

## ITRVL TERMS OF USE FOR AGENTS

Last updated on October 14, 2020.

### 1. PRELIMINARY MATTERS

#### 1.1 Introduction.

1.1.1 Welcome to itrvl. The Terms of Use contained in this document (the **Terms**) govern the access to and use of the Platforms and the making of any and all reservations, amendments, cancellations and other legally binding arrangements by Agents with itrvl (or, in certain circumstances, directly with Wilderness Group) in respect of Tours and/or Services.

1.1.2 The acceptance by the Agent of these Terms confirms a contractual relationship between the Agent and itrvl and, in respect of rights and obligations of any member of the Wilderness Group, Wilderness Travel Shop.

1.1.3 These Terms supplement any previous agreement between the Agent and itrvl and between the Agent and any member of the Wilderness Group relating to the subject matter hereof; provided that, in the event of any conflict, ambiguity or inconsistency between the provisions of these Terms and the provisions of any such previous agreement, the provisions of these Terms shall prevail.

1.2 Definitions and interpretation. Capitalised terms used and not separately defined in these Terms have the meaning ascribed thereto in **Annexure A** to these Terms, which also sets out the rules of interpretation applicable to these Terms.

#### 1.3 Term, duration and termination.

1.3.1 These Terms shall commence on the Commencement Date and shall continue in perpetuity subject to any amendment as per clause 1.4 below. Notwithstanding the foregoing, and without prejudice to any other rights or remedies set out in these Terms, itrvl or Wilderness Travel Shop shall be entitled to terminate these Terms at any time upon 28 days written notice of termination to the Agent, provided that any such termination shall not affect any existing provisional or confirmed bookings as at the date of termination.

1.3.2 Where itrvl or Wilderness Travel Shop is obliged under Applicable Law to provide the Agent with a cooling-off period, or any other right, in respect of a termination and such right is not included in these Terms, the Agent shall be entitled to exercise such right in accordance with Applicable Law, notwithstanding anything to the contrary in these Terms (subject to any early termination penalties or other conditions itrvl or Wilderness Travel Shop is permitted to impose under Applicable Law).

1.4 Amendments. itrvl and Wilderness Travel Shop, by agreement, shall have the right to amend, revise or update these Terms from time to time on notice to the Agent which amendments, revisions or updates may be effected by way of notifications given when the Agent uses its Login Credentials to access a Platform. The changes will have no effect on confirmed bookings unless otherwise specified in these Terms. The Agent will be required to review the amended Terms and indicate its knowledge and acceptance of the relevant amendments, revisions or updates before being allowed access to the Platforms. Once accepted<sup>1</sup>, the amended Terms shall replace and supersede the previous Terms. itrvl and Wilderness Travel Shop, as applicable, shall have the right to deny the Agent access to their respective Platforms in the event that an amendment, revision or update to these Terms is declined or otherwise not accepted by the Agent, and upon such denial the Agent's rights in terms of these Terms shall be automatically terminated.

#### 1.5 Eligibility.

1.5.1 Each Agent represents and warrants that it (i) is, if a natural person, 18 years of age or older, (ii) has not been previously suspended or removed from access to a Platform, or use of the Tours or Services, or engaged in any activity that could result in suspension or removal from a Platform, or use of the Tours or Services, and (iii) has full power and authority to enter into these Terms and in so doing will not violate any other agreement to which it is a party.

1.5.2 If the Agent is using a Platform on behalf of an entity, (i) it represents and warrants that it is authorised to bind that entity to these Terms, (ii) all references to the "Agent" or "you" will refer to

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<sup>1</sup> Counsel in Puerto Rico to confirm whether acceptance is required, or whether amendments can take effect on notice only. i.e. by continue use of the Platform, Agent is deemed to have accepted updated Terms.

the Agent and such entity, and (iii) such entity is responsible for the Agent and any other user that accesses a Platform on its behalf, including for the Agent's and their compliance with these Terms.

- 1.6 The Agent warrants that it is duly authorised to act as the agent of Travelers for purposes of contracting with itrvl and/or Wilderness Group, making use of the Platforms, booking Tours and Services, and entering into all related arrangements and agreements on the Travelers' behalf. The Agent warrants that it will not make, or purport to make, or represent that it has the power to make, any agreement or other binding arrangement between any Traveler and any member of the Wilderness Group, otherwise than in strict accordance with these Terms or as approved by itrvl and Wilderness Travel Shop from time to time.
- 1.7 Directly using the Wilderness Window and Travel Shops as booking channels.
- 1.7.1 In addition to the itrvl Platform, the Wilderness Group may (i) make the Wilderness Window directly available to the Agent as an alternative booking channel, as well as (ii) the Wilderness Group's traditional reservation channels ((i) and (ii) referred to as **Direct Bookings**), so that the Agent has a choice whether to work through the itrvl Platform or by way of Direct Bookings.
- 1.7.2 Once an Agent has accepted the Terms, they will govern all relationships between the Agent and itrvl and/or the members of the Wilderness Group (through Wilderness Travel Shop), including Direct Bookings made through the alternative channels referred to in clause 1.7.1 above. Until such time or for such time as an Agent has not accepted the Terms, its agent accreditation agreement will govern the relationship between the Agent and the members of the Wilderness Group and, save where expressly agreed in writing to the contrary, the contractual counter-party shall be Wilderness Travel Shop.

## 2. **SPECIFIC SUPPLIER TERMS**

- 2.1 All bookings made through the Platforms are subject to the terms and conditions specified by Suppliers; provided that in the event of any conflict, ambiguity or inconsistency between these Terms and the terms and conditions specified by Suppliers, the provisions of these Terms shall prevail.
- 2.2 On written request itrvl or Wilderness Group will advise the Agent of the identity of the Supplier(s), if any, and provide the Agent with a copy of the relevant Supplier's terms and conditions.

## 3. **LIABILITY TO THE TRAVELER AND TRAVELER AGREEMENT**

- 3.1 The Agent acknowledges and agrees that, by virtue of its charging the Agent Margin, it is liable to each relevant Traveler for all claims of whatsoever nature, and itrvl and Wilderness Group shall not be liable to any Traveler in any manner whatsoever for claims, relating in any way to the Agent's acts or omissions.
- 3.2 The Agent shall ensure that the standard Traveler terms as prescribed by itrvl or Wilderness Group from time to time (**Traveler Agreement**) is effectively delivered to, drawn to the attention of, and accepted by all Travelers. To the extent this is not done pursuant to the Traveler accepting the itrvl Quotation, the Agent shall include such agreement in travel packs and by such other means as may be referred to in the General Information Manual or as otherwise directed by itrvl or Wilderness Group from time to time.

## 4. **INDEMNITY, LIABILITY AND FORCE MAJEURE**

### 4.1 Limited indemnities.

- 4.1.1 itrvl hereby indemnifies each Agent in respect of direct damages suffered by the Agent as a result of a breach of these Terms by itrvl where the direct and substantial cause thereof was the negligence or wilful misconduct of itrvl.
- 4.1.2 Wilderness Travel Shop hereby indemnifies each Agent in respect of direct damages suffered by the Agent as a result of a breach of these Terms by Wilderness Travel Shop where the direct and substantial cause thereof was the negligence or wilful misconduct of any member of the Wilderness Group.
- 4.1.3 Except for the aforementioned indemnities and to the greatest extent permitted by Applicable Law, itrvl, the Wilderness Group and the Suppliers will not be liable to the Agent in respect of any damages, losses or liabilities incurred by the Agent arising from or in connection with use of the Platforms or a breach of these Terms by itrvl or Wilderness Travel Shop.

## 4.2 Liability exclusions.

4.2.1 Notwithstanding anything to the contrary in these Terms, nothing in these Terms excludes or limits any liability to the Agent where it would be unlawful to do so. This includes (if applicable) liability for death or personal injury, fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by Applicable Law.

4.2.2 Notwithstanding anything to the contrary in these Terms, but subject to clause 4.2.1 above, itrvl, the Wilderness Group and the Suppliers shall not be liable for punitive damages, indirect damages, consequential damages, loss of profits, third party claims or any claims imposed on the Agent by laws or statutes anywhere in the world, to the greatest extent permitted by Applicable Law. itrvl, the Wilderness Group and the Suppliers shall not be liable for any damages, losses or other amounts that the Agent has agreed, settled or compromised without the prior written consent of itrvl and Wilderness Travel Shop, or which the Agent is otherwise contractually bound to pay to any other person or entity, in each case to the greatest extent permitted by Applicable Law.

