



&BEYOND

INBOUND-PRE-PAYMENT TRADING TERMS AND CONDITIONS 2016

1. GENERAL TERMS AND ACCEPTANCE SIGNATURES

To: _____

(Herein referred to as “the Client”)

(Note: Client in the context of this Agreement shall mean an international travel agent and/ or wholesaler and/ or travel agent and wholesalers located in South, Southern, and East Africa)

&Beyond TRADING TERMS FOR THE PERIOD: 01 JANUARY 2016 TO 31 DECEMBER 2016

Between the Client _____ (Registration number : _____)

And Beyond South Africa Travel (Pty) Ltd (“&Beyond/ 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 Travel Private Limited, And Beyond Kenya Limited, India Safari &Tours Limited or And Beyond Bhutan Limited (“&Beyond/ We/ Us/ Our”), being a luxury experiential travel company which carries on business as such throughout Africa (i.e. South Africa, Namibia, Botswana, Kenya, Tanzania and Mozambique) and South East Asia (i.e. India, Sri Lanka, Nepal and Bhutan).

1. The Client carries on the business as a distributor of travel products and services (“the Services”) and has at its disposal the necessary knowledge, know how, skill and expertise to arrange travel from lodge and resort Accommodation to air and ground transportation, including car rental needs and tour packages.
2. &Beyond wishes, subject to the terms and conditions contained in this Agreement (“the Trading Terms”), to procure the Client’s Services to promote our travel services.
3. By signature hereof the Parties agree to be bound by the Trading Terms contained in this Agreement. In the event of the Trading Terms not being signed by the Client, the placement of any booking/s by the Client, whether by means of electronic mail or otherwise, shall be deemed to be confirmation that the Terms have been read and the Client agrees to be bound by the terms.
4. All sections of this document are applicable.
5. Unless otherwise notified by &Beyond, the Trading Terms apply for the period covered by this Agreement in relation to all operational divisions of &Beyond unless otherwise indicated.
6. Addresses for legal process and notices

For the purpose of the Trading Terms, the Client chooses the following:

Physical Address: _____

E-mail: _____

Fax number: _____

Yours sincerely

PRINT NAME: Ryan Powell

For and on behalf of &Beyond 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 Client”

SIGNATURE: _____ PRINT NAME: _____ or “the Client” who, by signing this Agreement, warrants that he/she is duly authorized to give effect to this Agreement.

TABLE OF CONTENTS

1.	GENERAL TERMS AND ACCEPTANCE SIGNATURES	1
2.	CONDITIONS: &BEYOND OWNED AND MANAGED LODGES	3
2.1.	Booking Process	3
2.2.	Child Policy	3
2.3.	Guide Policy	3
2.4.	Check-In and Check-Out Times	4
2.5.	Independent Travellers.....	4
2.6.	Groups.....	4
3.	PAYMENT POLICY	6
4.	BANKING DETAILS	7
5.	CLIENT RESPONSIBILITIES	8
6.	&BEYOND RESPONSIBILITIES	9
7.	BREACH	9
8.	EFFECT OF EXPIRATION/ EARLY TERMINATION.....	10
9.	USE OF TRADE MARKS	10
10.	FORCE MAJEURE	11
11.	DISPUTE RESOLUTION.....	11
12.	GENERAL	11
13.	ADDRESSES FOR LEGAL PROCESSES AND NOTICES	12
14.	COSTS	12
15.	SEVERABILITY	12
16.	CESSION	13
17.	ENTIRE AGREEMENT.....	13
18.	GOVERNING LAW	13
19.	COUNTERPARTS.....	13
20.	DEFINITIONS	13

2. CONDITIONS: &BEYOND OWNED AND MANAGED LODGES

2.1. BOOKING PROCESS

2.1.1 The Client shall be responsible for informing &Beyond of any bookings, confirmations, booking amendments, or cancellations of rooms or services in writing by e-mail or by fax. The onus of proof of delivery will be on the Client.

