS approved inbound tour operators (**ADS ITOs**) provide tour services in Australia for the purpose of delivering ADS Tour Packages.
- J ADS ITOs are approved by Austrade in accordance with a deed of participation between Austrade and an inbound tour operator. An approved ADS ITO must comply with the Code.
- K ADS tour guides assist and supervise tour groups who undertake ADS Tour Packages in Australia.
- L The ADS Tour Guide has been approved by Austrade to participate in the ADS scheme as an ADS tour guide.
- M The ADS Tour Guide will participate in the ADS Scheme, on the terms and conditions in this Deed.

Commencement Date	The date of this Agreement OR [insert date]
Period	In accordance with clause 3 of this Agreement.
Clauses of this Agreement that are confidential	[insert (for example): None]
Governing law	Australian Capital Territory
Date of Agreement	See Signing page

Agreement

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

ADS scheme means the China Approved Destination Status scheme as agreed between the Governments of Australia and the PRC by an exchange of letters on 22 April 1999.

Agreement means this deed of participation and its schedules.

Approval (and variants including **Approved**) means, unless the context dictates otherwise, the ADS Tour Guide's approval to participate in the ADS scheme under clause 5.

Associate means an individual related by employment to the ADS Tour Guide.

Code means the ADS Code of Business Standards and Ethics current at the date of this Agreement, or as updated, amended or replaced by a substantially similar regime from time to time and administered by Austrade.

Commencement Date has the meaning given in the Details.

ITO means an Australian ADS scheme inbound tour operator that has been approved by Austrade for the purposes of the ADS scheme.

OTO means an ADS scheme Chinese outbound tour operator who is approved by the Minister for Immigration and Border Protection by way of an instrument in writing for the purposes of paragraph 1218(1)(b)(iii) of Schedule 1 to the *Migration Regulations 1994*.

Period has the meaning given in the Details.

points system means the ADS points system set out in the Code and as elaborated upon in this Agreement.

Register means the register of approved ITOs and tour guides kept by Austrade in accordance with the Code.

Schedule means a schedule to this Agreement.

Show cause letter has the same meaning as "show cause letter" defined in the Code.

Show cause response has the same meaning as "show cause response" defined in the Code.

1.2 Rules of interpretation

- (a) In this Agreement unless the contrary intention appears:
 - (i) a reference to this Agreement or another instrument includes any variation or replacement of any of them;
 - (ii) a reference to a clause is a reference to a clause of this Agreement;
 - (iii) a reference to a clause number is a reference to the clause including its subclauses;
 - (iv) a reference to a Schedule includes a reference to any part of that Schedule which is incorporated by reference;
 - (v) the recitals to this Agreement do not form part of this Agreement;
 - (vi) words in the singular include the plural and vice versa;
 - (vii) words importing a gender include any other gender;
- (b) Headings are inserted for convenience and do not affect the interpretation of this Agreement.
- (c) This Agreement will be interpreted in accordance with the principle in section 15AA of the *Acts Interpretation Act 1901*:

In interpreting a provision of [this Agreement], the interpretation that would best achieve the purpose or object of the [Agreement] (whether or not that purpose or object is expressly stated in the Agreement) is to be preferred to each other interpretation.

2. Inconsistency

2.1 Agreement and the Schedules

If there is any inconsistency between the body of this Agreement and a Schedule, the body of this Agreement prevails to the extent of the inconsistency.

2.2 Agreement and the Code

If there is any inconsistency between this Agreement and the Code, this Agreement will prevail to the extent of the inconsistency.

3. Period

- (a) This Deed will take effect on the Commencement Date and will endure while the ADS Tour Guide is Approved to participate in the ADS scheme, or until terminated in accordance with clause 11.
- (b) In the event the ADS Tour Guide's Approval is terminated for any reason (for example, because the ADS Tour Guide has withdrawn

from the scheme or as a result of disciplinary action under the Code), this Deed will automatically be terminated.

4. The Code

- (a) The ADS Tour Guide must comply with the Code insofar as the Code applies to ADS tour guides.
- (b) Austrade may amend the Code from time to time in accordance with its absolute discretion, which includes replacing the Code with a new edition. Any amendments to or replacement of the Code will take effect 28 days after Austrade providing notification in writing to the ADS Tour Guide of any such changes to the Code.
- (c) Austrade will put the Code, as amended or replaced from time to time, on Austrade's website. Putting the current version of the Code on Austrade's website will be notification for the purposes of this clause, although Austrade may choose to notify individual registered ADS Tour Guides of the current version of the Code.
- (d) The ADS Tour Guide must ensure, so far as is reasonably practicable, that it assists Austrade with compliance activities that Austrade undertakes in accordance with the Code.
- (e) For the avoidance of doubt, the procedures in the Schedule are contractual rights and obligations under this Agreement, and in the event of an inconsistency between the procedures in the Schedule and the Code, the procedures in the Schedule will prevail to the extent of the inconsistency.