4.2.3 To the greatest extent permitted by Applicable Law:

4.2.3.1 itrvl, the Wilderness Group and the Suppliers shall not be held liable for any loss or damage caused by, and does not guarantee or warrant absence of, any errors or omissions in, or corruption of, any Content, promotional material and travel information, publications and documentation (including any such material, information, publications and documentation made available in digital or electronic media or format, or made available on the Platforms);

4.2.3.2 itrvl and the Wilderness Group shall not be held liable for loss or damage caused by defects in Associated Products, or the acts or omissions of Suppliers and other third parties; and

4.2.3.3 itrvl, the Wilderness Group and the Suppliers will not be held liable for any loss or damage caused by a Virus, distributed denial-of-service attack, or other technologically harmful material that may infect the Agent's computer equipment, computer programs, data or other proprietary material due to the Agent's use of the Platforms or due to the Agent downloading of any Content on or through it or on any website linked to it.

4.3 Total aggregate liability. Subject to the rest of this clause 4, the total aggregate liability to the Agent and relevant Traveler of itrvl, the Wilderness Group and the Suppliers for all losses incurred by the Agent and that Traveler and arising under or in connection with these Terms in relation to any Tour and/or Services, whether in contract, delict, tort, breach of statutory duty, or otherwise, shall be limited to the amounts actually paid by the relevant Traveler, and received by itrvl or the Wilderness Group, for such Tour and/or Services.

4.4 Force majeure. In the event that itrvl, any member of the Wilderness Group or any Supplier (**Affected Party**) is delayed, restricted or prevented directly or indirectly from performing all or a material part of its obligations under these Terms as a result of a Force Majeure Event, the Affected Party shall (i) be relieved of its obligations under these Terms and not be in breach during the period that such Force Majeure Event and its consequences continue but only to the extent so restricted or prevented; and (ii) not be liable for any delay or failure in the performance of any obligations under these Terms caused by the Force Majeure Event or any loss or damages which the Agent may suffer due to or resulting from such delay or failure.

## 5. **ACCESSING THE PLATFORMS**

5.1 Browser access. The Platforms are web based and mobile applications and can be accessed through any web-based or mobile-based browser approved by itrvl or Wilderness Travel Shop, as the case may be. itrvl and Wilderness Group shall under no circumstances be responsible for the safe and reliable operation of web-based or mobile-based browsers.

### 5.2 Access control.

5.2.1 The Agent shall keep the Login Credentials strictly secret and secure, and shall ensure that only properly authorised Agents who are aware of these Terms and who are bound by appropriate confidentiality restrictions have access to the Login Credentials.

5.2.2 Any use of the Login Credentials shall be deemed to have been a use by the Agent, and the Agent shall be strictly liable for and bound by arrangements, bookings and other transactions made using the Login Credentials. itrvl has the right to disable any Login Credentials in respect of the itrvl Platform at any time, and Wilderness Travel Shop has the right to disable any Login Credentials in

respect of the Wilderness Windows at any time, if in their respective reasonable opinion the Agent has failed to comply with any of the provisions of these Terms.

5.2.3 The Agent shall be bound by the other use and access provisions contained in this clause 5 as well as the use, cookies and access policies applicable to the Platforms, as amended from time to time.

5.2.4 The Agent shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platforms or documents provided via the Platforms and, in the event of any such unauthorised access or use, shall promptly notify (i) itrvl, if it applies to the itrvl Platform, or (ii) Wilderness Travel Shop, if it applies to the Wilderness Window. If the Agent knows or suspects that anyone other than the Agent or its authorised representatives knows the Agent's Login Credentials, the Agent must promptly notify itrvl at contact@itrvl.com and Wilderness Travel Shop at enquiry@wilderness.co.za.

5.2.5 Access to the Platforms is permitted on a temporary basis. itrvl and Wilderness Group do not guarantee that the Platforms will always be available or be uninterrupted. itrvl and Wilderness Group will not be liable to the Agent if for any reason the Platforms or any Content is unavailable at any time or for any period, to the extent permitted by Applicable Law.

5.3 Agent undertakings. The Agent undertakes that:

5.3.1 it shall use the Platforms and documents provided via the Platforms, solely for the purposes of booking, management, delivery, receipt of and payment for Tours and Services for the relevant Travelers;

5.3.2 it shall not access, store, distribute or transmit any Viruses or Vulnerability, or any material during the course of its use of the Platforms that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (vi) is otherwise illegal or causes damage or injury to any person or property; and

5.3.3 it shall not, except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between itrvl and/or Wilderness Travel Shop and the Agent and except to the extent expressly permitted under these Terms:

5.3.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of a Platform or documents provided via a Platform (as applicable) in any form or media or by any means;

5.3.3.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of a Platform;

5.3.3.3 access all or any part of a Platform or documents provided via a Platform in order to build a product or service which competes with a Platforms or documents provided via a Platform;

5.3.3.4 use a Platform or documents provided via a Platform to provide services to third parties, other than that for Agents to provide services to Travelers related to the booking, management, delivery, receipt of and payment for Tours and Services;

5.3.3.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make a Platform or documents provided via a Platform available to any third party; or

5.3.3.6 attempt to obtain, or assist third parties in obtaining, access to a Platform or documents provided via a Platform.

## 6. **PROVISIONAL BOOKINGS**

Provisional bookings do not create or imply any obligation to make the relevant Tour or Service available to the Agent and/or relevant Traveler, but do have an effect on the Inventory and may harm itrvl and/or the Wilderness Group commercially if not dealt with strictly in accordance with itrvl's and the Wilderness Group's policies and in a commercially responsible manner. Provisional bookings are accordingly subject to the following terms and conditions:

6.1 all provisional bookings quoted will be held available for the Booking Validity Period unless another period is expressly referred to on the relevant Quotation. Thereafter, the provisional bookings shall

automatically lapse unless otherwise agreed in writing by itrvl or a member of the Wilderness Group;  
and

- 6.2 no duplicate provisional bookings (other than those that have no effect on Inventory) may be made directly or indirectly by the Agent whereby alternative or multiple itineraries are created for the Agent in terms of which bookings are provisionally made for:
  - 6.2.1 the same camp or facility on different dates (except where, on a single Tour itinerary, there are multiple visits to the same camp or facility);
  - 6.2.2 more than one camp or facility on the same date, excluding an instance where one camp is booked and another camp is specifically held and identified as "waitlisted" by itrvl or a member of the Wilderness Group;
  - 6.2.3 any other Services, Tour or Air Services where, in the sole opinion of itrvl or a member of the Wilderness Group, the intention of the Agent was to reserve multiple booking options so that the alternative Services, Tour or Air Services became unavailable to third parties; or
  - 6.2.4 the same Agent or Traveler under a different booking reference, or with different Travel Shops.

## 7. **CONFIRMED BOOKINGS**

Provisional bookings will become confirmed bookings that are finally binding on the Traveler and the Agent, if applicable, once:

- 7.1 the Deposit, if applicable, has been received by itrvl or a member of the Wilderness Group in accordance with these Terms; and
- 7.2 written confirmation is given by itrvl or a member of the Wilderness Group that the booking is confirmed.

## 8. **TOUR AND SERVICE CHANGES AND CANCELLATIONS**

### 8.1 Changes to Tour or Services by itrvl or Wilderness Group.

- 8.1.1 Although every effort is made to adhere to booked schedules and itineraries, itrvl and Wilderness Group reserves the right to unilaterally make changes to the Tour, Services and the proposed itinerary, and may even in certain circumstances be obliged to cancel a Tour or Services, in each case as a result of a material change in circumstances, without prior notification. Such material changes may include (but are not limited to) health, safety, security and operational considerations.
- 8.1.2 itrvl, the Wilderness Group and the Suppliers are not liable for any loss or damage caused by changes or resultant delays arising from the circumstances contemplated in clause 8.1.1 above, and any additional expenses incurred as a result thereof will be for the account of the Traveler; provided that:
  - 8.1.2.1 itrvl and Wilderness Group shall only be entitled to change a Tour or Service in terms of clause 8.1.1 to an alternative that is (i) not of a materially lower standard or quality, and (ii) in respect of camps, of the same category (for example, if the originally confirmed booking is for a Premier Camp, the changed booked must also be for a Premier Camp); and
  - 8.1.2.2 the additional expense for the relevant line item cannot be greater than 10% of the expense for that line item in terms of the originally confirmed booking,

failing which, the Agent or Traveler shall be entitled to cancel the relevant booking and be refunded the amount of the Quotation already paid, less (i) the Deposit and (ii) any additional costs to Suppliers in respect of which itrvl or Wilderness Group is not able to obtain a refund, having made diligent efforts to do so.

