



**& BEYOND**  
BATELEUR CLUB

**BATELEUR CLUB** TERMS & CONDITIONS

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## APPENDICES

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# 1. INTRODUCTION

## Whereas:

- A And Beyond SA Travel (Pty) Ltd (herein after the “Agent”) has created a unique model to make it possible for participating Members to enjoy world class luxury Accommodation at andBeyond’s world renowned lodges and preferred partner properties (the “Properties”) through a point based system.
- B. The Agent has entered into various arrangements collectively and/or individually with the owners or operators of the Properties, in terms of which the Agent is entitled to procure, on behalf of its members (“Principals”), Accommodation at the Properties at certain rates.
- C. The Agent has established a Club (“the Bateleur Club”) to manage and control the occupation, use and enjoyment of the Accommodation at the Properties.
- D. The Principal wishes to partake and share in the benefits associated with the arrangements aforesaid and wishes to appoint the Agent as its agent to procure, on its behalf, Accommodation at the Properties at preferential rates as governed by the points based system.
- E. The Agent is willing, subject to the terms and condition contained in this Agreement, the Agency Agreement, the Purchase Agreement, the Constitution, as well as the Rules of the Club, to accept such appointment.

# 2. INTERPRETATION AND PRELIMINARY

- 2.1 The headings to the clauses in these Terms and Conditions, the Agency Agreement, the Purchase Agreement, the Constitution and Club Rules are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of the Agreement nor any clause of the Agreement.
- 2.2 In the Agreement, unless a contrary intention clearly appears:
  - 2.2.1 words importing any one gender include the other two genders, the singular include the plural and vice versa and natural persons include created entities (corporate or unincorporate) and vice versa;
  - 2.2.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

2.2.2.1	“Accommodation”	means, subject to the Club Rules, accommodation in a fully furnished room at any of the Properties and shall include the temporary use, possession and occupation of such room, the temporary use and occupation of any areas and facilities designated as common areas and facilities for all persons or any category of persons being accommodated at the Property from time to time, the right of traverse over the Property, including but not limited to game drives, and the use of all and any movables at the Property designated for the use of those persons, or any category of persons being accommodated at the Property from time to time. Each andBeyond Lodge and Partner Property has its own policy on what is included or excluded from the Accommodation as set out in the andBeyond lodge list and the Partner Property list, as reflected in <b>Schedules 3 and 4</b> attached to <b>Appendix A</b> ;
2.2.2.2	“Accommodation Rates”	means the rates that the Principal will be charged for Accommodation at any of the Properties as set out in Schedule 2 attached to Appendix A as amended from time to time;
2.2.2.3	“Agency Agreement”	means the agreement entered into between the Agent and the Principal substantially in the format annexed hereto as <b>Appendix A</b> ;
2.2.2.4	“Agent”	means And Beyond South Africa Travel (Pty) Ltd t/a andBeyond;
2.2.2.5	“Agreement”	means this agreement, the Agency Agreement ( <b>Appendix A</b> ), the Purchase Agreement ( <b>Appendix B</b> ), the Constitution ( <b>Appendix C</b> ) and the Club Rules ( <b>Appendix D</b> ) as well as all schedules attached to the said agreements;
2.2.2.6	“andBeyond Lodges”	means any of the andBeyond Lodges set out in <b>Schedule 3 of Appendix A</b> , as amended from time to time;

2.2.2.7	“Assignee”	means any person, whether natural or juristic, to whom or to which the Principal has assigned all of its rights and obligations under clause 9 of the terms and conditions;
2.2.2.8	“Bateleur Club”	means the club established in terms of the Bateleur Club Constitution dated 01 May 2012;
2.2.2.9	“Club Rules”	means the rules of the Bateleur Club, which rules may be amended from time to time, substantially in the format annexed hereto as <b>Appendix D</b> ;
2.2.2.10	“Commencement Date”	means the date on which the Principal has signed the Agency Agreement ( <b>Appendix A</b> ) and the Purchase Agreement ( <b>Appendix B</b> ), as well as paid the initial Membership Payment as contemplated in clause 2 of <b>Appendix B</b> ;
2.2.2.11	“Constitution”	means the Bateleur Club Constitution substantially in the format annexed hereto as <b>Appendix C</b> ;
2.2.2.12	“Domicilium”	means, in respect of a party, the domicilium address chosen by that party in terms of clause 13.2;
2.2.2.13	“Member”	means a member of the Bateleur Club contemplated in clause 4 of the Constitution;
2.2.2.14	“Member Register”	means the register of Members referred to in clause 4.8 of this Constitution;
2.2.2.15	“Membership Payment”	means such deposit as paid by the Principal in the procurement of points contemplated in clause 2 of <b>Appendix B</b> , which points will entitle the Principal to Accommodation at the Properties and at the Accommodation Rates;
2.2.2.16	“Partner Properties”	means any of the Preferred Partners hotel/s or lodge/s as reflected in <b>Schedule 4 of Appendix A</b> , as amended from time to time;
2.2.2.17	“Properties”	means the hotel/s and or lodge/s as defined as either and Beyond Lodges or Partner Properties;
2.2.2.18	“Purchase agreement”	means <b>Appendix B</b> attached to this Agreement which facilitates the acquisition of points under the relationship formed between the parties of <b>Appendix A</b> ;

