



& BEYOND

TRADING TERMS AND CONDITIONS

1. GENERAL TERMS AND ACCEPTANCE SIGNATURES

To: _____

(Hereinafter referred to as “the Guest”)

Between the Guest _____ (Registration number : _____)

And Beyond South Africa (Pty) Ltd (Registration No. 1991/000918/07) (“andBeyond” / “We” / “Us”/ “Our”)

The And Beyond Group of Companies, which for purposes of this agreement will be deemed to include by means of incorporation And Beyond South Africa (Pty) Ltd., And Beyond Kenya Limited, India Safari & Tours Limited, And Beyond Bhutan Limited, And Beyond Chile SpA, And Beyond Lanka Holdings (Private) Limited, and And Beyond Peru S.A.C and all operational divisions, which carries on business as such throughout Africa, South Asia and South America.

1. By signature hereof the Parties agree to be bound by the terms contained in this agreement. In the event of these Trading Terms not being signed by the Guest, the placement of any Booking, whether by means of electronic mail or otherwise, shall be deemed to be confirmation that the terms of the agreement have been read and that the Guest agree to be bound by the same.
2. Subject to the terms and conditions of clause 13 of the Agreement, addresses for legal process and notices for the purpose of the Trading Terms the Guest chooses the following address:

Physical Address: _____

E-mail: _____

Fax number: _____

Yours sincerely

Ryan Powell - Chief Operating Officer - Sales and Touring

For and on behalf of andBeyond who, by signing this agreement, warrants that he is duly authorized to give effect to this Agreement.

Please sign below and initial all pages to acknowledge and accept the Trading Terms contained in the agreement.

Agreed and accepted by _____ on _____
“the Guest”

SIGNATURE: _____ PRINT NAME: _____ of the Guest who, by signing this agreement, warrants that he/she is duly authorized to give effect to this agreement.

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2. CONDITIONS: ANDBEYOND TOURING SERVICES

(Note: Whilst andBeyond has used its best endeavours to standardise these Trading Terms, there may be instances where, with specific reference to third party supplier Bookings, it may be necessary to vary the payment and/ or other terms, in which event the Guest will be notified at the time the Booking is made).

2.1. GENERAL

2.1.1. Final itineraries will reflect the following:

2.1.1.1. Accommodation;

2.1.1.2. Room type(s) and specification;

2.1.1.3. Meals and/ or beverages included, where and if applicable;

2.1.1.4. Transfers and or transport where specified.

2.1.2. Itineraries relating to a Tour / Tour Series may be subject to change at any time (even after issue) due to unforeseen circumstances beyond the control of andBeyond. This includes Travel, Accommodation and Activities. Every effort will be made to operate itineraries as planned.

2.1.3. andBeyond reserves the right to make alterations to and/ or withdraw a Tour / Tour Series or any part of it as is deemed necessary, and to pass on any expenditures or losses caused by delays or events beyond our control. In case of any variation in pricing due to these circumstances, andBeyond reserves the right to make adjustments to the itinerary of the Tour costs as necessary.

2.1.4. andBeyond reserves the right to, in its sole and unfettered discretion, cancel a Booking if such cancellation is deemed to be necessary and in the interest of andBeyond, which cancellation shall be made against a full refund of all and any monies paid in respect of such Booking.

2.1.5. Provision for the handling of baggage by andBeyond will be as per the quotation. Weight restrictions for baggage on some routes on internal/domestic flights may apply, details of which will be provided with documentation.

2.1.6. Safekeeping of baggage and personal effects shall at all times remain at the risk of the Guest (i.e., the Guest's) risk. andBeyond will assume no liability for lost or damaged baggage.

2.1.7. It shall be the Guest's responsibility to verify with the relevant international carrier the extent of baggage restrictions which may apply.

2.1.8. The Guest shall note his / her obligation to, prior to travel, procure travel insurance sufficient to meet all medical expenses and related costs that may be incurred should a Guest require medical assistance whilst travelling with andBeyond. Whilst serious incidents are rare, emergencies can be expensive and good medical insurance cover is mandatory. andBeyond has procured medical evacuation cover and independent medical support that will remotely access incidents and, if deemed critical, will: (i) arrange for 3rd party service providers to attend to or evacuate the Guest to the nearest appropriate medical facility, (ii) procure access to such medical facility and (iii) make the necessary financial arrangements to secure medical attention for the ill/injured Guest without delay. Where medical emergencies warrant medical care, including the evacuation to a medical facility, andBeyond's insurance provider will recover such costs from a Guest's travel insurance provider and, as a last resort, from the Guest should the travel insurance provider fail to reimburse andBeyond's insurance providers as requested.