### 8.2 Cancellation of Tour or Services by itrvl or Wilderness Group.

- 8.2.1 itrvl or the relevant member of the Wilderness Group may in their discretion, at any time cancel or terminate the Traveler's booking in the event of the Traveler:
  - 8.2.1.1 having or reasonably be suspected of having a communicable or contagious illness or disease;
  - 8.2.1.2 conducting himself/herself in an illegal or improper manner;

- 8.2.1.3 conducting himself/herself in a manner that renders him/her materially incompatible with either the staff, or the fellow customers of Wilderness Group and/or their Suppliers; and/or
- 8.2.1.4 conducting himself/herself in such a manner that he/she endangers himself/herself and or any other person.
- 8.2.2 In the event that itrvl or the relevant member of the Wilderness Group terminates any booking in terms of clause 8.2 above, the Traveler whose booking is so cancelled, will not be entitled to any refund of the Tour or Service price unless this is required by Applicable Law.

### 8.3 Changes to Tour or Services by Agent.

If a Traveler wishes to change itinerary after a Deposit has been made, itrvl will, and Wilderness Travel Shop will procure that the relevant member of the Wilderness Group will, endeavour to make the changes required. itrvl, the relevant member of the Wilderness Group and/or the Agent may charge the Traveler a fee for a Traveler-initiated change to the booking after receipt of payment, and additional airline, hotel and/or Supplier fees may also be charged. Any change made will result in the booking being re-priced at the rate in effect at the time of the change and additional Deposit or balance payments may be required to confirm the change.

## 9. **PRICING CHANGES AND ERRORS**

- 9.1 Changes. itrvl will, and Wilderness Travel Shop will, and will procure, that the relevant member of the Wilderness Group will, make every effort to furnish the Agent with accurate prices in respect of the Tours and Services booked through a Platform. If prices change due to increases in underlying costs such as fuel costs, Supplier costs, currency fluctuations and/or government levies or taxes, itrvl or the relevant member of the Wilderness Group will inform the Agent accordingly, and itrvl and Wilderness Group reserves its right to adjust the pricing of the relevant Tour and/or Services accordingly. If the increase in underlying costs occurs after any applicable booking confirmation, such adjustment shall be directly related and proportional to the increase in underlying costs, evidence of which will be provided to the Agent as soon as reasonably possible following request.
- 9.2 Errors. In the event of an error in connection with the pricing or charging of a Tour and/or Service, itrvl and Wilderness Group reserves the right to correct such error and revise the Agent's order accordingly (including charging the correct price) or to cancel the purchase and refund any amount charged. The Agent's sole remedy in the event of a billing error is to obtain a refund for the excess amount charged. To be eligible for such refund, the Agent must provide notice of any billing error within 30 days of the date of the invoice in which such error first appeared.
- 9.3 Pricing structures and reward programs offered by itrvl and Wilderness Group shall be as specified on the Platforms from time to time.

## 10. **DEPOSIT AND PAYMENT**

### 10.1 Wilderness Deposit.

- 10.1.1 The Agent acknowledges that itrvl performs booking services for the Wilderness Group, and that the actual operation of Tours and Services is conducted by various members of the Wilderness Group, the Suppliers or by other third parties. itrvl and/or the Wilderness Group incur costs, expenses as well as other obligations towards other companies and third parties once bookings are made, which must be satisfied out of Wilderness Deposits and other payments received from the Traveler and/or Agent.

10.1.2 Accordingly, it is agreed that the Wilderness Deposits are not refundable in any circumstances.

### 10.2 Payments.

- 10.2.1 In relation to each Quotation accepted by a Traveler, payment shall occur through the following mechanisms:

10.2.1.1 by payment to itrvl by the Traveler or by the Agent (acting on behalf of the Traveler), in respect of any booking made via the itrvl Platform (**itrvl Payment**); or

10.2.1.2 by payment directly to Wilderness Group by the Traveler or by the Agent (acting on behalf of the Traveler) in respect of any Direct Booking (**Direct Payment**).

- 10.3 For each Quotation accepted by a Traveler, in consideration for the Tours and Services provided to a Traveler, the Quotation Amount is payable as follows:
- 10.3.1 if a Deposit is payable, it is due within 7 days of acceptance of the relevant Quotation, and the Balance is due at least 90 days prior to commencement of the Tours and Services (whichever is earlier); and
- 10.3.2 if a Deposit is not payable, the full amount is due at least 90 days prior to commencement of the Tours and Services (whichever is earlier).
- 10.4 Payment processing. Payment processing services for itrvl Payments are provided by Stripe and are subject to the [Stripe Connected Account Agreement](#), which includes the Stripe [Terms of Service](#) (collectively, the **Stripe Services Agreement**). By agreeing to these Terms or continuing to operate as an Agent on the itrvl Platform, the Agent agrees to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time.
- 10.5 Payment method. The Agent may only pay the Quotation Amount using valid payment methods acceptable to (i) itrvl or as specified on the itrvl Platform, in respect of itrvl Payments, or (ii) Wilderness Travel Shop or as specified on the Wilderness Window, in respect of Direct Payments; which may include, without limitation, credit card payment, automated clearing house and/or wire transfers. The Agent represents and warrants that it is authorized to use the payment method it designates via the relevant Platform. The Agent authorizes itrvl or Wilderness Group, as applicable, to charge the Agent's designated payment method for the Quotation Amount. If the payment method cannot be verified, is invalid or is otherwise not acceptable to itrvl or Wilderness Group, as applicable, the Agent's purchase may be suspended or cancelled.
- 10.6 Credit card chargebacks. The Agent has the ability to dispute charges with credit card companies (**Chargebacks**). If the Agent has a question about a charge on its credit card statement, it agrees to contact itrvl (in respect of an itrvl Payment) or Wilderness Group (in respect of a Direct Payment) prior to disputing a charge with its credit card company to discuss with itrvl or Wilderness Group, as applicable, any questions or concerns about the charges. itrvl or Wilderness Group, as applicable, will work with the Agent in resolving its concerns, and shall be entitled to charge an administration fee to cover the costs they incur in that regard. itrvl or Wilderness Group, as applicable, retains the right to dispute any Chargeback that it believes is improper. itrvl and Wilderness Group also retains the right to cancel any Tour or Service in the event of a Chargeback related to that Tour or Service.
- 10.7 Payment default.
- 10.7.1 If payment is not made by due date:
- 10.7.1.1 itrvl or Wilderness Group will in their discretion be entitled to cancel the Tour and/or Services and/or preclude the right to travel; and
- 10.7.1.2 if itrvl or Wilderness Group does not cancel the Tour and/or Services, itrvl or Wilderness Group, as applicable, will be entitled to demand payment of the whole of the outstanding balance of debt, together with accrued interest thereon and any costs immediately, and itrvl or Wilderness Group, as applicable, shall be entitled to proceed with the immediate recovery thereof without prior notice to the Agent or Traveler and without prejudice to the other rights or remedies in law of itrvl or Wilderness Group and/or without prejudice to any claims which itrvl or Wilderness Group may have against the Agent or Traveler arising from any breach of these Terms or any booking.
- 10.7.2 In the event that the Traveler fails to make any payment due to itrvl or Wilderness Group by the due date for payment, the Traveler shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 0.1% per day.
- 10.8 Certificate. A certificate under the hand of any director of itrvl (in respect of itrvl Payments) or Wilderness Travel Shop (in respect of Direct Payments) (whose appointment need not be proven) shall constitute *prima facie* proof of any amount owed by the Traveler from time to time under these Terms.
- 10.9 Taxes. The Agent is responsible for all Applicable Taxes. itrvl or Wilderness Group will collect applicable sales tax if it determines that it has a duty to collect it and will provide notice of such taxes in the Quotation Amount.
- 10.10 Escrow arrangements. The Agent acknowledges and agrees that by paying itrvl in respect of itrvl Payments, it designates and appoints itrvl as escrow agent, to act on behalf of the Agent and to hold

the amounts paid by the Agent (**Escrow Amount**) in escrow on behalf of the Agent, to make the payments described in these Terms, and to otherwise deal with the Escrow Amount in accordance with these Terms.