2.1.2 Provisional bookings for all &Beyond Owned and Managed Lodge reservations will be held as follows:

Number of Days Before Travel:	Number of Days Held:
61 days +	21 days
Between 60 and 31 days prior to arrival	14 days
Less than 30 days prior to arrival	48 hours

2.1.3 Upon expiry of the above provisional periods &Beyond reserves the right to release reservations, unless requested in writing by the Client to extend the provisional period. The extension of any provisional period will be at the sole discretion of &Beyond.

2.1.4 In the event &Beyond receives a confirmed reservation request against space being held on a provisional basis by the Client, &Beyond reserves the right to request confirmation or release of the held space within 72 hours.

2.1.5 It is recommended that the Client be in possession of the required deposit payment before confirming any reservation.

2.1.6 Upon confirmation it will be required to disclose the Guest's nationality, information which will solely be used for market data purposes.

2.1.7 Confirmed space will be subject to the appropriate cancellation and payment policies as set out for Independent Travellers or for Group Reservations.

2.2. CHILD POLICY

2.2.1 &Beyond's child policy differs per region. The applicable rate sheet should be consulted to ascertain which rules apply in the region/s to which the Guest/s intends to travel.

2.3. GUIDE POLICY

2.3.1. Tour Leader, Specialist Guide and Private Guide:

2.3.1.1 The following policy applies to guides travelling with either independent travellers or groups:

1 (One) to 14 (Fourteen) Full Paying Guests	
Staying in Guide Accommodation	As per applicable rate sheet (where available)
Staying in Guest Accommodation	STO less 50%
15 (Fifteen) Full Paying Guests or More	
	1 (One) free of charge guide for every 15 full paying Guests with a maximum of 2 (two) free guides per group on a sharing basis Should single accommodation be required where there are two guides then 1 of the guides will be charged at the 1 - 14 Full Paying Guest Guide

	rate
--	------

2.3.1.2 The above excludes driver guides in East Africa.

2.3.2. Pilots and Local Driver Guide:

2.3.1.3 Please refer to the applicable rate sheet for costs and conditions of use.

2.4. CHECK-IN AND CHECK-OUT TIMES

2.4.1. The following check-in and check-out times are applicable at all &Beyond Lodges and Camps:

2.4.1.1. Check-In: No earlier than 14:00 on date of arrival.

2.4.1.2. Check-Out: No later than 11:00 on date of departure.

2.4.2. Subject to room availability, &Beyond will, at its sole discretion, endeavour to accommodate requests for early arrivals and/ or late check outs.

2.4.3. It will be the Client’s responsibility to make Guests aware that any early check-in or late check-out may be at an additional charge.

2.5. INDEPENDENT TRAVELLERS: BOOKING AMENDMENT, REDUCTION, REFUND AND CANCELLATION POLICIES

2.5.1. All Booking Amendments made by the Client will be subject to the terms and conditions of the cancellation policy as contained in 2.5.5.

2.5.2. The Client will, without exception, notify &Beyond in writing should a booking be amended, which shall include the transfer of an existing booking to another trade partner.

2.5.3. Reservations held by &Beyond where no deposit has been paid or guarantee has been given will be cancelled by &Beyond on notice to the Client.

2.5.4. Requests to reduce or waiver cancellation fees will be considered with the decision made at the sole discretion of &Beyond.

2.5.5. On cancellation of a confirmed reservation &Beyond will, subject to the relevant provisions of the Consumer Protection Act No. 68 of 2008 (as amended from time to time), and to the extent that the provisions of said Act are applicable, be entitled to:

Between Confirmation and 181 days prior to arrival	Credit to the Client Account of 10% of the total invoice less actual costs incurred
Between 180 and 46 days prior to arrival	10% of total invoice
Between 45 days and arrival	90% of total invoice value

2.6. GROUPS: BOOKING AMENDMENTS, REDUCTIONS, REFUNDS, SITE INSPECTION AND CANCELLATION POLICIES

2.6.1. Where group reservations require space to be held with the intention of marketing a tour the Client should notify &Beyond at the time of booking in order to negotiate specific terms and conditions in consultation with the Client.