- 2.1.9. By virtue of the fact that andBeyond subcontracts all air travel services to independent airline carriers and / or air service operators, andBeyond cannot accept any responsibility in respect of any delay or cancellation of any flight and / or any inaccuracies of flight schedules which may occur. All flights, where required, would need to be paid in full and shall be subject to such cancellation and refund terms as may be determined from time to time by the relevant airline carrier and / or air service operator.
- 2.1.10. andBeyond reserves the right to take photographs during the operation of any tour and use them for promotional purposes. By booking a Tour with andBeyond it will be deemed that Guests have consented to the use by andBeyond of any photographic image taken of them whilst on Tour. Guests who prefer their images not be used should identify themselves prior to final payment to be exempted from the photography waiver clause.

2.2. PRICING

- 2.2.1. Price of the Tour shall include andBeyond's fee for planning and arranging itineraries, handling and operational charges quoted on the current rate of exchange and tariffs and VAT at the relevant rate where applicable.
- 2.2.2. Scheduled Activities will include entrance fees where stipulated. The Guest acknowledges that andBeyond will, subject to the provisions of clause 3.1.8, be entitled to revise and adjust the price of the Tour in the event that factors such as (without limitation) fluctuations in foreign currency exchange rates, changes in tariff rates and applicable taxes impact the price.

2.3. EXCLUSIONS

Unless expressly included all and any cost (without limitation) of obtaining passports, visas, items of a personal nature such as drinks, laundry, telephone calls, communication and excess baggage charges shall be excluded from the tour pricing.

2.4. BOOKING PROCESS

- 2.4.1. The Guest is responsible for informing andBeyond of any Bookings, Confirmations, Booking Amendments, Reductions or Cancellations of rooms or services in writing by e-mail to enable andBeyond to make the required itinerary arrangements. The onus of proof of delivery will rest on the Guest.
- 2.4.2. Provisional booking periods are determined by third party suppliers. andBeyond reserves the right to release reservations.
- 2.4.3. andBeyond will, at the request of the Guest in writing, attempt to extend provisional bookings. Any extension of any provisional period will, however, at all times remain the sole and unfettered discretion of third-party suppliers.
- 2.4.4. The Guest should be in possession of the required deposit payment and travel insurance before confirming any Reservation with andBeyond, the latter of which can be facilitated through andBeyond with a third party.

- 2.4.5. Upon confirmation the Guests nationality as per the passport on which travel will occur will be required, which information will be used solely for market data purposes.
- 2.4.6. Confirmed Reservations are invoiced with payment required as per the provisions of clause 3.2 for Independent Travellers and clause 3.3 for Groups. Where Touring Services have been booked the final invoiced amount will be inclusive of an itinerary planning and arranging fee, handling and operational fee and VAT where applicable but exclusive of the cost of obtaining passports, visas, excess luggage and items of a personal nature unless expressly included.
- 2.4.7. Confirmed Accommodation will be subject to the appropriate payment and cancellation policy as set out in clauses 2.4.8.7 and 3.2 for Independent Traveller reservations or clauses 2.4.8.8 and 3.3 for Group Reservations.

2.4.8. Amendment, Reduction, Refund and Cancellation Policy:

- 2.4.8.1. An amendment will refer to a change in travel/arrival date and/or an increase or reduction in number of rooms or services required, after confirmation;
- 2.4.8.2. All amendments made will be subject to the cancellation policy;
- 2.4.8.3. Reservations held by andBeyond where no deposit has been paid by the Guest or where no guarantee has been given will be cancelled by andBeyond on notice to the Guest;
- 2.4.8.4. All amendments, reductions, refunds and cancellation for Independent Travellers will be determined in the sole and unfettered discretions of the suppliers utilized in any itinerary.
- 2.4.8.5. Refunds will not be made for any missed services in respect of the Tour / Tour Series;
- 2.4.8.6. In the event of cancellation of a Booking, andBeyond shall be entitled to retain such portion of the Booking as may be prescribed by relevant consumer protection legislation (if applicable) in operation in the Country of jurisdiction where the Booking is made or Confirmed by andBeyond;
- 2.4.8.7. On cancellation of a confirmed Independent Traveller/s reservation andBeyond will be entitled to:

| | |
|--|-------------------------------------|
| Between Confirmation and 61 days prior to arrival | 25% of Total Booking (i.e. Deposit) |
| Between 60 days and arrival | 100% of Total Booking value |
| Cancellation during travel or stay | 100% of Total Booking value |

- 2.4.8.8. On cancellation of a confirmed Group reservation andBeyond will, subject to the relevant provisions of consumer protection legislation which may apply in the Applicable Jurisdiction, of the andBeyond office where the Booking is made, be entitled to:

| | |
|---|-----------------------------|
| Greater than 151 days prior to arrival | 30% of Total Booking value |
| Between 150 and 91 days prior to arrival | 60% of Total Booking value |
| Less than 90 days prior to arrival | 100% of Total Booking value |
| Cancellation during travel or stay | 100% of Total Booking value |

- 2.4.8.9. All amendments, reductions, refunds and cancellation policies for groups will be determined at the sole and unfettered discretions of the suppliers utilized in any itinerary.
- 2.4.8.10. Please refer to the payment policy relating to Independent Travellers (refer to clause 3.2) and Groups (refer to clause 3.3).