10.11 Set-off. Notwithstanding anything to the contrary contained in these Terms:

10.11.1 no Traveler shall be entitled to apply the principle of set-off against any indebtedness to itrvl or any member of the Wilderness Group;

## 11. FEES AND PAYMENTS.

11.1.1 Agent's Transaction Fee. An amount equal to 1% of the Quotation Amount shall be payable by the Agent to itrvl as a transaction fee in respect of all Quotations accepted by Travelers generated through the itrvl Platform on the basis set out below (**Agent Transaction Fee**).

11.1.2 Agent Deposit.

11.1.2.1 itrvl Payment. In respect of each itrvl Payment, the Agent Deposit, less a pro rata portion of the Agent Transaction Fee, which shall be withheld by itrvl in part payment of the Agent Transaction Fee, shall be due and payable to the Agent within 30 days of receipt by itrvl of such amount in respect of an itrvl Payment.

11.1.2.2 Direct Payment. The Agent Deposit shall be withheld by the Agent in respect of each Direct Payment.

11.1.3 Agent Margin. The Agent Margin, less (i) the amount paid in terms of clause 11.1.2 above, and less (ii) the balance of the Agent's Transaction Fee (if applicable), which shall be withheld by itrvl in settlement of the outstanding Agent Transaction Fee, shall be due and payable within 30 days following completion of the Tour by and provision of the Services to the Traveler.

## 12. CANCELLATION CHARGES

12.1 In the event of Cancellation, the Deposit will be forfeited in all circumstances, and the Traveler shall be entitled to be refunded, and the Agent shall be entitled to be paid, the following amounts within 30 days of Cancellation:

<u>Period before departure of Cancellation</u>	<u>Refund to Traveler</u>	<u>Amount payable to the Agent</u>
More than 90 days	<ul style="list-style-type: none"> <li>- Deposit is forfeited</li> <li>- If the Balance has been paid to itrvl or Wilderness Group, it will be refunded to the Traveler in full</li> <li>- If the Balance has not been paid to itrvl or Wilderness Group, the Traveler will receive no refund</li> </ul>	No amount payable.
61 and 90 days	<ul style="list-style-type: none"> <li>- Deposit is forfeited</li> <li>- If the Balance has been paid to itrvl or Wilderness Group, the Traveler will be refunded an amount equal to the lesser of (i) 50% of the Quotation Amount and (ii) the Balance</li> <li>- If the Balance has not been paid to itrvl or Wilderness Group, the Traveler will receive no refund</li> </ul>	The balance remaining following settlement of (i) the refund owing to the Traveler, (ii) the amount payable to Wilderness Group, being 50% of the Wilderness Quotation Amount, less (x) the Wilderness Deposit and (y) the outstanding Transaction Fee payable by Wilderness Travel Shop (which, for the avoidance of doubt, is separate from the Agent Transaction Fee), and (iii) the outstanding Agent Transaction Fee payable to itrvl
31 and 60 days	<ul style="list-style-type: none"> <li>- Deposit is forfeited</li> <li>- If the Balance has been paid to itrvl or Wilderness Group, the Traveler will be refunded an amount equal to the lesser of (i) 25% of the</li> </ul>	The balance remaining following settlement of (i) the refund owing to the Traveler, (ii) the amount payable to Wilderness Group, being 75% of the Wilderness Quotation Amount,

	Quotation Amount and (ii) the Balance - If the Balance has not been paid to itrvl or Wilderness Group, the Traveler will receive no refund	less (x) the Wilderness Deposit and (y) the outstanding Transaction Fee payable by Wilderness Travel Shop, and (iii) the outstanding Agent Transaction Fee payable to itrvl
30 days or less	Traveler will receive no refund	The balance remaining following settlement of (i) the amount payable to Wilderness Group, being 100% of the Wilderness Quotation Amount, less (x) the Wilderness Deposit and (y) the outstanding Transaction Fee payable by Wilderness Travel Shop, and (ii) the outstanding Agent Transaction Fee payable to itrvl

12.2 Cancellation will be without penalty to itrvl or the Wilderness Group, who will, save as set out in clause 12.1 above, have no further liability to the Agent and/or Traveler in respect thereof. If an Agent has provided itrvl or Wilderness Group with its credit or debit card details, it agrees that they may use such credit or debit card details to obtain payment of any balance due by the Traveler under these Terms, unless the Agent or Traveler has specifically notified itrvl or Wilderness Group, as applicable, in writing that the credit or debit card on file is not to be used for the payment of any outstanding balance.

13. **ADMINISTRATOR**

The Agent shall designate one of its staff as a responsible administrator (**Administrator**) for purposes of managing and administering the access to and use of the Platforms by the Agent and its employees and contractors (**Agent Representatives**). If any Agent Representative ceases to work for or be controlled by the Agent for any reason, or if such Agent Representative breaches any of the terms or conditions of use of a Platform, then the Administrator shall have the responsibility to terminate that Agent Representative's access to the Platforms, and the Agent hereby indemnifies itrvl and the Wilderness Group and holds each of them harmless from any loss or damage caused as a result of failing to immediately terminate a Agent Representative's access in accordance with this clause 13.

14. **THE GENERAL INFORMATION MANUAL**

14.1 The Agent warrants that it is familiar with the contents of the General Information Manual and all other written terms and conditions contained in any of itrvl's and the Wilderness Group's documentation in respect of Tour and Services that it has received and/or has access to such including, without limitation, the provisions of the General Information Manual relating to travel documentation, insurances, luggage and weight restrictions and information relevant to the specific itinerary in respect of, amongst other things, camps and activities.

14.2 In the event that there is any conflict, ambiguity or inconsistency between the Terms and the documents referred to in clause 14.1 above, the provisions of the Terms shall prevail.

14.3 The Agent shall regularly check for and familiarise itself with any amendments and updates to the General Information Manual as published on the applicable Platform or otherwise notified to the Agent.

15. **HEALTH**

15.1 The Agent shall ensure that the Traveler is made aware of all health related requirements of the Tour, and any specific requirements that may impact on the Traveler's ability to travel in the territories specified in the Tour itinerary, as well as any provisions of the General Information Manual applicable to health.

15.2 The Agent shall ensure that the Traveler acknowledges an awareness of the proposed itinerary and confirms that he/she is medically fit, in good physical and mental health and that there is nothing which renders him/her unfit to undertake the Tour.

15.3 The Agent shall ensure that any Traveler with a pre-existing medical condition(s) or illness declares the true nature of such condition(s), through inputting such information onto a Platform, and the relevant member of the Wilderness Group, before the commencement of the Tour. The Agent will ensure that the Traveler understands and agrees that he/she is responsible for attending to any medical condition

which he/she may have and must consult with his/her medical practitioner in respect of all medical conditions which might be affected by his/her participation in the Tour, activities or associated activities.

- 15.4 The Agent shall ensure that the Traveler/s warrants that they will carry sufficient prescribed and chronic medication with them at all times for the duration of the Tour and for one additional week. The Agent will furthermore ensure that the Traveler understands that it is his/her responsibility to ascertain whether his/her medication may be considered a prohibited substance by the country/countries that he/she is visiting.
- 15.5 The Agent shall ensure that the Traveler acknowledges that he/she has been pre-advised that certain areas included in the Tour may be malaria and potentially other tropical and/or communicable disease infected areas and acknowledge that he/she has been advised to consult with his/her medical practitioner regarding the taking of reasonable anti-malaria and other tropical and/or communicable disease precautions.
- 15.6 Without derogating from the generality of the foregoing, the Agent shall ensure that the Traveler understands that it is his/her duty to ensure that all vaccinations and inoculations (including but not limited to Yellow Fever) are valid, or have been obtained timeously and that the Traveler carries proof thereof with him/her at all times.

## 16. **AIR SERVICES<sup>2</sup>**

- 16.1 No international Air Services will be booked through itrvl or Wilderness Group, with the exception of flights between the first and last night of accommodation booked.
- 16.2 It is recorded that certain air transfers and flight operations are conducted through Internal Air Services. itrvl and the Wilderness Group may however subcontract the flying Services to Preferred Air Service operators, in which instance the Preferred Air Service operator will be responsible for all activities in respect of the flight to and from destinations.
- 16.3 All bookings that include Air Services are subject to the terms and conditions applicable to specific Air Services, which in the case of External Air Services and Preferred Air Services must be obtained from the relevant carriers, operators or charter companies. itrvl, the Wilderness Group and the Suppliers shall not be liable for delays, costs, charges, cancellations, losses or damages related to Air Services.
- 16.4 itrvl, the Wilderness Group and the Suppliers shall not be liable for any delays or additional costs incurred as a result of External Air Service operators (or self-flying clients) either changing schedule or not running according to schedule for any reason whatsoever, including but not limited to adverse weather conditions and operational delays.
- 16.5 The Agent shall ensure that an External Air Service operator (or Traveler if the Traveler is flying him/herself) using an Aerodrome:
  - 16.5.1 is in possession of Aerodrome protocols applicable to the Aerodrome and region in question;
  - 16.5.2 signs the standard Wilderness Aerodrome use and indemnity agreement, which can be obtained from itrvl on written request; and
  - 16.5.3 supplies proof of insurance in respect of the aircraft to be used in each flight,

not less than 4 weeks prior to the commencement of the relevant Tour, failing which the External Air Service and/or Traveler may be denied permission to use the Aerodrome(s) at their cost and without any liability on the part of the any member of the Wilderness Group or Supplier.