2.6.2. Exclusive Use:

2.6.2.1. Any group travelling in high season which requires 80% (eighty per cent) or more of available inventory (rooms or beds) in a single property that consists of 7 (seven) or more rooms will be required to take exclusive use of the relevant property.

2.6.2.2. In such cases cost shall be calculated on a twin sharing basis for all available rooms, less the applicable guide or FOC policy.

2.6.3. Amendments:

2.6.3.1. An amendment refers to a change in travel/ arrival date and/ or an increase or reduction in number of rooms or services required, after a booking has been confirmed.

2.6.3.2. All amendments of confirmed bookings are made subject to the cancellation policy as contained in 2.6.6.

2.6.3.3. The Client should, without exception, notify &Beyond in writing to amend a booking, including the transfer of an existing booking to another trade partner.

2.6.3.4. The following reduction policy applies:

Groups occupying less than 80% of available rooms, in High Season or Greater than 80% of available rooms in Low/ Shoulder Seasons	1 room up to 45 days from travel
Groups occupying 80% and more of available rooms in High Season (in properties consisting of 7 rooms or more)	No reductions permitted - exclusive use applies

2.6.4. Refunds:

2.6.4.1. No Refunds are made for missed services, except for verifiable extenuating circumstances. Verifiable claims will only be considered if received in writing within 30 (thirty) days of the service being missed. Any refunds made will be at the discretion of &Beyond.

2.6.5. Site Inspections Policy

2.6.5.1. A maximum of 2 rooms (double or single occupancy) will be made available at Rack Rate less 50% (fifty per cent) for a maximum of two (2) nights. Prepayment will be required and the invoiced amount will be deducted off the final invoice should the group confirm. Additional rooms and nights are charged at contracted rates.

2.6.5.2. Any additional site inspections will be charged at Rack Rate less 50% (fifty per cent) and prepaid. The invoiced amount will not be deducted from the final invoice.

2.6.5.3. &Beyond reserves the right to exclude high demand periods from site inspection schedules.

2.6.5.4. Site inspections are subject to provisional, amendment, payment and cancellation policies.

2.6.6. Cancellation Policy

2.6.6.1. Reservations held by &Beyond where no deposit has been paid or guarantee has been given will be cancelled by &Beyond on notice to the Client.

2.6.6.2. Requests to reduce or waiver cancellation fees from the Client will be considered with the decision made at the discretion of &Beyond.

2.6.6.3. On cancellation of a confirmed reservation &Beyond shall, subject to the relevant provisions of the Consumer Protection Act No. 68 of 2008 (as amended from time to time),

and to the extent that the provisions of said Act are applicable, be entitled to the payment of the following cancellation fees:

Between Confirmation and 121 days prior to arrival	20% of total invoice value
Between 120 and 91 days prior to arrival	50% of total invoice value
Less than 90 days prior to arrival	100% of total invoice value

2.6.7. General

2.6.7.1. Guests staying in any &Beyond Lodges and Camps are covered under &Beyond's medical emergency evacuation insurance cover. Should it be required to evacuate the Guest, it shall be the Guests' responsibility to ensure the Guest has sufficient medical and travel insurance cover in place to cover in-hospital medical expenses and associated costs once admitted to hospital.

2.6.7.2. By virtue of the fact that &Beyond sub contracts the flying services to independent operators, &Beyond cannot accept any responsibility in respect of any delay in flights and/ or any inaccuracies of flight schedules which may occur.

2.6.7.3. &Beyond reserves the right to take photographs during the operation of any tour and use them for promotional purposes. By booking a tour with &Beyond it will be deemed that Guests have consented to the use by &Beyond 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.

3. PAYMENT POLICY

3.1. GENERAL

3.1.1. Unless prior arrangements have been made with &Beyond the Client shall at all-time remain solely liable and responsible for the payment of all invoices issued by &Beyond in respect Confirmed Reservations, as well as the payment of any cancellation fees due.