3. PAYMENT POLICY

3.1. General:

- 3.1.1. Unless prior arrangements have been made with andBeyond the Guest shall at all-times remain solely liable and responsible for the payment of all invoices issued by andBeyond in respect Confirmed Reservations, as well as the payment of any fees due.
- 3.1.2. Payment shall be effected via secure payment portal using a valid Mastercard.
- 3.1.3. It is acknowledged by the Guest that, with specific reference to Touring Services which are arranged by andBeyond pursuant to this Agreement, certain portions of said Touring Services may be exempt from VAT, whilst other portions may be subject to VAT at the standard or zero rate. To this end the Guest agrees that prices and /or the fees charged by andBeyond in respect of touring services are inclusive of VAT at the relevant rate, if applicable, but exclusive of any other taxes.
- 3.1.4. andBeyond reserves the right to request payment by credit card or PayPal to secure all short lead time bookings which have been confirmed within 7 (seven) days of travel.
- 3.1.5. Should the Guest fail to effect any payment on due date or breach any other Trading Term of this agreement, andBeyond shall, be entitled to:
 - 3.1.5.1. cancel this agreement and or booking and take such action as may be deemed necessary to recover the full amount owing to andBeyond, and/or;
 - 3.1.5.2. cancel any future Bookings made by the Guest, and/ or;
 - 3.1.5.3. recover from the Guest any costs incurred, and/or;
 - 3.1.5.4. refuse to accept any further bookings from the Guest , and/ or;
 - 3.1.5.5. request payment on arrival prior to the rendering of any Touring Services, and/ or;
 - 3.1.5.6. levy a charge on all overdue account balances at a rate that is equal to the quoted prime lending rate as may be determined, to the extent applicable, by the relevant banking institution in the Applicable Jurisdiction published from time to time and/ or;
 - 3.1.5.7. apportion credits due to the Guest and apply to any amounts which may be due to andBeyond in terms of these Trading terms.
- 3.1.6. Errors and Omissions Excepted: andBeyond shall not be liable for any inadvertent delay in the issuing of an invoice or any supporting document (i.e. any related proposal(s) and / or quotation(s)) related thereto, or any omission or error contained in such invoice or supporting document provided that such delays, errors or omissions be rectified by andBeyond as soon as reasonably possible after the discovery of the same.
- 3.1.7. Currency Movements: In an effort to simplify the Booking process andBeyond will translate the local currency charges into a single currency namely United States Dollars. Whilst this is done to be of assistance the actual liability for the amounts remains in the source currency. In the event of any change to the current Booking the Booking will be recalculated using the relevant exchange rate of the day as reflected on *Oanda.com* which may attract extra charges as a result. If a refund is due on a Booking that refund will be calculated in the source currency and be paid in that source currency. We are able to pay these refunds in United States Dollars and if that is requested and will do so at the current rate of exchange which may or may be different to the original rate of exchange when the Booking was first made.

3.2. Independent Travellers

3.2.1. Upon Confirmation for all Reservations the Guest will be liable for a deposit.

3.2.2. The following specific payment policy applies:

| | |
|-------------------------------|--------------------------------------|
| On Confirmation within 7 days | 25% of the Total Booking value |
| 60 days before arrival | Remaining 75% of Total Booking value |

3.3. Groups

3.3.1. The following Group payment terms apply and exclude any payment conditions agreed for Independent Travellers. Deviations to this payment condition are agreed by exception:

| | |
|--|--|
| Deposit due within 14 days of Confirmation for Reservations 1 year and greater from date of travel | 30% of Total Booking value |
| Deposits due within 14 days of Confirmation for Reservations less than 1 year from date of travel | |
| Due at 150 days prior to arrival | An additional 30% of Total Booking value |
| Due at 90 days prior to arrival | Final 40% of Total Booking value |