## 17. **AWARENESS OF HAZARDS, RISKS AND DANGERS**

- 17.1 The Agent warrants, acknowledges, and shall procure that each Traveler acknowledges that it is acquainted with, aware of, and appreciates:
  - 17.1.1 the real hazards and risks associated with wildlife areas, game and nature reserves and game lodges (which may be situated in unfenced wildlife areas);

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<sup>2</sup> To be considered further, including air cancellation policy.

- 17.1.2 the hazards and risks associated with rivers, streams, lakes and other bodies of water that may be affected by unpredictable weather, tides and other circumstances, and that may not have effective warning or control systems that might be expected in developed-world jurisdictions;
- 17.1.3 the real dangers and risks associated with various forms of travel in remote locations, which usually have poorly maintained infrastructure;
- 17.1.4 the danger and risk of suffering bodily harm, injury, illness, death, damages as well as loss of or damage to property, which may arise as a result of an encounter with or presence of wild, dangerous or unpredictable animals (including birds, mammals, amphibians, reptiles, fish and insects), as well as the prevalence of communicable, tropical and other diseases, and similar health hazards;
- 17.1.5 the risks associated with undeveloped or partially developed countries and jurisdictions, including acts of terrorism, the unavailability of reliable electricity and communications, and problems associated with limited or unavailable health, safety and security services; and
- 17.1.6 that he/she voluntarily participates in the Tour(s) and/or Service(s) and associated activities, and make use of all services and facilities of the Wilderness Group and the Suppliers, entirely at their own risk

(collectively, **Hazards, Risks and Dangers**).

- 17.2 The Agent shall furthermore ensure that its staff, employees and other representatives are also made aware of the Hazards, Risks and Dangers, and the necessity of communicating the contents thereof to Travelers.

## 18. PROTECTION OF PERSONAL INFORMATION<sup>3</sup>

- 18.1 itrvl and Wilderness Group receives various types of information (**Information**) from Agents who access the Platforms, including personal information or personal data as defined in any Applicable Laws relating to such personal information, data and electronic communications and transactions (**Personal Information**). It is agreed that:
  - 18.1.1 the Agent shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Information that it provides;
  - 18.1.2 [itrvl shall, and Wilderness Travel Shop shall procure that the relevant member of the Wilderness Group shall, make secure back-up copies of the Information on such regular basis as is reasonable for the particular data concerned, and at a minimum at least once every two weeks make a secure back-up of all Information. In the event of any loss or damage to Information, itrvl shall, and Wilderness Travel Shop shall procure that relevant member of the Wilderness Group shall, use reasonable commercial endeavours to restore the lost or damaged Information from the latest back-up of such Information;] <sup>4</sup>
  - 18.1.3 the Parties shall each comply with all requirements of the Applicable Laws relating to data protection and privacy. This clause 18.1 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under such laws;
  - 18.1.4 The Agent hereby consents to itrvl, the Wilderness Group and the Suppliers: (i) collecting, storing, using and otherwise processing its Personal Information for the purpose of carrying out their obligations in terms of these Terms and for purposes of any Tours and Services; (ii) transferring, storing and otherwise processing its Personal Information outside of the country where they reside in order to carry out the Services and the other obligations under these Terms in accordance with Applicable Law; and (iii) retaining and using the Personal Information as set out in clause 18.1.5 below;
  - 18.1.5 itrvl, the Wilderness Group and the Suppliers may electronically collect, store, use and otherwise process Personal Information, including the Agent's name, contact details, surfing patterns, email addresses, IP addresses, etc, for the purpose of carrying out any current and future Tours and Services and will retain such Personal Information for as long as is necessary in order to achieve this purpose, and to comply with any other statutory obligations;

<sup>3</sup> To be vetted by EU counsel.

<sup>4</sup> Is the back-up done by both itrvl and Wilderness? The Framework Agreement currently only indicates that Wilderness will do it.

- 18.1.6 itrvl shall, Wilderness Travel Shop shall procure that the Wilderness Group shall, and itrvl and Wilderness Travel Shop shall use reasonable commercial endeavours to ensure that the Suppliers shall, establish and maintain adequate security measures to secure the integrity and confidentiality of any and all Personal Information that it processes, and in this regard will strictly comply with the requirements in Applicable Law as if it were a “responsible party” or “controller”;
- 18.1.7 itrvl shall, Wilderness Travel Shop shall procure that the Wilderness Group shall, and itrvl and Wilderness Travel Shop shall use reasonable commercial endeavours to ensure that the Suppliers shall, treat Personal Information received by it with reasonable care. Whenever the Agent is of the opinion that a member of the Wilderness Group or Supplier has failed to do so, the Agent may inform itrvl or Wilderness Group thereof by sending an email to contact@itrvl.com or enquiry@wilderness.co.za. itrvl will review the Agent’s representations made by email and, if within itrvl’s discretion deemed advisable (and where possible taking commercially reasonable and affordable measures), or where required by Applicable Law, take corrective action and in any event within 20 (twenty) days respond to the Agent informing it about corrective actions taken, if any; and
- 18.1.8 despite such undertaking, the Agent acknowledges that it is possible for internet-based communications to be intercepted. Without the use of encryption, the internet is not a secure medium and privacy cannot be ensured. Internet e-mail is vulnerable to interception and forging.
- 18.2 Except to the extent prohibited under Applicable Law, itrvl, the Wilderness Group and Suppliers will not be responsible for any damages suffered by the Agent or any third party as a result of the transmission of confidential or other information disclosed to itrvl, the Wilderness Group and/or their Suppliers through the internet, or that the Traveler expressly or implicitly authorise itrvl, the Wilderness Group and/or their Suppliers to make, or for any errors or any changes made to any transmitted information.
- 18.3 To ensure acquaintance with and awareness of the privacy measures and policies of the Wilderness Group, the Agent must take care to read and understand the privacy policies and disclaimers published on the itrvl Platform, as amended from time to time, which forms part of these Terms.
- 18.4 Notwithstanding the aforesaid, in the event that the contents of this clause 18 conflict with the provisions of any legislation governing the protection of Personal Information, to which a particular Agent is subject, then the relevant provisions of this clause 18 will not apply to that particular Agent to the extent necessary to resolve the inconsistency, and (for that specific instance only) the provisions of clause 18 must be read as if amended to resolve the inconsistency.

## 19. CONTRIBUTIONS

- 19.1 Where a Platform permits the Agent to make any submissions, comments or other contributions (**Contributions**):
- 19.1.1 the Agent grants itrvl and each member of the Wilderness Group a worldwide, irrevocable, perpetual, non-exclusive, royalty-free licence to use, store, modify, copy, adapt, publish, reproduce translate and distribute its Contributions, and make them available to third Parties, without restriction as to field of use or territory;
- 19.1.2 the Agent shall at all times ensure that its Contributions shall:
- 19.1.2.1 be accurate, complete and up to date (where they state facts);
- 19.1.2.2 be genuinely held (where they state opinions);
- 19.1.2.3 be relevant; and
- 19.1.2.4 comply with Applicable Law;
- 19.1.3 the Agent shall at all times ensure that its Contributions shall not:
- 19.1.3.1 be false, unlawful, harassing, defamatory, abusive, hateful, racial, threatening, harmful, vulgar, obscene, seditious or otherwise objectionable or offensive material of any kind or nature;
- 19.1.3.2 be likely to deceive any person;
- 19.1.3.3 promote any illegal activity;
- 19.1.3.4 breach any Applicable Law;

- 19.1.3.5 give the impression that they emanate from any member of the Wilderness Group or Supplier, if this is not the case;
  - 19.1.3.6 give the impression that they are endorsed by any member of the Wilderness Group or Supplier; or
  - 19.1.3.7 advocate, promote or assist any unlawful act including, but not limited to copyright infringement or computer misuse.
- 19.2 In uploading Contributions, it is the Agent's responsibility to review its Contributions on a regular basis and to ensure that they comply with the provisions of this clause 19. If any Contribution does not, then the Agent must, depending on the context, publish an updated Contribution, modify the previously uploaded Contribution or contact itrvl or Wilderness Travel Shop, as applicable, at contact@itrvl.com or enquiry@wilderness.co.za to remove the Contribution from the relevant Platform.
- 19.3 No member of the Wilderness Group or Supplier will be liable for any breach by the Agent of this clause 19. The Agent indemnifies each member of the Wilderness Group and Supplier against any and all losses, damages, costs or expenses (whether direct or indirect) which they may suffer or incur and all and any claims which may be brought against them by any third party in respect of any loss, liability (whether actual, contingent, or otherwise), damage, costs and expenses of any nature whatsoever as a consequence of or which may arise from or be attributable to the Agent's breach of this clause 19.
- 19.4 The Agent's Contributions may be removed from the relevant Platform at the sole discretion of itrvl or Wilderness Travel Shop, as applicable, where any such Contributions do not comply with the provisions of this clause 19.