3.1.2. Payment shall be effected by electronic fund transfer into accounts listed in **Section 4**.

3.1.3. It is acknowledged by the Client that, with specific reference to touring services which are arranged by &Beyond 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 Client agrees that prices and /or the fees charged by &Beyond in respect of touring services are inclusive of VAT at the relevant rate, if applicable, but exclusive of any other taxes.

3.1.4. As a general rule, unless specifically agreed with &Beyond in advance, credit card and PayPal payments will not be accepted when making payment for bookings made through &Beyond. In the event of consent being granted, the Client agrees that, in order to defray not only administrative costs associated with the processing of the credit card payment, but also costs levied by the relevant credit card company in processing the credit card payment, &Beyond will be entitled to charge an administration fee on the transaction, which administration fee will not exceed 3% (three per cent) of the value of the booking.

- 3.1.5. &Beyond reserves the right to request payment by credit card or PayPal for all short lead time bookings which have been confirmed within 7 (seven) days of travel.
- 3.1.6. &Beyond reserves the right to request payment in full before any tickets for flights are issued.
- 3.1.7. Should the Client fail to effect any payment on due date or breach any other Trading Term of this Agreement, &Beyond shall, be entitled to:
 - 3.1.7.1. Cancel this Agreement and take such action as may be deemed necessary to recover the full amount owing to &Beyond, and/or;
 - 3.1.7.2. cancel any future bookings made by the Client, and/ or;
 - 3.1.7.3. recover from the Client any costs incurred due to late cancellation, and/or;
 - 3.1.7.4. refuse to accept any further bookings from the Client, and/ or;
 - 3.1.7.5. request payment from Guests booked by the Client on arrival prior to the rendering of any services, and/ or;
 - 3.1.7.6. levy a charge on all overdue account balances at a rate that is equal to the quoted prime lending rate of First National Bank South Africa as published from time to time and/ or;
 - 3.1.7.7. apportion credits due to the Client and apply to any amounts which may be due to &Beyond in terms of this Agreement.

3.2. INDEPENDENT TRAVELLERS

- 3.2.1. Upon confirmation for all Reservations a deposit will be paid by the Client to &Beyond within 7 (seven) days.
- 3.2.2. The following specific payment policy applies:

On Confirmation within 7 days	10% of invoice value
45 days before arrival	Remaining 90% of invoice value

3.3. GROUPS

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

Deposit due within 30 days of confirmation for reservations 1 year and greater from date of travel	20% of total invoice value
Deposits due within 14 days of confirmation for reservations less than 1 year from date of travel	
Due at 120 days prior to arrival	An additional 30% of total invoice value
Due at 90 days prior to arrival	Final 50% of total invoice value

4. BANKING DETAILS

- 4.1. Electronic transfers or bank drafts drawn must be in favour of the &Beyond entity as listed on the relevant invoice provided by &Beyond as these will vary per entity transacted with.
- 4.2. A copy of the deposit slip or bank draft, together with the appropriate Guest/ Group details, reservation number and invoice number must be faxed or emailed to the &Beyond reservations consultant being dealt with.