4. BANKING DETAILS - DELETED

5. GUEST'S RESPONSIBILITIES

5.1. THE GUEST SHALL:

- 5.1.1. Provide at time of confirmation the nationality as per the passport on which travel will occur, which information is to be used for market data purposes only.
- 5.1.2. Not, under any circumstances, promote (whether by advertising or otherwise) and/or sell, as the case may be, the travel packages and/or Accommodation to the end consumer at an amount that is less than the andBeyond advertised Rates, unless otherwise agreed and/or stipulated by andBeyond.
- 5.1.3. Provide information as to his /her /their required travel itineraries, whether or not they require a specialised activities programme or tailor-made programme, the type of Accommodation required, the duration of the proposed stay, and similar information required by andBeyond in order to arrange the itinerary and to confirm the Reservation.
- 5.1.4. Adhere strictly to the provisions of the Trading Terms.
- 5.1.5. Not knowingly engage in any distribution or trade practice or advertising method which could be harmful to andBeyond.
- 5.1.6. Without delay, communicate all Bookings and/or cancellations to andBeyond in writing by e-mail.
- 5.1.7. Not dispute or assist anyone else to dispute the validity of any Trademarks, patent or design, or any copyright in any advertising material, belonging to andBeyond and used in connection with the travel packages and/or Accommodation during the period of this agreement.
- 5.1.8. Promptly comply with any reasonable instruction given by andBeyond.
- 5.1.9. Not appoint any sub-Guest/ agent without andBeyond's prior written consent.

- 5.1.10. Refer to andBeyond any reasonable queries which the Guest cannot answer.
- 5.1.11. Ensure comprehensive travel insurance is purchased covering the Guest for personal effects, personal accident, medical and emergency travel expenses, cancellation, and curtailment.
- 5.1.12. Ensure all travelling on the itinerary have the necessary and correct passport, visa, and vaccination requirements to cover all the countries into which travel is planned.
- 5.1.13. Seek medical advice regarding prophylaxis and vaccination requirements for countries and regions into which travel is planned.
- 5.1.14. Be advised that in some cases travel may take them into isolated regions and in close proximity with wildlife in which event the Guest will be required to sign a conditions and waiver form at the time of their safari.
- 5.1.15. At time of Booking provide all special requests or preferences via andBeyond's Guest Information Service portal.
- 5.1.16. All Reservations made shall be made on the trading terms contained in this document and any relevant annexures.
- 5.1.17. The Guest shall at all times be solely responsible for ensuring all payments due to andBeyond are received timeously and in full by andBeyond in accordance with the provisions of the Trading Terms;
- 5.1.18. In the event of any credit card payment dispute the Guest shall refrain from filing any unfounded or unlawful payment dispute ("chargeback") with the Guest's issuing bank without first attempting in good faith to resolve the dispute with andBeyond. The Guest acknowledges that any unlawful or unfounded chargeback will result in andBeyond sustaining financial loss which will entitle andBeyond to institute appropriate remedial action to mitigate against such loss which action may include, without limitation, challenging the grounds with the Guest's issuing bank the grounds on which the chargeback was requested by the Guest or instituting legal action as may be deemed appropriate to enforce the rights of andBeyond.

6. ANDBEYOND RESPONSIBILITIES

6.1. AND BEYOND SHALL:

- 6.1.1. Have the responsibility of planning and arranging itineraries, provide quotations, make Reservations, Confirmations, invoicing, and credit control relating to the Tour and / or Tour Series.
- 6.1.2. Stipulate all Accommodation, room types, specifications, transfers provided on arrival and departure from airport to hotel and return when specified in the itinerary.
- 6.1.3. Be entitled to change Travel arrangements (e.g., flights), Accommodation and arranged Activities due to unforeseen circumstances after the itinerary has been issued. Should this occur andBeyond will inform the Guest. Every effort will be made to operate the tour as planned.
- 6.1.4. Make every effort to secure special requests, however these cannot be guaranteed.
- 6.1.5. Promptly supply the Guest with brochures, information, and marketing collateral that the Guest may from time to time reasonably require for the purpose of its obligations in terms of this Agreement.
- 6.1.6. On request, provide to the Guest proof of any insurance policies taken out in andBeyond name; and
- 6.1.7. Ensure that all brochures, advertising material and other documents of whatever nature supplied to the Guest are accurate and fully comply with all applicable laws, regulations, rules, and codes of practice.

7. WAIVERS AND INDEMNITIES

7.1. FOR PURPOSES OF THIS CLAUSE 7:

- 7.1.1. the term “Guest” shall include the Guest, its beneficiaries, estate, directors, partners, members, employees, agents, servants, assignees, and/or successors in title;
- 7.1.2. the term “Claims” shall include all and any claims, payments, demands, actions, causes of action, losses and expenses, including all and any future and unascertained damages
- 7.1.3. the term “Third Party” shall include any party who does not have a direct connection with this Agreement but might be affected by it, and includes Third Party Service Providers;
- 7.1.4. the term “Third Party Service Provider” shall include any party who does not have a direct connection with this agreement who has been engaged to carry out and operate part of the Tour; and
- 7.1.5. the term “Third Party Claims” shall include all and any claims, payments, demands, actions, causes of action, losses and expenses, including all and any future and unascertained damages that any party who does not have a direct connection with this agreement but might be affected by it may have.