## 20. **RULES ABOUT LINKING**

The Agent may link to any page of the itrvl Platform, provided that itrvl's prior written consent is obtained and provided further that the Agent does so in a way that is fair and legal and does not damage any member of the Wilderness Group's reputation or take advantage of it. The Agent must not establish a link in such a way as to suggest any form of association, approval or endorsement on the part of any member of the Wilderness Group where none exists. The Agent must not establish a link to the itrvl Platform in any website that is not owned, managed or controlled by the Agent. The itrvl Platform must not be framed on any other site, nor may the Agent create a link to any part of the itrvl Platform other than the home page. itrvl reserves the right to withdraw linking permission without notice.

## 21. **CHANGES TO THE PLATFORMS**

- 21.1 itrvl may update and modify the itrvl Platform from time to time, and may suspend, withdraw, discontinue, or change all or any part of the itrvl Platform or the Content on the itrvl Platform, including that itrvl may remove any Content from the itrvl Platform at any time. Any of the Content on the itrvl Platform may be out of date at any given time and itrvl is under no obligation to update it.
- 21.2 Wilderness Travel Shop may update and modify the Wilderness Window from time to time, and may suspend, withdraw, discontinue, or change all or any part of the Wilderness Window or the Content on the Wilderness Window, including that Wilderness Travel Shop may remove any Content from the Wilderness Window at any time. Any of the Content on the Wilderness Window may be out of date at any given time and Wilderness Travel Shop is under no obligation to update it.

## 22. **INTELLECTUAL PROPERTY RIGHTS**

- 22.1 itrvl is the owner or the licensee of all intellectual property rights in, to and of the itrvl Platform and the Content displayed on the itrvl Platform. Those works are protected by intellectual property laws and treaties around the world. All such rights are reserved.
- 22.2 The relevant member of the Wilderness Group is the owner or the licensee of all intellectual property rights in, to and of the Wilderness Window and the Content displayed on the Wilderness Window. Those works are protected by intellectual property laws and treaties around the world. All such rights are reserved.
- 22.3 The Agent may be granted the ability to share, edit, modify, download, or print certain Content. To the extent that the Agent is not granted such ability, the Agent is not entitled to share, edit, modify, download, print, or use in any other way any applicable Content. Where the Agent is granted this ability, the Agent may print off one copy of and may download extracts of Content for the Agent's use only.

- 22.4 The Agent must not modify the paper or digital copies of any materials the Agent has printed off or downloaded in any way, and the Agent must not use, share or edit any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text, or without acknowledging the source of such Content.
- 22.5 If the Agent shares, modifies, edits, copies, downloads, prints off, or uses in any other way, any part of a Platform or Content in breach of these Terms, the Agent's right to use that Platform will cease immediately and the Agent must return or, if so instructed, destroy any copies of the materials, the Platform or Content that the Agent has made.

### 23. **DISCLAIMER**

- 23.1 The Content on the Platforms is provided for general information only. It is not intended to amount to advice on which the Agent should rely. The Agent must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the Content on a Platform.
- 23.2 Although itrvl and Wilderness Travel Shop make reasonable efforts to update the information on the itrvl Platform and Wilderness Window, respectively, neither itrvl nor any members of the Wilderness Group make any representations, warranties or guarantees, whether express or implied, that the Content on the Platforms is accurate, complete or up to date.
- 23.3 The Content on or accessed through the Platforms is provided "as is", without any conditions, warranties or other terms of any kind. In particular, to the extent permitted by Applicable Law, neither itrvl nor any member of Wilderness Group make any representations, warranties or guarantees, whether express or implied:
- 23.3.1 that the Content on the Platforms is accurate, complete or up-to-date; or
- 23.3.2 as to merchantability, title, non-infringement, compatibility, security, accuracy, completeness, sufficiency, availability, adequacy, quality, reliability or fitness for any particular purpose of the Content available or created through, published or incorporated or made available, on or through the Platforms.

### 24. **BREACH**

- 24.1 In the event that the Agent breaches these Terms in any respect whatsoever, the aggrieved Party will be entitled (without limiting any other rights or actions which the aggrieved Party might have in terms of these Terms or any Applicable Law) to:
- 24.1.1 terminate the Agent's access to the relevant Platform;
- 24.1.2 cancel these Terms;
- 24.1.3 claim damages from the Agent;
- 24.1.4 institute urgent or other proceedings against the Agent to enforce any obligation of the Agent; and/or
- 24.1.5 take any other steps available in law which aggrieved Party may consider advisable to protect the rights and interests of itrvl, any members of the Wilderness Group or any Supplier.
- 24.2 In addition, the Agent acknowledges and agrees that, should itrvl or the relevant member of the Wilderness Group terminate a Supplier Agreement or any Tours and/or Services to be provided to an Agent, in accordance with the terms applicable thereto (including under these Terms, where applicable), the Agent shall have no claim against itrvl or any member of the Wilderness Group arising from or in relation to any such termination.
- 24.3 The Agent acknowledges and agrees that if itrvl's agreement with Wilderness Travel Shop expires or terminates for any reason, these Terms will automatically terminate and the Agent shall be entitled to sign a new agreement directly with Wilderness Travel Shop or another member of the Wilderness Group relating to the Wilderness Window.
- 24.4 Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination of these Terms shall remain in full force and effect.

## 25. **ARBITRATION**

### 25.1 Separate, divisible agreement.

This clause is a separate, divisible agreement from the rest of these Terms and shall:

25.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of these Terms and not to this clause. The Parties intend that any such issue shall be subject to arbitration in terms of this clause 25;

25.1.2 remain in effect even if these Terms terminates or is cancelled.

### 25.2 Disputes subject to arbitration.

Any dispute arising out of or in connection with these Terms or the subject matter of these Terms, including, without limitation, any dispute concerning:

25.2.1 the existence of these Terms apart from this clause 25;

25.2.2 the interpretation and effect of these Terms;

25.2.3 the Parties' respective rights or obligations under these Terms;

25.2.4 the rectification of these Terms;

25.2.5 the breach, termination or cancellation of these Terms or any matter arising out of the breach, termination or cancellation;

25.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of these Terms apart from this clause is valid and enforceable,

[shall be decided by international arbitration under the International Arbitration Act 2008 (**IA Act**). The provisions of the First Schedule to the IA Act shall apply to the arbitration. The arbitration shall be conducted pursuant to the MIAC Arbitration Rules 2018 (**Rules**), which Rules will be incorporated by reference herein, and under the direction of the Mauritius International Arbitration Centre (**MIAC**).]<sup>5</sup>

### 25.3 Appointment of arbitrator.

25.3.1 There shall be one arbitrator. The Parties shall agree on the identity of the arbitrator who shall be appointed according to the Rules. If agreement is not reached within 14 days after any Party makes a written request for such appointment, the arbitrator shall be appointed by the MIAC.

25.3.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

### 25.4 Arbitration.

25.4.1 The arbitration shall be held in Puerto Rico with only the Parties to the dispute and their representatives present thereat.

25.4.2 It is the intention of the Parties that the arbitration shall, where possible, be held and concluded in 21 days after it has been demanded. The Parties to the dispute shall use their best endeavours to procure the expeditious completion of the arbitration.

25.4.3 The decision of the arbitrator shall be final and binding on the Parties.

25.4.4 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated in these Terms.

25.4.5 The arbitrator shall be obliged to give his award in writing fully supported by reasons.

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<sup>5</sup> These provisions apply to arbitration in Mauritius. To be considered by legal counsel in Puerto Rico.