4.3. Failure to do so may result in any payments being allocated to the first booking held in the system by the Client.

5. CLIENT RESPONSIBILITIES

5.1. THE CLIENT SHALL:

- 5.1.1. Provide at time of confirmation the nationality of the Guests. This information is used for market data purposes;
- 5.1.2. Provide to the Guests all information regarding the travel packages and Accommodation as relevant in terms of this Agreement, including those rates and specials as &Beyond may notify to the Client in writing from time to time;
- 5.1.3. 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 &Beyond Rates, unless otherwise agreed and/or stipulated by &Beyond;
- 5.1.4. Obtain information from Guests as to their required travel itineraries, whether or not they require a specialised activities programme or tailor-made programme, the type of Accommodation required by the Guest, the duration of the Guest's proposed stay specified on that Guest's itinerary, and similar information required by &Beyond in order to arrange the itinerary and to confirm the Reservation;
- 5.1.5. Adhere strictly to the provisions of the Trading Terms;
- 5.1.6. Not knowingly engage in any distribution or trade practice or advertising method which could be harmful to &Beyond;
- 5.1.7. Without delay, communicate all bookings and/or cancellations to &Beyond in writing or by fax or by e-mail;
- 5.1.8. Not dispute or assist anyone else to dispute the validity of any trade mark, patent or design, or any copyright in any advertising material, belonging to &Beyond and used in connection with the travel packages and/or Accommodation during the period of this Agreement;
- 5.1.9. Promptly comply with any reasonable instruction given by &Beyond;
- 5.1.10. Not appoint any sub Client/ Agent without &Beyond's prior written consent;
- 5.1.11. Refer to &Beyond any reasonable queries of the Guests which the Client cannot answer;
- 5.1.12. Ensure all Guests take out comprehensive travel insurance covering them for personal effects, personal accident, medical and emergency travel expenses, cancellation and curtailment;
- 5.1.13. Ensure all Guests have the necessary and correct passport, visa and vaccination requirements to cover all the countries into which travel is planned;
- 5.1.14. Notify Guests to seek medical advice regarding prophylaxis and vaccination requirements for countries and regions into which travel is planned.
- 5.1.15. Ensure Guests understand that in some cases their travel may take them into isolated regions and in close proximity with wildlife. Guests will be required to sign a conditions and waiver form at the time of their safari

- 5.1.16. At time of booking provide all special requests or Guest preferences
- 5.1.17. All Reservations made by the Client shall be made on the trading terms contained in this document and any relevant annexures;
- 5.1.18. The Client shall be solely responsible for the collection of all monies due to &Beyond from their Guest and for ensuring that all payments due to &Beyond are received timeously by &Beyond in accordance with the provisions of the trading terms.

6. &BEYOND RESPONSIBILITIES

6.1. &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 Accommodation and Travel Packages;
- 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 flights, Accommodation and arranged sightseeing due to unforeseen circumstances after the itinerary has been issued. Should this occur &Beyond will inform the Client. 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 Client with brochures, information and marketing collateral that the Client 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 Client proof of any insurance policies taken out in &Beyonds name; and
- 6.1.7. Ensure that all brochures, advertising material and other documents of whatever nature supplied to the Client are accurate and fully comply with all applicable laws, regulations, rules and codes of practice.

7. BREACH

7.1. EITHER PARTY SHALL BE ENTITLED, WITHOUT PREJUDICE AND IN ADDITION TO ANY RIGHTS WHICH IT MAY HAVE IN TERMS OF THIS AGREEMENT OR IN LAW, FORTHWITH TO CANCEL THIS AGREEMENT OR TO UPHOLD THIS AGREEMENT AND IN EITHER EVENT TO CLAIM SUCH DAMAGES AS IT MAY HAVE SUFFERED IN THE EVENT THAT THE OTHER PARTY:

- 7.1.1. 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
- 7.1.2. takes steps to enter into a compromise with any of its creditors or takes steps or has steps taken against it for liquidation, winding up, deregistration or judicial management; or
- 7.1.3. 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 defined in the Insolvency Act No. 24 of 1936, as amended, if committed by a natural person; or

- 7.1.4. fails to satisfy any judgment taken against it and of which it is aware and fails, within 10 (ten) 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 days after the date on which it becomes final.
- 7.1.5. if the Client fails to timeously pay to &Beyond any amount due to &Beyond as set out in the trading terms, and fails to remedy such breach within a period of 3 (three) days after receipt by it of written notice from &Beyond calling for such breach to be remedied, &Beyond shall be entitled, without prejudice, to its rights in terms of the trading terms, or in law, to terminate these terms and claim such damages as it may have suffered, and to cancel any Reservations that may have already been made for the Client.