5. Approval to participate

5.1 Principle

The parties acknowledge that:

- (a) a person is not entitled to participate in the ADS scheme as an ADS tour guide (including, but not limited to receiving any fee or reward as an ADS tour guide or holding themselves out as such) unless the person is approved and registered in the Register; and
- (b) an ADS tour guide must be an individual (unlike and ITO, who may be an individual or a corporation) who may be:
 - (i) an independent contractor (that is, an individual carrying on business in his or her own right) to an ITO; or
 - (ii) an employee of an ITO or of another employer.¹

¹ The other employer might be a duty free store, coach company or other organisation in the China tourism submarket in Australia.

5.2 Approval

- (a) The ADS Tour Guide is Approved by Austrade to participate in the ADS scheme by entering into this Agreement.
- (b) Austrade is not to be taken to have acknowledged that the ADS Tour Guide is a fit and proper person to participate in the ADS scheme by approving and registering the ADS Tour Guide.

5.3 The Register

- (a) Austrade will enter the ADS Tour Guide's name and particulars on the Register.
- (b) The name and particulars to be entered and maintained on the Register are set out in Part 1 of **Schedule 1** to this Agreement.
- (c) The ADS Tour Guide consents to its name and the particulars being listed on the Register maintained on Austrade's 24/7 publicly-accessible website for the period of his or her Approval.
- (d) Austrade may keep the ADS Tour Guide's details set out in Part 2 of **Schedule 1** to this Agreement on an Austrade database, but will not put those details on the Register.

6. Sanctions

6.1 Disciplinary action

- (a) Austrade may:
 - (i) revoke the ADS Tour Guide's Approval by removing their name and particulars from the Register; or
 - (ii) suspend the ADS Tour Guide's Approval by removing their name and particulars from the Register for the period of the suspension; or
 - (iii) caution the ADS Tour Guide;if Austrade becomes satisfied that:
 - (iv) the ADS Tour Guide has not complied with the Code; or
 - (v) the ADS Tour Guide's application for Approval was known by the ADS Tour Guide to be false or misleading in a material particular; or
 - (vi) the ADS Tour Guide is not a fit and proper person to participate in the ADS scheme as a tour guide (see clause 6.2); or
 - (vii) an Associate of the ADS Tour Guide is not a person of integrity (see clause 6.2); or

- (viii) the ADS Tour Guide has not complied with, or in breach of, a material provision of this Agreement.
- (b) For the avoidance of doubt, clause 4(a) (compliance with the Code) and clause 7 (Investigations) are material provisions of this Agreement, provided that material provisions are not limited to those two clauses.
- (c) Austrade may also revoke the ADS Tour Guide's Approval or suspend the ADS Tour Guide's Approval in accordance with the points system.
- (d) If Austrade suspends the registration of the ADS Tour Guide under this clause, Austrade may:
 - (i) set a period of suspension of up to but not more than 3 months; or
 - (ii) set a condition or conditions for the lifting of the suspension.
- (e) If 2 or more conditions are set under the preceding paragraph, one of them may be that at least a set period of suspension has ended.
- (f) Austrade may set one or more conditions for the lifting of a caution it gives to the ADS Tour Guide.
- (g) Austrade may, in its discretion, elect to take disciplinary action under clause 6, or to terminate this Agreement under clause 11, or both, for the ADS Tour Guide's impugned conduct.

6.2 Fit and proper criteria

- (a) In considering whether it is satisfied that the ADS Tour Guide is not a fit and proper person to participate in the ADS scheme as a tour guide, Austrade must take into account the matters specified in Part 3 of **Schedule 1** to this Agreement.
- (b) In considering whether it is satisfied that an Associate of the ADS Tour Guide is not a person of integrity, Austrade must take into account the matters specified in Part 3 of **Schedule 1** to this Agreement.

6.3 Procedural fairness

- (a) If Austrade is considering making a decision under this clause or the Code to revoke or suspend the ADS Tour Guide's Approval, or to caution the ADS Tour Guide, Austrade must, by way of a Show cause letter or otherwise:
 - (i) inform the ADS Tour Guide of that fact and the reasons for it;
 - (ii) provide the ADS Tour Guide with any relevant evidence that Austrade is likely to take into account when making its decision; and

- (iii) invite the ADS Tour Guide to make a submission on the matter.
- (b) In this clause “*submission*” means:
 - (i) a statutory declaration;
 - (ii) a written argument; or
 - (iii) a Show cause response.
- (c) If Austrade does not receive a submission as invited, Austrade may decide the matter on the information before it.
- (d) If Austrade receives a submission, it may:
 - (i) decide the matter; or
 - (ii) give the person who made the submission the opportunity to appear before it and then decide the matter.
- (e) Austrade must not decide the matter adversely to the ADS Tour Guide on the basis of any relevant evidence that was not included in the invitation notice under subclause (a).
- (f) If Austrade makes a decision that is adverse to the ADS Tour Guide, Austrade will, upon request of the ADS Tour Guide, provide him or her with a statement of reasons that complies with section 25D of the *Acts Interpretation Act 1901*.²
- (g) Austrade may, of its own volition, provide the ADS Tour Guide with a statement of reasons that complies with section 25D of the *Acts Interpretation Act 1901* in the absence of a request from the ADS Tour Guide.