- 25.4.6 The language of the arbitration proceedings, and of all orders, decisions, and the award, shall be English.
- 25.4.7 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.
- 25.5 Application to court for urgent interim relief. Nothing contained in this clause 25.5 shall prohibit a Party from approaching any court of Puerto Rico for urgent interim relief pending determination of the dispute by arbitration. The Parties consent and submit to the exclusive jurisdiction of the courts of Puerto Rico in this regard.

26. **MISCELLANEOUS PROVISIONS**

- 26.1 Waiver. Any failure by any Party to exercise or delay by any Party in exercising its rights or remedies provided under these Terms by law does not constitute a waiver of that or any other right or remedy and does not prevent, limit or restrict the future exercise or enforceability of that or any other rights or remedies. No single or partial exercise of any right or remedy provided under these Terms or by law prevents or restricts the further exercise of that or any other right or remedy.
- 26.2 No Partnership, Agency or Joint Venture. The Parties agree that these Terms does not constitute any kind of partnership, agency or joint venture between them.
- 26.3 Remedies. No remedy conferred by these Terms is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy shall be cumulative and in addition to every other remedy given under these Terms or under any existing or future law. The election of any one or more remedy by one of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 26.4 Severance. If any provision of these Terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 26.5 Survival of Rights, Duties and Obligations. Termination of these Terms for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 26.6 Further Assurance. Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution of documents and doing of such things as are required to give full effect to these Terms and the transactions contemplated by it.
- 26.7 Entire Agreement. These Terms constitutes the whole agreement and understanding of the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of these Terms. Each Party acknowledges that, in entering into these Terms, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Terms, provided always that nothing in this clause shall limit or exclude any liability for fraud.
- 26.8 Non-variation. Save as otherwise expressly provided for in these Terms, no agreement to amend, add to or otherwise vary or waive any of the provisions of these Terms (including this clause 26.8) or to cancel or terminate it shall be effective unless made in writing and duly signed by the Parties or on their behalf by their duly authorised Agents. For the purposes of this clause 26.8, any reference to writing or written shall not include email or other data messages and signed shall not include any electronic signature.
- 26.9 Assignment. Save as expressly permitted by the provisions of these Terms, no Party may cede any of its rights or delegate any of its obligations under these Terms without the prior written consent of the other Party. However, Wilderness Travel Shop may cede, delegate or assign any of its rights or obligations under these Terms to any other member of the Wilderness Group without the prior written consent of the Agent.
- 26.10 Successors Bound. These Terms shall be binding on and shall inure for the benefit of the successors and permitted assigns and personal representatives (as the case may be) of each of the Parties.

26.11 Governing Law. These Terms and the right and obligations of the Parties and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Puerto Rico.

27. **INFORMATION ABOUT ITRVL<sup>6</sup>**

27.1 itrvl is registered in Puerto Rico and having its registered office at 220 Calle Manuel Domenech, Unit #714, San Juan, Puerto Rico, 00918.

27.2 Contact us. Email: contact@itrvl.com; Telephone: +1-858-465-4679.

27.3 The Agent shall notify Travelers residing in the European Union and the United Kingdom that, as an entity registered in Puerto Rico, itrvl is not offering "package travel" and "linked travel arrangements" under, and is not subject to, The European Package Directive 2015/2302 and The Package Travel and Linked Travel Arrangements Regulations 2018, each as amended, supplemented and/or replaced from time to time.

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<sup>6</sup> Under South African law, this information is required to be provided where electronic transactions are concluded.

**ANNEXURE A**  
**DEFINITIONS AND INTERPRETATION**

**Definitions**

For the purposes of these Terms, unless the context requires otherwise:

1. **Aerodrome(s)** means the aerodromes, airfields or airstrips owned, managed or operated by members of the Wilderness Group;
2. **Agent** means the person that accepts these Terms in the capacity of agent or representative, being any tour operator, travel agency, travel consultant or any other person or entity that acts as a Traveler's agent or representative in respect of a Tour (or part thereof), and/or who makes use of the Services;
3. **Agent Deposit** means such percentage of the Wilderness Quotation Amount required by the Agent as a deposit, as included in an itrvl Quotation and/or notified by the Agent to the Traveler from time to time prior to acceptance of the Quotation by the Traveler, subject to a floor of 1% of the total Deposit amount;
4. **Agent Margin** means the Agent's margin in addition to the Wilderness Quotation Amount as determined and specified by the Agent and included in the itrvl Quotation or Agent Quotation provided to a Traveler;
5. **Agent Quotation** means, in respect of Direct Bookings, each quotation generated by the Agent, incorporating the Wilderness Quotation and adding the Agent Margin, if any;
6. **Air Services** means External Air Services, Internal Air Services and Preferred Air Services;
7. **Applicable Taxes** means, in respect of the Quotation Amount, any applicable sales, duty or other governmental taxes or fees due with respect to the Quotation Amount;
8. **Applicable Law** shall mean, to the extent permitted by law, any applicable national or provincial legislation, statutes, ordinances and other laws and regulations and any by-laws of any legally constituted public authority, in each case in force at the relevant time;
9. **Associated Products** means products and services designated as "Associated Products" (or designated with words having a similar meaning) by itrvl or any member of the Wilderness Group from time to time, supplied by regular or preferred Suppliers with whom any member of the Wilderness Group has a business relationship, provided that such Associated Products shall not be deemed to be products or services offered by any member of the Wilderness Group, and provided further that no member of the Wilderness Group or Supplier will be liable or responsible for defects in, or liabilities arising from, such Associated Products, to the extent permitted by Applicable Law;
10. **Balance** means the Quotation Amount less the Deposit;
11. **Booking Validity Period** means the period of time that itrvl, a member of the Wilderness Group or Suppliers hold a provisional booking before the status is changed to either confirmed or cancelled/lapsed, such period being 7 days calculated from midnight (System Time) on the date on which the relevant provisional booking is made. In exceptional circumstances, this period may be extended by itrvl or a member of the Wilderness Group in writing only and in its sole discretion, at the request of the Agent, such extension however being subject to the written confirmation thereof by itrvl or the relevant member of the Wilderness Group in each instance;
12. **Cancellation** means (i) cancellation of a Tour or Services made in writing and which is effective from the date itrvl or a member of the Wilderness Group receives the written notification of the cancellation from the Traveler or Agent, and is deemed to include (ii) a Traveler failing to arrive when due, or (ii) a "name change";
13. **Commencement Date** means the earlier of the date on which the Agent first accepts these Terms and the date on which the Agent first accesses the itrvl Platform;
14. **Content** means any textual, visual, audio or audio-visual content, including photographs, videos, information, materials, opinions and/or statements made available on the Platforms;
15. **Day** means a period of 24 hours commencing at 0:00am System Time on any day of the week, and the word **date** shall have a corresponding meaning;
16. **Deposit** means the aggregate of the Wilderness Deposit and the Agent Deposit;