7.2. THE GUEST ACKNOWLEDGES THAT:

- 7.2.1. the Tour / Tour Series or part thereof offered by andBeyond may be inherently dangerous, which dangers may include (without limitation) Guests visiting isolated regions, being in close proximity to wildlife, using chartered Travel and participating in Activities; parts of the Tour / Tour Series may be carried out and operated by Third Party Service Providers and that andBeyond does not accept any responsibility for the performance of these parts of the Tour / Tour Series; the Guest may be required to accept additional terms and conditions, which may include exclusions or limitations of liability before commencing certain Activities or embarking on certain Travel;
- 7.2.2. Safekeeping of baggage and personal effects shall at all times remain at the Guest(s) risk and that andBeyond assumes no liability for lost or damaged baggage.
- 7.2.3. The Guest hereby agrees to hold harmless andBeyond from for and against all Claims, arising from or following or in any way connected to the following:
 - 7.2.3.1. this agreement;
 - 7.2.3.2. the Booking;
 - 7.2.3.3. the Tour / Tour Series or any part thereof;
 - 7.2.3.4. all and any statutory or strict liability;
 - 7.2.3.5. all and any negligent acts (excluding gross negligence) or omissions of andBeyond;
 - 7.2.3.6. all and any acts or omissions of any other party, including but not limited to Third Party Service Providers (not limited to negligent acts); or
 - 7.2.3.7. all and any extraneous events including but not limited to rain, storm water, hail, lightening, fire, riots and strikes.
- (Note: The effect of this clause is that the Guest(s) abandons any Claims that it may have against the andBeyond arising from, following or in any way connected to the items listed at clauses 7.2.3.1 to 7.2.3.7(above).*
- 7.2.4. The Guest hereby agrees to indemnify andBeyond from, for and against all Claims, which may be taken or made by a Third Party, arising from or following or in any way connected to the following:

- 7.2.4.1. this agreement;
- 7.2.4.2. the Booking;
- 7.2.4.3. the Tour / Tour Series or any part thereof; or
- 7.2.4.4. the conduct of the Guest(s).

(Note: The effect of this clause is that if any Third Party makes or brings a Third Party Claim against andBeyond connected to this Agreement, the Tour or any part thereof or the conduct of the Guest, the Guest will be responsible to pay to andBeyond the value of the Third Party Claim).

- 7.2.5. The Guest hereby agrees to indemnify andBeyond from, for and against any legal or other expenses which may be incurred as a result of and/or in consequence of any Third Party Claim arising from or following or in any way connected to this agreement, the Tour or any part thereof or the conduct of the Guest.

(Note: the effect of this clause is that if any Third Party makes or brings a Third Party Claim against andBeyond arising from or following or in any way connected to this agreement, the Tour or any part thereof or the conduct of the Guest, in addition to being responsible to pay the value of the Third Party Claim, the Guest will be responsible to pay to andBeyond the cost of any legal or other expenses that may be incurred as a result of the Third Party Claim).

8. HEALTH PROTOCOLS AND INDEMNITIES

- 8.1. By entering into this Agreement, the Guest acknowledges personal responsibility for his / her own health and health safety when utilising any Accommodation or partaking in any Activities or Travel whilst on Tour.
- 8.2. The Guest warrants and will provide written confirmation to his / her adherence and strict compliance to all health safety policies, rules, processes, procedures, and guidelines (“Health Safety Protocols”) which may be applicable at andBeyond Lodges and Camps and / or any third-party properties from time to time.
- 8.3. The Guest further acknowledges that, whilst andBeyond may request third party service providers providing Accommodation, Activities and / or Travel on Tour to implement health safety standards similar to andBeyond Health Safety Protocols, andBeyond is not in a position to enforce health safety processes and procedures to be followed by third party service providers, nor is it in position to verify the standard at which same may be implemented by third party service providers. Consequently, it will be deemed that the Guest acknowledge and agree that andBeyond cannot accept any form of liability (in the broadest terms) should the Guest(s) or any member of the party contract an infectious disease when using Accommodation or partaking in any Activities or Travel offered by third party service providers.
- 8.4. The Guest is duly informed that:
 - 8.4.1. certain premises at andBeyond Lodges and Camps (including third party properties) may be open to members of the public and as such may be frequented by other members of the public;
 - 8.4.2. they may visit public places during a Tour;
 - 8.4.3. by coming into contact with other members of the public or visiting public venues recognises that he / she may be at a higher risk of contracting an infectious disease;

- 8.4.4. by visiting any of the above public areas, it will be deemed that the Guest has voluntarily accepted the higher risk of infection as contemplated in clause 8.4.3;
- 8.4.5. as andBeyond does not have any control in respect of the health safety practices followed by members of the public, nor any control in respect of health safety protocols, policies and rules implemented at public venues, andBeyond will not be liable (in the broadest terms) should the Guest(s) or any member of the party contract an infectious disease by coming into contact with a member of the public who is infected with a contagious disease or when visiting a public venue during whilst on Tour.