6.4 The points system

- (a) The points system in the Code is outlined in Part 1 of **Schedule 2** to this Agreement.
- (b) Austrade may elect, in its discretion, to dock points from the ADS Tour Guide’s points balance without sending a Show cause letter in circumstances where docking the points will not result in a caution, suspension or revocation of Approval.
- (c) The ADS Tour Guide acknowledges that simply docking points without imposing a caution, suspension or revocation:
 - (i) is not a sanction, and will not be adverse to the ADS Tour Guide’s legitimate interests; and

² Namely, the reasons will set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

- (ii) will not require Austrade to serve a Show cause letter or other notice under clause 6.3 in order to provide procedural fairness to the ADS Tour Guide.
- (d) Austrade may elect, in its discretion, to revoke, suspend or caution under clause 6.1 of this Agreement in the circumstances described in clause 6.1 without using the points system (that is, without docking any points).
- (e) If Austrade decides to use the points system:³
 - (i) Austrade will only dock the number of points specified in the Code for Category 1 breaches;
 - (ii) Austrade may dock between 1 and 10 points for a Category 2 breach depending on the seriousness of the breach, in Austrade's discretion;
 - (iii) in the event 10 points are docked for a single Category 2 breach (so that the ADS Tour Guide is left with zero points), the ADS Tour Guide's Approval will be suspended for 3 months;
 - (iv) in the event 10 points are docked cumulatively for two or more breaches (so that the ADS Tour Guide is left with zero points),⁴ the ADS Tour Guide's Approval will be suspended for 3 months.
 - (v) Austrade may notify the ADS Tour Guide whenever points are docked, of the number of points docked, provided that Austrade is not required to give the notice;
 - (vi) Austrade may caution the ADS Tour Guide under clause 6 when giving notice that points have been docked, provided that Austrade will first comply with the procedural fairness provisions of clause 6;
 - (vii) in the event that Austrade is considering a caution, suspension or revocation of Approval because the ADS Tour Guide is left with zero points, the Show cause letter will set out the facts and other relevant information of each breach for which the ADS Tour Guide was docked points, and invite the ADS Tour Guide to respond accordingly in a Show cause response; and
 - (viii) any Show cause letter served in accordance with the Code will be served after Austrade has investigated a suspected

³ See Part 1 of Schedule 2 for the definitions of "Category 1" and "Category 2" breaches.

⁴ Regardless of them being Category 1 or Category 2 breaches.

breach, and must include all relevant information that the decision-maker will take into account.⁵

- (f) If Austrade decides to revoke the ADS Tour Guide's Approval under this clause 6, or under the points system or the Code generally:
 - (i) the period of revocation will be 12 months; and
 - (ii) the ADS Tour Guide will be at liberty to apply for Approval to join the ADS scheme again, but Austrade may take into account the ADS Tour Guide's conduct that resulted in the revocation when considering the application, and may refuse the application:
 - (A) for a fixed period of months or years before the ADS Tour Guide may re-apply to join the ADS scheme again; or
 - (B) indefinitely, so that the ADS Tour Guide is forever banned from being an approved ADS Tour Guide.
- (g) In the event that:
 - (i) the ADS Tour Guide's Approval has been revoked for 12 months;
 - (ii) the ADS Tour Guide applies for Approval to join the ADS scheme again; and
 - (iii) Austrade is considering a decision to refuse the application for a fixed period or indefinitely,

Austrade will comply with the procedural fairness provisions in clause 6.3.

6.5 Clients

If Austrade makes a decision under this clause in relation to disciplinary action against the ADS Tour Guide, Austrade may inform one or more of the clients of the ADS Tour Guide about any one or more of the following:

- (a) the making of the decision;
- (b) whether or not the agent has applied for review of the decision; and
- (c) the status of any such review.

7. Investigations

- (a) The parties will comply with the investigations regime in **Schedule 2** to this Agreement.

⁵ That is, a Show cause letter will not be served before or during an investigation, and the decision-maker will not take into account any relevant information unless that information was included in the Show cause letter, or in a fresh Show cause letter.