8. EFFECT OF EXPIRATION/ EARLY TERMINATION

8.1. UPON THE EXPIRATION OR EARLIER TERMINATION OF THE TRADING TERMS FOR ANY REASON WHATSOEVER, THE CLIENT SHALL:

- 8.1.1. Immediately cease to use any advertising or other material which indicates or suggests that the Client is the Client of &Beyond; and
- 8.1.2. Deliver to &Beyond all documentation containing confidential information which is in the Client's possession by virtue of its relationship with &Beyond created in the terms.
- 8.1.3. Cease and not in future whether directly, indirectly, or howsoever use, copy, issue copies to the public or make an adaptation of any materials copied from or provided by &Beyond;
- 8.1.4. Cease and not in future whether directly, indirectly, or howsoever use any identical trademarks and/or any trademarks which nearly resembles the &Beyond trademarks; and
- 8.1.5. Cease to and not in the future, pass off or attempt to pass off its services as being in any way associated with the services or any other services offered by &Beyond.

9. USE OF TRADE MARKS

- 9.1. The Client may, during the existence of this Agreement, use the Trade Marks, subject to the terms and conditions of this Agreement. On the termination of the Agreement, for any reason, the Client shall no longer enjoy any right to use any of the Trade Marks.
- 9.2. In the event that &Beyond requires the Trade Marks to be used in any particular form, the Client shall be obligated to only use the Trade Marks in the form permitted by &Beyond, which form shall be communicated to the Client from time to time.
- 9.3. The Trade Marks may only be used to give effect to the terms of this Agreement. Any use of the Trade Marks on any other goods or services not herein defined shall constitute unauthorised use and shall constitute a material breach of this Agreement, unless &Beyond provides its express written authorisation of such use.
- 9.4. The Client will not represent that it has any right or title to the Trade Marks, nor will it directly or indirectly, at any time, contest or impair &Beyond's rights in the Trade Marks, or assist anyone else to do so either directly or indirectly.
- 9.5. The Parties acknowledge that all use of the Trade Marks shall inure to the benefit of &Beyond, and the Client undertakes hereby not to register the Trade Marks or any

trademarks, trade name, business name or corporate denominations confusingly similar thereto.

- 9.6. The Parties expressly agree that except as provided for in this Agreement, the Client acquires no right, title or interest in any of the Trade Marks.
- 9.7. The Client undertakes not at any time to attempt to, directly or indirectly, dilute the value of the goodwill attaching to any of the Trade Marks.
- 9.8. The Client may not use the Trade Marks in any manner that would injure the reputation or goodwill of &Beyond.

10. FORCE MAJEURE

- 10.1. If either Party is prevented or restricted 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, floods and acts of God), the Party so affected shall be relieved of its obligations hereunder during the period of that event and shall not be liable for any delay or failure in the performance of any obligations hereunder or for any loss or damages which the other Party may suffer due to or resulting from such delay or failure, provided that written notice of the inability to perform shall be given by the Party so affected within 48 (forty eight) hours of the occurrence constituting force majeure.
- 10.2. 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.

11. DISPUTE RESOLUTION

- 11.1. In the event of any dispute, controversy or claim (a “dispute”) as to the rights and obligations of the Parties or as to any other matter arising from or out of or that in any way is related to the trading terms, including any question as to its existence, validity or termination, the Parties shall attempt in good faith to resolve the dispute between themselves.
- 11.2. If the Parties are unable to resolve a dispute by mutual agreement within 14 (fourteen) days after the dispute is first communicated in writing by any Party to the others, then the dispute shall be submitted to and decided by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa, by an arbitrator agreed upon between the Parties or, failing agreement, appointed by that Foundation.
- 11.3. Unless otherwise agreed by the Parties in writing the arbitration shall be held in Sandton in the Gauteng Province of the Republic of South Africa.
- 11.4. The arbitrator shall be obliged to give in writing the reasons for any decision made by him in the course of the arbitration.

12. GENERAL

- 12.1. 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.

- 12.2. Neither Party may, without the express written consent of the other Party, cede or delegate any of its rights and/ or obligations in terms of this Agreement.
- 12.3. 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.
- 12.4. 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.
- 12.5. No party, nor the trustee, provisional liquidator, liquidator, provisional judicial manager, or judicial manager of any party, may cede any of its rights or delegate any of its obligations under the Trading Terms.
- 12.6. Each party warrants that he is acting as a principal and not as a Client for an undisclosed principal.