9. FORCE MAJEURE

- 9.1. If either Party is prevented, restricted, hindered or delayed, whether directly or indirectly, from carrying out all or any of its obligations under the Trading Terms for any cause beyond the reasonable control of that Party (including without limiting the generality of the a foregoing: war, civil commotion, riot, insurrection, strikes, lock-outs, fire, explosion, natural disasters, floods, disease, epidemic, pandemic, quarantines, Acts of State and acts of God), the Party so affected shall be relieved of its obligations hereunder during such period that the force majeure occurrence continues and shall not be liable for any delay or failure in the performance of any of its obligations hereunder or for any loss or damages which the other Party may suffer due to or resulting from such delay or failure on the part of the affected Party to perform, provided that written notice of the inability to perform shall be given by the affected Party within 48 (forty eight) hours of the occurrence constituting force majeure.
- 9.2. The Party invoking force majeure shall use its best endeavours to terminate the circumstances giving rise to force majeure and upon termination of these circumstances giving rise thereto, shall forthwith give written notice thereof to the other Party.

10. USE OF TRADEMARKS

- 10.1. The Guest may, during the existence of this agreement, use the Trademarks, subject to the terms and conditions of this agreement. On the termination of the agreement, for any reason, the Guest shall no longer enjoy any right to use any of the Trademarks.
- 10.2. In the event that andBeyond requires the Trademarks to be used in any particular form, the Guest shall be obligated to only use the Trademarks in the form permitted by andBeyond, which form shall be communicated to the Guest from time to time.
- 10.3. The Trademarks may only be used to give effect to the terms of this agreement. Any use of the Trademarks on any other goods or services not herein defined shall constitute unauthorised use and shall constitute a material breach of this agreement, unless andBeyond provides its express written authorisation of such use.
- 10.4. The Guest will not represent that it has any right or title to the Trademarks, nor will it directly or indirectly, at any time, contest or impair andBeyond's rights in the Trademarks, or assist anyone else to do so either directly or indirectly.
- 10.5. The Parties acknowledge that all use of the Trademarks shall inure to the benefit of andBeyond, and the Guest undertakes hereby not to register the Trademarks or any trademarks, trade name, business name or corporate denominations confusingly similar thereto.
- 10.6. The Parties expressly agree that except as provided for in this Agreement, the Guest acquires no right, title or interest in any of the Trademarks.

- 10.7. The Guest undertakes not at any time to attempt to, directly or indirectly, dilute the value of the goodwill attaching to any of the Trademarks.
- 10.8. The Guest may not use the Trademarks in any manner that would injure the reputation or goodwill of andBeyond.

11. DISPUTE RESOLUTION

- 11.1. Any dispute which arises out of or in relation to this agreement, whether directly or indirectly (“the Dispute”), shall first, by written notice (“Dispute Notice”), be referred for negotiation between senior executives of the Parties with the necessary authority to settle the Dispute.
- 11.2. The senior executives shall forthwith upon receipt of the Dispute Notice in good faith attempt to resolve the Dispute as expeditiously as possible but, in any event, not later than 30 (thirty) calendar from the date on which the Dispute Notice was first issued.
- 11.3. In the event of the Parties failing to reach a negotiated settlement within the period aforesaid the Parties shall refer the Dispute for arbitration subject to Applicable Laws governing arbitration proceedings within the Applicable Jurisdiction.
- 11.4. The provisions of this clause 11 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process.
- 11.5. This clause is a separate, divisible agreement from the rest of this agreement and shall remain in effect even if the agreement terminates, is nullified, or cancelled for whatsoever reason or cause.

12. BREACH

- 12.1. The Parties shall be entitled, without prejudice and in addition to any rights which they may have in terms of this agreement or in Law applicable within the Applicable Jurisdiction, to (i) forthwith cancel this agreement or (ii) to uphold this agreement and in either event claim such damages as it may have suffered in the event that the other Party:
 - 12.1.1. commits a breach of any of the terms of the Trading Terms, and fails to remedy such breach within a period of 7 (seven) days after receipt by it of written notice from the other Party calling for such breach to be remedied; or
 - 12.1.2. takes steps to enter a compromise with any of its creditors or takes steps or has steps taken against it for liquidation, winding up, deregistration, being placed under business rescue or judicial management (or any similar process); or
 - 12.1.3. prior to or during the currency of these Trading Terms, commits or has committed an act of insolvency or an act which would be an act of insolvency as governed by relevant insolvency Laws applicable within the Applicable Jurisdiction and /or, in the case of the Guest, relevant insolvency legislation in the country of domicile (i.e., registration and incorporation) of the Guest; or
 - 12.1.4. fails to satisfy any judgment taken against it and of which it is aware and fails, within 10 (ten) calendar days of the date on which the judgment is granted or the date on which it becomes aware of the judgment, whichever is the latter, to take such steps and to continue to take such steps as may be necessary to have the judgment set aside, or, having taken such steps, fails to satisfy the judgment within 10 (ten) calendar days after the date on which it becomes final, or