- (b) If the ADS Tour Guide fails to comply with an obligation in Schedule 2 to this Agreement:
 - (i) the non-compliance will be a material breach of this Agreement for the purposes of the disciplinary regime in clause 6, whereupon Austrade may take disciplinary steps under clause 6; and
 - (ii) Austrade may issue a notice under clause 11.1 at the same time as taking the disciplinary steps, or without taking the disciplinary steps.

8. Internal review

- (a) If Austrade makes a decision under clause 6 to revoke the ADS Tour Guide's Approval, the ADS Tour Guide or an interested party may request an internal review.
- (b) The request must be made by written notice received by Austrade:
 - (i) within the period of 10 days after the day on which the person first receives notice of the decision; or
 - (ii) within such further period as Austrade allows.
- (c) The notice must set out the reasons for making the request.
- (d) Austrade may, within 21 days of receipt of the request, in its discretion, elect to undertake an internal review.
- (e) If Austrade elects to undertake an internal review, the parties will comply with the procedure in **Schedule 3** to this Agreement.
- (f) If the ADS Tour Guide is entitled to request an internal review under the Code, the parties will comply with the procedure in **Schedule 3** to this Agreement.

9. Confidentiality

9.1 Obligation

- (a) Neither party may disclose the confidential information of the other (or confidential information disclosed by or on behalf of the other), or use that information for any purpose, except:
 - (i) Austrade may disclose confidential information to Austrade's officers, employees, agents, advisers or approved service provider contractors requiring the information for the purposes of this Agreement or the Code;
 - (ii) A party may disclose confidential information with the consent of the other party;

- (iii) A party may disclose confidential information if required to do so by any law; or
 - (iv) A party may disclose confidential information to the extent necessary in connection with legal proceedings relating to this Agreement or the Code.
- (b) When disclosing information under the preceding subclause, a party must use all reasonable endeavours to ensure that persons receiving the confidential information do not disclose the information except in the circumstances permitted in this clause.
 - (c) Where a party is required to disclose the confidential information of the other party under this clause, the disclosing party must give to the other party reasonable notice of the required disclosure.
 - (d) In this clause 9, “confidential information” means information that a party has notified that other party is confidential to the notifying party, or is information that a party ought reasonably to know is confidential to the other party.

9.2 Exception

Notwithstanding the preceding clause, Austrade may disclose confidential information of the ADS Tour Guide if required or requested to do so by any judicial, parliamentary or governmental committee, member, house, body, agency or Authority. If appropriate, Austrade must give reasonable notice to the ADS Tour Guide of the relevant disclosure.

9.3 Confidentiality of this Agreement

The terms of this Agreement, and information on the Register, are not confidential information of the ADS Tour Guide, except for any information listed as confidential in the Details.

10. Privacy

If the ADS Tour Guide is:

- (a) an independent contractor (not an employee); or
- (b) an employee of an employer who is not an ITO,

the ADS Tour Guide agrees, in respect of personal information held in connection with this Agreement:

- (c) subject to subclause (d), to comply with the Australian Privacy Principles (**APPs**) in Schedule 1 to the *Privacy Act 1988* applicable to this Agreement:
 - (i) as an “APP entity” as defined in the *Privacy Act 1988*; or

- (ii) if the ADS Tour Guide is not an “APP entity” as defined in the *Privacy Act 1988*, as if the ADS Tour Guide were such an “APP entity”.
- (d) if the ADS Tour Guide is not an “APP entity” as defined in the *Privacy Act 1988*, the ADS Tour Guide is not required to have an APP privacy policy in accordance with APP 1 unless Austrade has served notice on the ADS Tour Guide to have an APP privacy policy in accordance with APP 1;
- (e) to use personal information only for the purposes of fulfilling its obligations under this Agreement;
- (f) not to disclose the information without the written authority of Austrade except for the purposes of fulfilling its obligations under this Agreement;
- (g) immediately to notify Austrade where it becomes aware that a disclosure of personal information may be required by law;
- (h) not to transfer the personal information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of Austrade;
- (i) to include equivalent provisions in any subcontract entered into by the ADS Tour Guide, including this subparagraph (i); and
- (j) to notify Austrade immediately if the ADS Tour Guide becomes aware of a breach of this clause 10 by itself or by any subcontractor to the ADS Tour Guide.

11. Termination

11.1 Termination for breach

Austrade may terminate this Agreement by notice to the ADS Tour Guide if the ADS Tour Guide:

- (a) commits a breach of the Code; or
- (b) commits a breach of this Agreement where the breach can be remedied, and the ADS Tour Guide fails to remedy it within 10 business days of receipt of a notice from Austrade specifying the breach and requiring it to be remedied.