### 3. DURATION

This agreement shall automatically terminate simultaneously with the termination of the Principal's membership contemplated in clause 4 in the Constitution of the Bateleur Club.

### 4. OBLIGATIONS OF THE AGENT

4.1 The Agent shall:

4.1.1 on written request by the Principal, use all reasonable endeavours to procure Accommodation on behalf of and for the Principal at any of the Properties, in accordance with the written requests and instructions of the Principal, subject always to the provisions of the Agreement;

4.1.2 administer and manage the utilization of the Membership Payment against any procurement of Accommodation as contemplated in clause 4.1.1 above;

4.1.3 on written request by the Principal, provide the Principal with such information relating to the Properties as the Principal may reasonably require, including but not limited to the location of the Properties and the facilities available at the Properties;

4.1.4 use its reasonable endeavours to ensure that any advertising, promotional or information brochures published by the Properties, from time to time, are in its possession and are able to be made available to the Principal on request;

4.1.5 at all times comply in all respects with the provisions of the Agreement.

4.2 The Agent shall not:

4.2.1 procure any Accommodation or enter into any agreement on behalf of the Principal with any of the owners or operators of any of the Properties unless it has received a written request from the Principal to do so;

- 4.2.2 incur any liability on behalf of the Principal or in any way pledge or purport to pledge the Principal's credit, other than as is expressly provided for in the Agreement or otherwise authorised by the Principal in writing;
- 4.2.3 be obliged to endeavour to procure any Accommodation or enter into any agreement on behalf of and for the Principal in accordance with any written request from the Principal, if such written request conflicts or is in anyway inconsistent with the provisions of the Agreement, or if the compliance with such written request will result in the Principal enjoying a right or benefit not provided for in this Agreement.
- 4.3 The Principal acknowledges that the procurement of Accommodation by the Agent on behalf of the Principal shall always be subject to the availability of Accommodation at the Property(s) and time(s) at which the Principal has, in writing, requested the Agent to procure such Accommodation.

## **5. BALANCE OF MEMBERSHIP PAYMENT ON TERMINATION**

On termination of the Agreement for any reason whatsoever, the Principal shall cease to be entitled to any further rights or benefits as contemplated in terms of the Agreements. Any unused portion of the Membership Payment as reflected in the written statement (less the administration and commission fee as contemplated in clause 10), provided by the Agent in terms of clause 11.1 as at the date of termination, shall become payable within 7 (seven) working days from such termination.

## **6. MEMBERSHIP OF BATELEUR CLUB**

- 6.1 The Agent warrants that the Principal shall, on the Commencement Date, automatically become a Member of the Bateleur Club and shall, subject to the Constitution and the Club Rules, be entitled for so long as such membership endures, to Accommodation at any of the Properties at the Accommodation Rates, as amended from time to time.
- 6.2 The Agent undertakes to procure that, as soon as possible after the Commencement Date, the necessary entries are made in the Member's Register provided for in the Club Rules so as to reflect that the Principal is a Member of the Bateleur Club.

## **7. AMENDMENTS TO SCHEDULES OF APPENDIX A**

The Principal acknowledges that the Agent has the sole and unfettered discretion to make amendments to **Schedules 2, 3 and 4**, which amendments will be published on [www.bateleurclub.com](http://www.bateleurclub.com).

## **8. INDEMNITY**

The Principal indemnifies the Agent and holds it harmless against and for any claims of any nature by any person arising out of or in connection with any agreement entered into by the Agent on behalf of the Principal in terms of the Agreement, regardless of whether such claim arises in contract or delict or by virtue of any other cause whatsoever, including negligence, and in particular, but not limited to, any claim for the payment of any amount in respect of Accommodation Rates, or relating to arising out of the use by the Principal or any other person of the Accommodation at any of the Properties, insofar as such amount is over and above the balance of the Membership Payment from time to time.