12.1.5. in the event of the Guest being the breaching party, the Guest fails to timeously pay to andBeyond any amount due to andBeyond as set out in the Trading Terms, and fails to remedy such breach within a period of 3 (three) Business Days after receipt by it of written notice from andBeyond calling for such breach to be remedied, andBeyond shall be entitled, without prejudice, to its rights in terms of the trading terms, or in law, to terminate these Trading Terms and claim such damages as it may have suffered, and to cancel any Reservations that may have already been made for the Guest.

13. NOTICES AND ADDRESSES

13.1. Any notice, consent, approval, or other communication in connection with this agreement (“Notice”) will be in writing in English.

13.2. Addresses:

Each Party chooses the physical address and/or email address corresponding to its name as the address to which any Notice must be sent.

13.2.1. andBeyond:

Physical address: 164 Katherine Street

Pinmill Farm, Block F

Sandown

2196

South Africa

Email address: legal@andbeyond.com

Marked for the attention of: Group Legal and Compliance Officer

13.2.2. For the Guest:

The details as provided by the Guest on the cover page of the Trading Terms.

13.3. Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:

13.3.1. on the day of delivery, if delivered by hand to a responsible person at the recipient’s physical address as chosen in terms of clause 13.2. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice shall be deemed to have been received on the Business Day after the date of delivery; and

13.3.2. on the first Business Day after the date of transmission, if sent by email to the recipient’s email address in clause 13.2.(as applicable). Despite anything to the contrary in this agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its chosen address in clause 13.2.

13.4. Despite anything to the contrary in this agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in chosen in clause 13.2.

13.5. Service of Legal Process:

- 13.5.1. Each Party chooses its physical address referred to in clause 13.2 above as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served.
- 13.5.2. Any Party may by Notice to the other Party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

14. MISCELLANEOUS

14.1. Entire Agreement:

- 14.1.1. The cover letter to this agreement, the agreement, as well as any other documentation, guidelines and or other written advice and / or directives issued by andBeyond to the Guest pursuant to this agreement shall constitute the entire agreement between the Parties.
- 14.1.2. andBeyond shall not be bound by any representation, warranties, undertakings, promises or the like (whether or not made by andBeyond, its companies or servants) which are not recorded therein.
- 14.1.3. Subject to the provisions of this agreement, no alternation, variation, or cancellation by agreement of, amendment or addition to, or deletion from this agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

14.2. Non Waiver:

No failure by a Party to enforce any provision of the Trading Terms shall constitute a waiver of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

14.3. Data Protection:

- 14.3.1. The Guest is duly informed that, subject to Applicable Laws and andBeyond's Privacy Policy, andBeyond may be required to electronically collect, store and use personal information, including the Guest(s) name/s, contact details, email addresses, IP addresses etc. for the purpose of carrying out any Tour and, unless objected thereto, it will be deemed that the Guest(s) have consented to andBeyond retaining such personal information for as long as is necessary or legally required in order to render services under the Tour or Tour Series or as may be required to comply with relevant statutory obligations under Applicable Laws.
- 14.3.2. The Guest except to the extent of its own gross negligence, recklessness or wilful misconduct, andBeyond will not be responsible for any damages suffered by the Guest as a result of the transmission of confidential or other information disclosed to andBeyond through the Internet.

14.4. Cession:

- 14.4.1. andBeyond shall be entitled, without the consent of the Guest, to cede, delegate or assign all or any of its rights and/or obligations under this agreement to any affiliate within the And Beyond Group of Companies ("*the Cessionary*"), or a nominee elected by andBeyond.
- 14.4.2. On any cession, assignment and/or delegation taking place in terms of this clause 14, the Guest shall, if so required by any Cessionary, make all payments to such Cessionary.
- 14.4.3. The Guest shall not, without the written consent of andBeyond, be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this agreement to any third party.

14.5. Severability:

- 14.5.1. All provisions of this agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.
- 14.5.2. If any provision of the Trading Terms is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 14.5.3. The Parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof

14.6. Co-Operation:

Each Party shall co-operate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purposes.