11.2 Termination without cause by the ADS Tour Guide

- (a) The ADS Tour Guide may terminate this Agreement by notice to Austrade of not less than 30 days, without providing any reason.
- (b) Austrade will, upon receiving such notice, remove the ADS Tour Guide’s name and particulars from the Register.

11.3 Termination without cause by Austrade

- (a) Austrade may at any time, by notice to the ADS Tour Guide, terminate this Agreement in whole or in part, without providing any reason.
- (b) Austrade is not entitled to terminate this Agreement under the preceding subclause capriciously, but may do so on the basis of a relevant change in Australian Government policy, or on other valid legal grounds.
- (c) For the avoidance of doubt, Austrade has an unfettered discretion to terminate this Agreement in accordance with this “termination without cause” provision, provided the termination is lawful.

12. Liability and Indemnity

12.1 Liability

If the ADS Tour Guide is:

- (a) an independent contractor (not an employee); or
- (b) an employee of an employer who is not an ITO,⁶

the ADS Tour Guide is liable for and indemnifies Austrade against any liability, damage, loss, claim or expense in respect of:

- (c) any injury, loss or damage whatsoever to any property, real or personal; and
- (d) any personal injury to, or death of, any person,

arising out of, or in any way connected with, the ADS Tour Guide’s Approval.

12.2 Indemnity

If the ADS Tour Guide is:

- (a) an independent contractor (not an employee); or
- (b) an employee of an employer who is not an ITO,⁷

the ADS Tour Guide is liable for and indemnifies Austrade against any liability, damage, loss, claim or expense arising from, or incurred in connection with:

- (c) a breach of this Agreement or the Code by the ADS Tour Guide or any of its officers, employees, agents or subcontractors;

⁶ Austrade will not enter into a separate contract of indemnity with the employer.

⁷ Austrade will not enter into a separate contract of indemnity with the employer.

- (d) the negligence or default of the ADS Tour Guide or any its officers, employees, agents or subcontractors; or
- (e) Austrade doing anything which the ADS Tour Guide must do under this Agreement but it has not done or which Austrade considers the ADS Tour Guide has not done properly.

12.3 Contribution

Any liability a party has to the other for breach of this Agreement is reduced to the extent the other party caused or contributed to the breach.

13. Dispute Resolution

- (a) Either party may give the other a notice of dispute under this Agreement, except for or in connection with:
 - (i) the ADS Tour Guide's obligation in clause 4 to comply with the Code;
 - (ii) the disciplinary regime in clause 6;
 - (iii) the investigation regime in clause 7;
 - (iv) the internal review procedure in clause 8.
- (b) The parties will use all reasonable endeavours to resolve any dispute notified under this clause promptly, including by escalation where appropriate, in accordance with alternative dispute resolution procedures, before commencing litigation.

14. Notices

14.1 Requirements

- (a) A notice, approval, consent, instruction or other communication in connection with this Agreement:
 - (i) must be in writing;
 - (ii) must be marked for the attention of the person set out below; and
 - (iii) must be:
 - (A) left at the business (street) address of the addressee;
 - (B) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the business (street) address or the postal of the addressee; or
 - (C) sent by fax to the fax number of the addressee or by e-mail to the e-mail address of the addressee,

- (b) The business (street) addresses, postal addresses, email addresses, and fax numbers of the parties for the purpose of this clause are set out in the Parties section of this Agreement, subject to a party notifying the other party of a change in those particulars.
- (c) A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

14.2 Deemed Receipt

A communication is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
- (b) in the case of fax, on creation of an entry in a transmission log kept by the machine from which the fax was sent which indicates that the fax was sent in its entirety to a fax number of the addressee; and
- (c) in the case of e-mail, when it is delivered to a system from which the addressee can retrieve it.

15. Miscellaneous

15.1 No agency or partnership

- (a) Nothing in this Agreement constitutes either party as the agent, partner or joint venturer of the other.
- (b) The ADS Tour Guide acknowledges that it has no authority to bind Austrade without Austrade's specific consent.

15.2 No employment relationship

- (a) This Agreement does not constitute a relationship of employer and employee between Austrade and the ADS Tour Guide.
- (b) The ADS Tour Guide must not, and must ensure that its personnel do not, represent itself or themselves as being Austrade's employees, partners or agents.

15.3 Assignment by ADS Tour Guide

- (a) The ADS Tour Guide may not assign any of its rights or obligations under this Agreement without the prior consent of Austrade, which Austrade may refuse in its absolute discretion.
- (b) Austrade will not provide consent under the preceding clause except in extraordinary circumstances.

15.4 Costs

The ADS Tour Guide and Austrade each agree to bear their own legal and other costs of and incidental to the preparation, execution and performance of this Agreement and the Code.

15.5 No liability for loss

Austrade is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement or the Code.