13. ADDRESSES FOR LEGAL PROCESSES AND NOTICES

- 13.1. Any legal process to be served on either of the Parties may be served on it at the address specified for it in page 1 and it chooses that address as its domicilium citandi et executandi for all purposes under the Trading Terms.
- 13.2. Any notice or other communication to be given to either of the Parties in terms of the Trading Terms shall be valid and effective only if it is given in writing, provided that any notice given by facsimile or electronic mail shall be regarded for this purpose as having been given in writing.
- 13.3. Either Party may by written notice to the other Party change to any other address (other than a post office box number) provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

14. 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 Client scale, shall be borne by the Party in breach.

15. SEVERABILITY

All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this Agreement shall remain of full force and effect. 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.

16. CESSION

- 16.1.** &Beyond shall be entitled, without the consent of the Client, 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 &Beyond.
- 16.2.** On any cession, assignment and/or delegation taking place in terms of clause **16.1**, the Client shall, if so required by any Cessionary, make all payments to such Cessionary.
- 16.3.** The Client shall not, without the written consent of &Beyond, be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.

17. ENTIRE AGREEMENT

The covering letter and Trading Terms, read with the applicable confirmation and the relevant Client agreement in respect of each Reservation, contains the entire agreement between the parties and &Beyond shall not be bound by any representation, warranties, undertakings, promises or the like (whether or not made by &Beyond, its companies or servants) which are not recorded therein. Subject to the provisions, 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.

18. GOVERNING LAW

The terms and conditions of this Agreement shall be governed by, and shall be construed in accordance with the laws of the Country of domicile of the relevant &Beyond legal entity through which the booking for Accommodation is made or facilitated.

19. 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.

20. DEFINITIONS

- 20.1.** Definitions for the purposes of this Agreement, unless the context requires otherwise shall be as follows:-
- 20.1.1.** “Accommodation” means collectively Accommodation at any of the &Beyond Lodge and Camps and the provision of third party services (where relevant) reserved by &Beyond;
- 20.1.2.** “Booking Amendments” means any change required by the Client 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;
- 20.1.3.** “the/ this Agreement” means the trading terms contained in this agreement as amplified by the provisions of any Annexure attached hereto;

- 20.1.4. “&Beyond Lodges and Camps” means collectively those lodges owned and/ or operated by &Beyond including Under Canvas and mobile expedition products;
- 20.1.5. “Guest” means customer of the Client;
- 20.1.6. “Parties” means collectively &Beyond and the Client, and “Party” means either of them as the context may require;
- 20.1.7. “Rates” means the rates for the Accommodation as set out by &Beyond in its then current rate documents, as substituted and sent to the Client from time to time;
- 20.1.8. “Reservation” means a reservation made by the Client on behalf of the Guest and confirmed by &Beyond in writing;
- 20.1.9. “Confirmation” means written confirmation by the Client confirming that the reservation will be honoured and guaranteed;
- 20.1.10. “Tours and Tour Series” means a pre-arranged tour being organised, marketed and sold by the Client prior to commencement which may be single or multiple dates/ departures;
- 20.1.11. “Independent Travellers” shall mean 14 (fourteen) full paying Guests or less per reservation;
- 20.1.12. “Group” and “Group Reservations” shall mean 15 (fifteen) full paying Guests or more per reservation;
- 20.1.13. “STO” means selected tour operator rate which is a contracted net, non-commissionable rate payable by the Client to &Beyond;
- 20.1.14. “Trade Marks” shall mean any registered trademarks registered in the name of &Beyond, (including any pending trade mark applications), as amended from time to time at the instance of &Beyond and includes the well-known international common law mark, namely “&BEYOND” and its associated logos (notably: of the bateleur eagle) and stylized wording, &Beyond being authorised to license the use of these Trade Marks for purposes of this Agreement; and
- 20.1.15. “VAT” means Value Added Tax or any similar consumption tax payable in any country.