17. **Direct Bookings** has the meaning given to the term in clause 1.7.1;
18. **Direct Payment** has the meaning given to the term in clause 10.2.1.2;
19. **External Air Services** means air services provided by airlines, carriers, charter companies and other air operators that are not members of the Wilderness Group, but excluding Preferred Air Services;
20. **Force Majeure Event** means any circumstance beyond the reasonable control of itrvl, any member of the Wilderness Group or any Supplier (**Affected Party**), which is not due to the negligence or default of the Affected Party or any company in the same group as the Affected Party, including, but not limited to the following (i) acts of God, flood, drought, earthquake, tempests or other natural disaster; (ii) epidemic or pandemic (whether or not declared by the World Health Organization); (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any law or any action taken by a government or public authority, including but not limited to imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent if such failure to grant the licence or consent is not due to the negligence or default of the Affected Party or any company in the same group as the Affected Party; (vi) collapse of buildings, fire, explosion or accident not caused by the Affected Party or any company in the same group as the Affected Party; (vii) any labour or trade dispute, strikes, industrial action or lockouts; (viii) non-performance by suppliers or subcontractors; or (viii) interruption or failure of utility service.
21. **General Information Manual** means the General Information Manual, as amended by Wilderness Group from time to time, containing important information relating to the Wilderness Group, the Tours and the Services, with which all Agents are required to thoroughly familiarise themselves on a regular basis;
22. **Internal Air Services** means air services provided in respect of a Tour using aircraft owned or operated by a member of the Wilderness Group;
23. **Inventory** means the stock of camps, lodgings, bed-nights, facilities, Internal Air Services and other Tour products made available for reservation by Agents and Travelers, for specific periods (nightly, weekly or otherwise), through the Platforms;
24. **itrvl** means itrvl, LLC, a company registered in accordance with the laws of the Puerto Rico under registration number [•];
25. **itrvl Payment** has the meaning given to the term in clause 10.2.1.1;
26. **itrvl Platform** means the real-time online booking service platform with the title itrvl and accessed via [www.itrvl.com](http://www.itrvl.com) or any other website notified by itrvl from time to time, made available to Agents and designed to allow the Agent access to Tours and Services;
27. **itrvl Quotation** means each quotation generated on the itrvl Platform, incorporating the Wilderness Quotation and the Agent Margin, if any;
28. **Login Credentials** means, where use of the itrvl Platform is granted to the Agent, and/or of the Wilderness Window is granted to the Agent, the Agent name and password credentials provided to the Agent, and includes subsequent Agent and password credentials selected by the Agent in accordance with the use and access policies applicable to the itrvl Platform or the Wilderness Window, as applicable, from time to time;
29. **Parties** means itrvl, each Agent and, in respect of rights and obligations of any member of the Wilderness Group, Wilderness Travel Shop; and **Party** shall mean any one of them as the context may require;
30. **person** includes any individual, firm, partnership, limited partnership, limited liability partnership, joint venture, venture capital fund, limited liability company, association, trust, estate, group, body corporate or corporation (wherever incorporated), unincorporated association or organisation, governmental entity, syndicate, works council, employee representative body or other entity, regardless of whether having separate legal personality;
31. **Platforms** means the itrvl Platform and the Wilderness Window;
32. **Preferred Air Services** means air services provided by airlines, carriers, charter companies and other air operators that are not members of the Wilderness Group, but whose services were arranged on behalf of Travelers through the itrvl Platform, and including those who are accredited as "preferred" Suppliers of air services to the Wilderness Group, in accordance with the Wilderness Group internal process of assessing suppliers of aviation services;

33. **Quotation** means an itrvl Quotation or a Wilderness Quotation, as the case may be;
34. **Quotation Amount** means the amount set out in each Quotation including any Applicable Taxes;
35. **Services** means the services provided by itrvl, including those provided by or through the Wilderness Group and the Suppliers, in connection with the Tours, including but not limited to providing information, providing online services (including without limitation the provision of access to and all services accessible through the Platforms), drawing up itineraries, making recommendations, obtaining, processing and retaining client records, obtaining and providing quotations, securing provisional and/or final bookings for Tours, arranging Tours, arranging Air Services and making other transport arrangements, taking or facilitating account payments and the taking of Deposits from the Agent and/or Traveler, making emergency arrangements, attending to cancellations, arranging or procuring insurance cover, amending reservation details, and interacting with Suppliers on behalf of the Traveler(s);
36. **Stripe** means Stripe, Inc as operated via the website <https://stripe.com>;
37. **Supplier** means: (i) itrvl; (ii) any member of the Wilderness Group; (iii) any third party through which the Wilderness Group members make arrangements to provide goods or services to the Agent and/or Travelers in connection with a Tour or Tours; or (iv) in jurisdictions where the Wilderness Group does not operate, any third party through which itrvl makes arrangements to provide goods or services to the Agent and/or Travelers in connection with a Tour or Tours;
38. **System Time** means Greenwich Meridian Time (GMT) plus 2 hours;
39. **Quotation Amount** means the amount set out in the applicable Quotation including Applicable Taxes;
40. **Transaction Fees** means fees payable to itrvl by the Agent and Wilderness Travel Shop respectively in connection with the use of the itrvl Platform and related services;
41. **Travel Shops** means any company in the Wilderness Group designated as a travel shop by Wilderness Travel Shop and recorded as such by itrvl on the itrvl Platform from time to time, and **Travel Shop** means any one of them as the context may indicate;
42. **Traveler(s)** means the person(s) that will participate in the Tour(s) as the lead booking name, and shall include his/her spouse, common law wife/husband, children (whether minor or adult), dependents, guests and invitees, as well as the heirs, trustees, executors, administrators, agents, representatives and assigns of any of the aforementioned persons;
43. **Traveler Agreement** has the meaning given to the term in clause 3.2;
44. **Tour** shall mean a package of tourism products and services including, without limitation, accommodation, meals, entertainment, travel, recreational and leisure activities, and further includes incidental, associated or other goods and services provided by Suppliers arranged by or through a Travel Shop, as set out in itinerary and other documents furnished on the Platforms from time to time;
45. **Virus** shall mean any thing or device (including any software, code, file or programme) which may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or (iii) adversely affect the Agent experience, including worms, trojan horses, viruses and other similar things or devices;
46. **Vulnerability** shall mean a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability;
47. **Wilderness Deposit** means such percentage of the Wilderness Quotation Amount required by Wilderness Group and/or its Suppliers as a deposit, as notified by itrvl or Wilderness Group to the Agent from time to time prior to acceptance of the Quotation by the Traveler, subject to a floor of 20% of the Wilderness Quotation Amount;
48. **Wilderness Group** means Wilderness Holdings Limited and all of the companies connected with it in a network of direct and indirect shareholdings (whether holding, subsidiary, associated, external or affiliated); and

49. **Wilderness Travel Shop** means Wilderness Safaris Ltd, a company incorporated in Mauritius with registration number 171652 GBC;
50. **Wilderness Quotation** means each quotation provided by or on behalf of Wilderness Group in respect of Tours and/or Services, and excluding any Agent Margin;
51. **Wilderness Quotation Amount** means, in relation to any accepted Wilderness Quotation, the amounts payable for the provision of Tours and Services, as specified in a Wilderness Quotation accepted by the Traveler, including any Applicable Taxes; and
52. **Wilderness Window** means the real-time online booking service platform with the title Wilderness Window and accessed via <https://wilderness-window.com> or any other website notified by Wilderness Travel Shop from time to time, designed to allow the Agent access to Tours and Services.

## Interpretation

1. In addition to the definitions in the clause above, for the purposes of these Terms, the following rules of interpretation shall apply, unless the context clearly requires otherwise:
  - 1.1 a reference to:
    - 1.1.1 any one gender, whether masculine, feminine or neuter, includes the other two;
    - 1.1.2 the singular includes the plural and vice versa;
    - 1.1.3 a party includes its successors or permitted assigns;
  - 1.2 references to a statute or statutory provision include any subordinate legislation made from time to time under that statute or provision and references to a statute or statutory provision include that statute or provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to these Terms or any transaction entered into in accordance with these Terms;
  - 1.3 a reference to writing or written includes faxes and e-mails;
  - 1.4 references to a **clause, sub-clause, Schedule, Annexure** or **Appendix** is to a clause, sub-clause, Schedule, Annexure or Appendix to these Terms;
  - 1.5 a **law** shall be construed as any law, common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange;
  - 1.6 any reference in these Terms to these Terms or any other agreement, document or instrument shall be construed as a reference to these Terms or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;
  - 1.7 any word or expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout these Terms;
  - 1.8 if a definition confers substantive rights or imposes substantive obligations on a Party, such rights and obligations shall be given effect to and are enforceable as substantive provisions of these Terms, notwithstanding that they are contained in that definition;
  - 1.9 no rule of construction shall be applied to the disadvantage of a Party to these Terms because that Party was responsible for or participated in the preparation of these Terms or any part of it;
  - 1.10 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day;
  - 1.11 all the headings and sub-headings in these Terms are for convenience only and are not to be taken into account for the purposes of interpreting it;
  - 1.12 where the words **include(s), including** or **in particular** followed by specific examples shall be construed by way of example or emphasis only and shall not be construed, nor shall it take effect, as limiting the generality of any preceding words, and the eiusdem generis rule is not to be applied in the

interpretation of such specific examples or general words and where the context permits, the words **other** and **otherwise** are illustrative and shall not be construed eiusdem generis with or limit the sense of the words preceding them where a wider construction is possible.

2. A term defined in a particular clause, Schedule, Annexure or Appendix in these Terms, unless it is clear from the clause, Schedule, Annexure or Appendix in question that application of the term is to be limited to the relevant clause, Schedule, Annexure or Appendix bears the meaning ascribed to it for all purposes of these Terms, notwithstanding that that term has not been defined in the definitions clause above and, where there is any inconsistency between any term defined in definitions clause above and any term defined in any clause, Schedule, Annexure or Appendix in these Terms, then, for the purposes of construing such clause, Schedule, Annexure or Appendix the term as defined in such clause prevails.