15.6 Variation and Waiver

- (a) The provisions of this Agreement may not be varied either in law or in equity except in writing signed by both Austrade and the ADS Tour Guide.
- (b) A waiver by either party in respect of a breach of a provision of this Agreement by the other party does not operate as a waiver in respect of any other breach, and the failure of either party to enforce at any time a provision of this Agreement is not to be interpreted as a waiver of the provision.

15.7 Entire agreement

This Agreement constitutes the entire agreement between the parties about its subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

15.8 Further steps

Each party will promptly do and perform all further acts and executions and deliver all further documents (in form and content reasonably satisfactory to that party) required by law, or reasonably requested by the other party to give effect to this Agreement.

15.9 Counterparts

Subject to clause 15.10, this Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, all of which together constitute one agreement.

15.10 Electronic formation of contract

- (a) The parties acknowledge that there is no need for a hard copy (paper) form of this Agreement to have been executed by one or both of the parties in order for the Agreement to be binding, provided:
 - (i) the ADS Tour Guide sent an email to Austrade offering to enter into the template form of this Agreement posted on Austrade's website;⁸ and
 - (ii) Austrade responded to the email, by email or by other means permitted in clause 14, unconditionally accepting the ADS Tour Guide's offer.⁹

⁸ The email must have been an unequivocal offer to enter into the template form of this Agreement.

- (b) For the avoidance of doubt, there is no need for a party to have signed a hard copy form of this Agreement for the Agreement to be binding, or for a party to have submitted an electronic signature to the other party for the Agreement to be binding, provided:¹⁰
- (i) the ADS Tour Guide made the email offer in accordance with the preceding subclause; and
 - (ii) Austrade accepted the offer in accordance with the preceding subclause.

16. Governing law, jurisdiction and service of process

16.1 Governing law

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in the Australian Capital Territory.

16.2 Submission to jurisdiction

Each party submits to the exclusive jurisdiction of the courts of the Australian Capital Territory, and courts of appeal from them, for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement. Each party waives any right it has to object to an action being brought in those courts, including claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

16.3 Service of notices

Without preventing any other method of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 14.

⁹ Austrade's acceptance will only have been sent after Austrade conducted its due diligence checks on the ADS Tour Guide, and Austrade was satisfied that the ADS Tour Guide had supplied sufficient information for the offer to be accepted.

¹⁰ The *Electronic Transactions Act 1999* (Cth) apply to this Agreement insofar as its provisions have not been displaced by this Agreement.

Deed of Participation

Signing page

EXECUTED as a deed

DATED: _____

SIGNED by:)

.....)

as Authorised Representative for the)

Australian Trade Commission on)

behalf of the **Commonwealth of**)

Australia in the presence of:)

)

)

)

.....)

Signature of witness)

)

.....)

Name of witness (block letters)

SIGNED by:)

)

.....)

ADS Tour Guide [*block letters*])

)

)

.....)

Signature of witness)

)

)

)

.....)

Name of witness (block letters)

Deed of Participation

Schedule 1 – The Register, fit and proper, and integrity issues

Part 1 *[clause 5.3(b) – name and particulars for the register]*

1. The ADS Tour Guide's full name;
 2. Any business names of the ADS Tour Guide if the ADS Tour Guide is an independent contractor; and
 3. The State or Territory in Australia where the ADS Tour Guide has his or her principal place of business (if the ADS Tour Guide is an independent contractor) or is employed (if the ADS Tour Guide is an employee).
-

Part 2 *[clause 5.3(d) – details not for the register]*

1. The ADS Tour Guide's Australian Business Number (**ABN**) if the ADS Tour Guide is an independent contractor;
 2. A telephone number and email address for contacting the ADS Tour Guide;
 3. The date on which the ADS Tour Guide was registered most recently;
 4. Particulars of any suspension of the ADS Tour Guide's registration; and
 5. Particulars of any caution given to the ADS Tour Guide.
-

Part 3 *[clause 6.2 – fit and proper and integrity issues]*

For an ADS Tour Guide, Austrade will take into account the following matters when considering whether the person is a fit and proper person to participate in the ADS scheme as a tour guide:

1. the criteria for being a person of good standing in Attachment B to the Code; and
2. any conviction of the ADS Tour Guide of a criminal offence (except a conviction that is spent under Part VIIC of the *Crimes Act 1914*) that is relevant to the question whether the ADS Tour Guide is a fit and proper person to participate in the ADS scheme as tour guide; and
3. any criminal proceedings that the ADS Tour Guide is the subject of that are relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and

4. any inquiry or investigation that the ADS Tour Guide is or has been the subject of that is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
5. any disciplinary action that is being taken, or has been taken, against the ADS Tour Guide that is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
6. the ADS Tour Guide is (or has become) bankrupt; and
7. the ADS Tour Guide has ever been bankrupt, provided the ADS Tour Guide's past bankruptcy is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
8. any other matter relevant to the ADS Tour Guide's fitness to participate in the ADS scheme as a tour guide.