## **9. ASSIGNMENT OF PRINCIPAL'S RIGHTS AND OBLIGATIONS**

- 9.1 The Principal shall not be entitled to cede or assign all or any of its rights and obligations under the Agreement to any other person without the Agent's prior written consent, which consent shall not unreasonably be withheld.
- 9.2 The Agent is entitled, at any time, to cede and assign all and any of its rights and obligations in terms of the Agreement to any other person which in either a holding company or subsidiary of the Agent, or a subsidiary of its holding company.

- 9.3 If the Principal is a natural person, then the rights and obligations of such Principal shall on the death of the Principal be deemed to have been ceded and assigned to the heir nominated by the Principal in his/her will, provided that the Agent has no reasonable objection to such cession and assignment. If no such person is nominated in the Principal's will, or if the Agent has a reasonable objection to the person so nominated, then, at the election of the Agent and in its sole discretion, the rights and obligations of the Principal shall be deemed to be ceded and assigned to any person nominated by the executor of the Principal's estate.

## 10. REMUNERATION OF AGENT

Save for a documentation fee and extension fee (if applicable) reflected in **Form I** attached to **Appendix B**, as well as the levying of a 10 (ten) percent administration fee and commission calculated on the Membership Payment, the Agent shall not be entitled to receive any remuneration, commission, or any other payment of any other nature whatsoever from the Principal in consideration for the performance of its obligations in terms of the Agreement.

## 11. RECORDS AND ACCOUNTS

- 11.1 The Agent shall at all times maintain proper records and books of accounts reflecting the amount of the Membership Payment paid by the Principal, the balance of the unutilized portion from time to time and the payments in respect of which the Membership Payment or any part thereof has been applied in terms of the Agreement.
- 11.2 The Agent shall, on a monthly basis, provide the Principal with a statement setting out the information contemplated in clause 11.1 above.

## 12. BREACH

In the event that either party commits a material breach any of the material terms of the Agreement and fails to remedy such breach within 14 (fourteen) days after receipt of a written notice from the other party requesting it to remedy the breach, then the other party shall be entitled, without prejudice to any other of its rights and law or in terms of the Agreement, to cancel the Agreement or to uphold the Agreement and sue for specific performance, and in either event to claim such damages as it may have suffered.

## 13. NOTICES AND DOMICILIA

- 13.1 A party may at any time change that party's Domicilium by notice in writing to the other, provided that the new Domicilium consists of or includes a physical address in the Republic of South Africa, at which process can be served.
- 13.2 For purposes of this Agreement the Domicilium elected by the parties will be as follows:
- 13.2.1 The Agent: Block F,  
Pinmill Farm,  
164 Katherine Street,  
Sandton,  
Johannesburg  
Mark for the Attention of: The Legal and Compliance Officer  
Telephone Number: 011 809 4300  
Email Address: bateleurclub@andbeyond.com
- 13.2.2 The Principal: see **Schedule 1 of Appendix A**
- 13.3 Any notice given in connection with the Agreement shall, if delivered to a responsible person at the physical address set out in the Domicilium, be deemed to have been duly given on the date of delivery and, if sent by pre-paid registered post to the Domicilium, be deemed to have been given 7 (seven) days after posting and, if sent by email, be deemed to have been given on the day the email is transmitted or, if such transmission does not take place on a business day, on the first business day following the day on which it is transmitted.
- 13.4 Notwithstanding anything to the contrary, a written notice or communication which has actually been received by a party will be regarded as sufficient notice, despite the fact that it has not been dispatched or delivered to or received at the Domicilium.

- 13.5 Any notices or communications given or permissible in terms of the Agreement shall not be valid and effective unless given in writing.

#### **14. VIS MAJOR**

Notwithstanding any other provision of the Agreement, should the Agent be precluded from carrying out any material term of the Agreement due to vis major, including but without being limited to, any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, riot, political or civil disturbances, the elements, any act of any State or Government or any other authority or any other cause whatever beyond the control of the Agent, then the carrying out of that material term shall be suspended for a period of 90 (ninety) days on the basis that the Principal shall not have any claim of any nature whatever against the Agent arising out of the failure by the Agent to carry out such material term.

#### **15. APPLICABLE LAW**

The Agreement shall be governed by and interpreted in all respects in accordance with the laws of the Republic of South Africa.

#### **16. JURISDICTION**

Each of the parties submits to the exclusive jurisdiction of the High Court of South Africa: Gauteng South Division in respect of any proceedings directly or indirectly related to the Agreement.

#### **17. GENERAL**

- 17.1 The documents comprising the Agreement constitute the sole record of the Agreement between the parties.
- 17.2 No party shall be bound by any representation, warranty, promise or the like not recorded in the document comprising the Agreement.
- 17.3 Subject to the provision of clause 7, no addition to, variation, or agreed cancellation of the Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 17.4 No indulgence which either party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

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