14.7. Governing Law and Jurisdiction:

- 14.7.1. Subject to the provisions of clause 11, the Parties unconditionally consent to the relevant court(s) within the Applicable Jurisdiction having the authority to preside over any matter(s) / dispute(s) arising from this agreement.
- 14.7.2. The terms and conditions of this agreement shall be governed by and shall be construed in accordance with the Laws of the Applicable Jurisdiction.

14.8. Costs:

All and any costs incurred by either party arising out of or in connection with a breach of any of the provisions of the trading terms by the other party, including but not limited to legal costs on the attorney and own Guest scale, shall be borne by the party in breach.

14.9. Counterparts:

This agreement may be executed in counterparts, each of which will be deemed to be an original of this agreement with the same force and effect. A facsimile or photocopy of a fully executed counterpart of this agreement, or of a set of identical versions separately executed by the Parties, will be valid evidence of the existence and the terms of this agreement.

15. DEFINITIONS

- 15.1. Definitions for the purposes of this agreement, unless the context requires otherwise shall be as follows:

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- 15.1.1. "Accommodation" means collectively any accommodation reserved by andBeyond at any of the andBeyond Lodge and Camps or any third-party property and / or the provision of Activities and / or third party services (where relevant) reserved by andBeyond;
- 15.1.2. "Activities" means any recreational pursuit reserved by andBeyond and shall include, without limitation, sight-seeing excursions, sporting activities and adventure activities;
- 15.1.3. "andBeyond Lodges and Camps" means collectively those lodges owned and/ or operated by andBeyond including under canvas and mobile expedition products;
- 15.1.4. "Applicable Jurisdiction" shall mean the country of domicile in which the relevant andBeyond entity responsible for the processing and the administration of the Booking is registered and incorporated;
- 15.1.5. "Applicable Laws" means the Laws of the Applicable Jurisdiction;

- 15.1.6. "Booking/s" means the initiation, processing, amendment and/or finalisation of any Tour and shall include provisional bookings;
- 15.1.7. "Booking Amendments" means any change required by the Guest in the travel and/ or arrival date, any increase or reduction in the number of rooms booked, and/ or any services required after the date of Confirmation;
- 15.1.8. "Business Day" means any day other than a Saturday, Sunday or official public holiday in the Country of incorporation / registration of the relevant andBeyond legal entity through which the Tour or Tour Series are Booked;
- 15.1.9. "Confirmation" means written confirmation by the Client confirming that the Reservation will be honoured and guaranteed;
- 15.1.10. "Group" and "Group Reservations" shall mean 15 (fifteen) full paying Guests or more per Reservation;
- 15.1.11. "Guest/s" means the end user of services rendered by either andBeyond or a third party during the Tour and / or Tour Series;
- 15.1.12. "Independent Travellers" shall mean 14 (fourteen) full paying Guests or less per Reservation;
- 15.1.13. "Laws" means all legislation, statutes, regulations (as amended, replaced or re-enacted from time to time) which may be applicable in the Applicable Jurisdiction;
- 15.1.14. "Parties" means collectively andBeyond and the Guest, and "Party" means either of them as the context may require;
- 15.1.15. "Rates" means the rates for the Accommodation as set out by andBeyond in its then current rate documents, as substituted and sent to the Guest from time to time;
- 15.1.16. "Reservation" means a reservation made for or on behalf of the Guest and confirmed by andBeyond in writing;
- 15.1.17. "Total Booking Value" means the monetary value of a Booking as invoiced by AndBeyond upon Confirmation of Booking by the Guest, which monetary value will be adjusted to the extent that the Guest requests further Booking Amendments to the Booking prior to date of travel;
- 15.1.18. "Tour" means all and any arrangements reserved by andBeyond for the Guest, including but not limited to Accommodation, meals and beverages, Travel and Activities and "Touring Services" shall have a similar meaning ;
- 15.1.19. "Tour Series" means a pre-arranged Tour being organised, marketed and sold to the Guest prior to commencement which may comprise of a single or multiple dates/ departures;
- 15.1.20. "Trademarks" shall mean any registered trademarks registered in the name of andBeyond, (including any pending trade mark applications), as amended from time to time at the instance of andBeyond and includes the well-known international common law mark, namely "andBeyond" and its associated logos (notably: of the Bateleur eagle) and stylized wording, andBeyond being authorised to license the use of these Trade Marks for purposes of this Agreement;
- 15.1.21. "the/ these Trading Terms or "the / this agreement" means the trading terms contained in this document as amplified by the provisions of any Annexure attached hereto or document referred therein from time to time;
- 15.1.22. "Travel" means any transport reserved by andBeyond, including but not limited to road, water and air travel; and

15.1.23. “VAT” means Value Added Tax or any similar consumption tax payable in any country.