For an Associate of the ADS Tour Guide, Austrade will take into account the following matters when considering whether the Associate is a person of integrity:

9. any conviction of the Associate of a criminal offence (except a conviction that is spent under Part VIIC of the *Crimes Act 1914*) that is relevant to the question whether the ADS Tour Guide is a fit and proper person to participate in the ADS scheme as a tour guide; and
10. any criminal proceedings that the Associate is the subject of that are relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
11. any inquiry or investigation that the Associate is or has been the subject of that is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
12. any disciplinary action that is being taken, or has been taken, against the Associate that is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
13. in the event the Associate is an individual, the Associate is (or has become) bankrupt and the Associate's bankruptcy is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
14. in the event the Associate is an individual, the Associate has ever been bankrupt, provided the Associate's past bankruptcy is relevant to the ADS Tour Guide being a fit and proper person to participate in the ADS scheme as a tour guide; and
15. in the event the Associate is a corporation, the Associate enters into a scheme of arrangement or is placed into liquidation.

Deed of Participation

Schedule 2 – The points system, and investigations

Part 1 [clause 6.4 – the points system]

1. The points system is for the purpose of the administrative sanctions system.
2. The ADS Tour Guide is allocated 10 points upon Approval.¹¹
3. If it appears to Austrade that the ADS Tour Guide has committed a breach of the Code, Austrade may:¹²
 - (a) revoke the ADS Tour Guide’s Approval for a “Category 2” breach (see below), depending on the seriousness of the breach;
 - (b) suspend the ADS Tour Guide’s Approval for a Category 2 breach for a period to be determined by Austrade; or
 - (c) “dock” a number of points.
4. The number of points to be docked depends on the type of the breach:¹³
 - (a) **Category 1** - breaches of the Code in this category attract a specified number of points that will be lost; or
 - (b) **Category 2** - breaches of the Code in this category do not attract a specified number of points to be lost, but the number of points to be lost will be between 1 and 10 depending on the seriousness of the breach, in Austrade’s discretion.
5. For example:
 - (a) the Code requires the ADS Tour Guide to attend training or workshops for ADS scheme tour guides as directed by Austrade;
 - (b) this is a Category 1 requirement - if the ADS Tour Guide is in breach by not attending training or workshops for ADS scheme tour guides as directed by Austrade, the Code specifies the loss of 2 points;
 - (c) the ADS Tour Guide will be docked 2 points if Austrade is satisfied that this particular Category 1 breach has occurred;
 - (d) the Code also requires the ADS Tour Guide to comply with relevant laws of Australian jurisdictions in which he or she operates;

¹¹ The points are topped up to 10 on 1 January each year provided the ITO is not operating in a 12 month probationary period.

¹² References in this Schedule to “Austrade” are references to the “ADSEO” in the Code.

¹³ The Code does not identify breaches as “Category 1” breaches or “Category 2” breaches. The “Category 1 / “Category 2” terminology is only used in this Agreement.

- (e) this is a Category 2 requirement - if the ADS Tour Guide is in breach by not complying with a relevant law, Austrade will dock the ADS Tour Guide points depending on the seriousness of the breach, in Austrade's discretion,
 - (f) the ADS Tour Guide will be docked between 1 and 10 points if Austrade is satisfied that this particular Category 2 breach has occurred.
- 6. For the avoidance of doubt, in the event of a Category 2 breach, Austrade can elect:
 - (a) to revoke the ATO's Approval straight away after serving a Show cause letter,
 - (b) to suspend the ATO's Approval straight away after serving a Show cause letter; or
 - (c) to dock points.
- 7. If the ADS Tour Guide loses 10 points (so that the ADS Tour Guide is left with zero points), either for a single breach or cumulatively for two or more breaches, the ADS Tour Guide's Approval will be suspended for 3 months.¹⁴
- 8. At the end of the 3 months suspension period, the suspension will be automatically lifted. The ADS Tour Guide:
 - (a) will be permitted (if they are willing) to recommence operating as an Approved tour guide for a probationary period of 12 months; and
 - (b) will be allocated 5 points to carry on with during the probationary period.
- 9. If the ADS Tour Guide commits a further breach or breaches in the probationary period and loses the 5 points (so that the ADS Tour Guide is left with zero points), the ADS Tour Guide's Approval will be revoked.¹⁵
- 10. If an ADS Tour Guide's Approval is revoked for Category 1 or Category 2 breaches, the period of revocation will be 12 months. The ADS Tour Guide will be at liberty to apply for approval to join the ADS scheme again.

Part 2 [*clause 7(a)- the investigations regime*]

- 1. Austrade may require the ADS Tour Guide:
 - (a) to make a statutory declaration in answer to questions in writing by Austrade; or
 - (b) to appear before an individual or individuals specified by Austrade and to answer questions; or

¹⁴ After a Show cause letter is served.

¹⁵ After a Show cause letter is served.

- (c) to provide Austrade with specified documents or records relevant to the ADS Tour Guide's continued registration under this Agreement.
- 2. The in an individual (or individuals) mentioned in sub-clause (1) may be an officer of Austrade or a service provider contracted to Austrade.
- 3. If the ADS Tour Guide appears before one individual to answer questions, that individual must record the questions and answers and give the record to Austrade.
- 4. If the ADS Tour Guide appears before 2 or more individuals to answer questions, one of them must record the questions and answers and give the record to Austrade.
- 5. The ADS Tour Guide is not excused from giving information or providing a document on the ground that the information or provision of the document may tend to incriminate the person.
- 6. However:
 - (a) any information or document provided in response to a requirement under subclause (1); and
 - (b) any information or thing (including any document) obtained as a direct or indirect result of information or a document provided in response to a requirement under subclause (1);

is not admissible in evidence against the registered migration agent in any criminal proceedings except as ordered by the court concerned.

Deed of Participation

Schedule 3 – Internal review

[clause 8(b) – the internal review procedure]

Who may apply for an internal review

1. If Austrade makes a decision under clause 6 to revoke the ADS Tour Guide' Approval, the ADS Tour Guide or an interested party may request an internal review
2. Austrade will decide, in its discretion, whether an interested party has standing under paragraph 1

Requirements for an application

3. An application for an internal review is:
 - (a) to be in writing, and
 - (b) to be addressed to Austrade, and
 - (c) to specify an address in Australia to which a notice under subsection (6) may be sent, and
 - (d) to be lodged with Austrade within 10 days (or such later date as Austrade may allow) after the person:
 - (i) if the person has requested reasons under clause 6 — was provided with a statement of reasons, or notified of a refusal to provide reasons, or
 - (ii) if the person has not requested reasons under clause 6 — was notified of the making of the adverse decision.

Who is to deal with an application?

4. An application for an internal review of a decision is to be dealt with by an individual who is directed to do so by Austrade (the *internal reviewer*). The internal reviewer directed to deal with an application must be, as far as is practicable, an individual:
 - (a) who was not substantially involved in the process of making the decision under review, and
 - (b) who is an officer of Austrade, a service provider contracted to Austrade or an employee of the administrator or is an employee of a service provider contracted to Austrade, and
 - (c) who is otherwise suitably qualified to deal with the issues raised by the application.

Material to be considered

5. In reviewing a decision, the internal reviewer is to consider all relevant information regarding the decision including any relevant material submitted by the ADS Tour Guide applicant.

Review of the application

6. Following the internal review of the decision, the internal reviewer may:

- (a) affirm the decision, or
- (b) vary the decision, or
- (c) set aside the decision and make a decision in substitution for the decision that is set aside.

Reviewer has functions of Austrade

7. In exercising a function under paragraph 6, the internal reviewer is taken for all purposes to have the right to exercise the same functions under this Agreement or any relevant legislation or other law that Austrade had in making the decision being reviewed.

Reviewer to notify Austrade of decision

8. The internal reviewer must notify Austrade of the result of his or her decision under paragraph 6 as soon as is practicable after making the decision.

Notice of result of review and appeal rights

9. Within 10 days of the internal reviewer notifying Austrade of his or her decision, Austrade must notify the applicant ADS Tour Guide in writing of the outcome of the internal review,

Statement of reasons

10. When the applicant ADS Tour Guide is notified of the reasons for a decision, Austrade may, upon request by the applicant, or on Austrade's own volition, provide a statement of reasons to the applicant setting out the following:
- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
 - (b) the understanding of the internal reviewer of the applicable law,
 - (c) the reasoning processes that led the internal reviewer to the conclusions the reviewer made.

Status of decisions made on internal review

11. For the purposes of this Agreement and the Code, an impugned decision that is affirmed, varied or set aside and substituted under paragraph 6 is:
- (a) taken to have been made by Austrade (as affirmed, varied or substituted by the internal reviewer), and
 - (b) taken to have been made on the date on which the applicant ADS Tour Guide is given a notice under paragraph 8.

When an internal review is finalised

12. An internal review is taken to be finalised if:
- (a) the applicant is notified of the outcome of the review under paragraph 8, or
 - (b) if reasons are provided under paragraph 10, the date when the reasons are provided,
- whichever is the latest.

No internal reviews of decisions previously reviewed under this section

13. A person is not entitled to an internal review of any decision previously reviewed under clause 8 and this Schedule 3.