

## MEMORANDUM OF USER AGREEMENT

entered into and between

**INVOLV AFRICA PROPRIETARY LIMITED**

Registration number: 2021/953428/07

1<sup>st</sup> Floor, 3 High Street,

Bellville

7530

Herein duly represented by Rijan Hugo Visser, in his capacity as director, duly authorized

(Hereinafter referred to as “the Operator”)

**And**

(Hereinafter referred to as “the Agent”)

- the Operator and the Agent referred to as “the Parties”

### 1. RECORDAL:

It is recorded that –

- 1.1. The Operator is the registered and duly licensed owner of all rights, in terms of a license user agreement, of an internet-based facility (“the facility”) which enables the Operator and its authorized users, to quote and check availability on live availability of suppliers of tourism and related products and facilities;
- 1.2. The Agent is desirous to utilize the facility for purposes of research, enquiries and obtaining quotations from the Operator’s suppliers in respect of tourism and related products and facilities;
- 1.3. The Operator is willing to extend its use of the facility to the utilization thereof by the Agent, subject to the terms and conditions of the license user agreement and the terms and conditions as may be determined by the operator herein;
- 1.4. the parties have agreed to reduce the terms of utilization to writing;  
the Parties agree as follows:

## Online Agent Website Usage with Live availability connections

**NB: PLEASE READ THIS USER AGREEMENT AND THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE LIVE BOOKING PORTAL.**

For the purpose of this document and all further communications, the terms, Webconnect and Partner/Agent Portal refer to a tool provided by *Involv Africa* through Tourplan, which enables industry partners made up of Wholesalers, Tour Operators and Travel Agents, to quote and check availability on live availability of suppliers.

This platform is not an 'OTA' (online travel agent), but rather a tool created for the trade and caters to the needs of the operator responsible for the travel arrangements.

Live available options are reliant on the technical development of a supplier and therefore, many suppliers do not feature live booking option in which case the request remains *on request*. All suppliers listed on the *Webconnect portal* have been requested and encouraged to join up with a channel manager or similar to allow live inventory feed to the *Webconnect portal*.

### 1. Interpretation

This User Agreement shall be interpreted according to the following provisions, unless inconsistent with or otherwise indicated by the context:

- 1.1 The headings of clauses, sub-clauses and Annexures have been inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.2 Any reference to any agreement or annexure, shall be construed as including a reference to any agreement or annexure amending, varying, novating or substituting that agreement or annexure, provided all approvals required to be given pursuant to this Agreement for any amendment, variation, novation or substitution of such agreement or annexure has been obtained.
- 1.3 The Annexures to this Agreement form an integral part of this Agreement and a reference to this Agreement shall include a reference to the Annexures.
- 1.4 Words in parentheses and italics appearing after a clause reference or a reference to an Annexure are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 1.5 Any reference to "Parties", "Involv Africa", "the Operator" or "the Agent" shall include the Parties' respective successors-in title and, if permitted in this Agreement, their respective assignees and assignees.
- 1.6 Any reference to one gender shall include the other gender.

- 1.7 Words in the singular number shall include the plural and *vice versa*.
- 1.8 References to a “person” shall include where the context so requires, an individual, firm, Corporation, corporation, juristic person, local authority, and any trust, organization, association or partnership, whether or not having separate legal personality.
- 1.9 References to “clauses”, “sub-clauses” and “Annexures” are references to the clauses, sub-clauses and Annexures of this Agreement and words defined in a specific clause have the same meaning in all other clauses of this Agreement.
- 1.10 If any definition in the interpretation clause contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.

## 2. Confidentiality

- 2.1 All users who access the Online Agent Website service do so with User account(s) which are provided to them by Involv Africa. You are responsible for maintaining the confidentiality of your user account information and your password. You agree to accept responsibility for all activities and changes to data that occur under your user account(s) or password(s). You understand that you are financially responsible for all uses of this site by you and those using your login information. *Involv Africa* will not be held accountable for changes made by either the users or the Booking Channels.
- 2.2 Live availability connection through *Webconnect* is expressly conditioned on your acceptance of all terms and conditions by the system and its third parties.
- 2.3 *Involv Africa* grants you a limited, non-transferable license to use this site. You may only use this site to make legitimate reservations or purchases and shall not use this site for any other purposes, including without limitation, to make any speculative, false or fraudulent reservation or any reservation in anticipation of demand. This site and the content provided in this site, including the text, graphics, button icons, may not be copied, reproduced, republished, uploaded, posted, transmitted or distributed without the written permission of *Involv Africa*, except that you may download, display and print the materials presented on this site for your personal, non-commercial use only. You may not use any "robot," "spider" or other automatic device, or a program, algorithm or methodology having similar processes or functionality, or any manual process, to monitor or copy any of the Web pages, data or content found on this site, in any case without the prior written permission from *Involv Africa*. You agree that you will not transmit or otherwise transfer any Web pages, data or content found on this site to any other computer, server, Web site, or other medium for mass distribution or for use in any commercial enterprise. You agree that you will not use any device, software or routine to interfere or attempt to interfere with the proper working of this site. You agree that you will not take any action that imposes a burden or load on our infrastructure that *Involv Africa* deems in its sole discretion to be unreasonable or disproportionate to the benefits of *Involv Africa* obtains from your use of the site.

2.4 Un-authorized use of this site and/or the materials contained on this site may violate applicable copyright, trademark or other intellectual property laws or other laws. You must retain all copyright and trademark notices, including any other proprietary notices, contained in the materials, and you must not alter, obscure or obliterate any of such notices.

2.5 The use of such materials on any other Web site or in any environment of networked computers is prohibited. You are prohibited from posting or transmitting any unlawful, threatening, libellous, defamatory, obscene, indecent, inflammatory, pornographic or profane material or any material that could constitute or encourage conduct that would be considered a criminal offence, give rise to civil liability, or otherwise violate any law.

In addition, you are prohibited from posting or transmitting any information which:

- (a) infringes the rights of others or violates their privacy or publicity rights,
- (b) is protected by copyright, trademark or other proprietary right, unless with the express written permission of the owner of such right,
- (c) contains a virus, bug or other harmful item, or
- (d) is used to unlawfully collude against another person in restraint of trade or competition. You shall be solely liable for any damages resulting from any infringement of copyright, trademark, or other proprietary right, or any other harm resulting from your use of this site.

2.6 In particular, the Agent warrants that it is familiar with and understand the implications and application of the Protection of Personal Information Act, 2013 ("POPI") and the Agent agrees that it will comply with POPI regulations and process all the information and/or personal data in respect of the services being rendered in accordance with the said regulation and only for the purpose of providing the Services set out in the agreement to provide services.

### 3. Booking Conditions

Booking conditions and procedures apply to all agents booking a travel service/s with *Involv Africa*, through *Webconnect*. Itineraries booked via *Webconnect*, are to be reviewed by an experienced *Involv Africa*-consultant and alternatives may be suggested. The payment of a deposit or any other partial payment for a reservation with *Involv Africa* constitutes consent by all clients covered by that payment to all the terms, conditions and provisions stipulated by *Involv Africa*.

### 4. Contracted rates vs Live rates

4.1 Services booked via *Webconnect* on all **Contracted rates** are not to be seen as a final confirmation until the reservation(s) is/are manually confirmed by *Involv Africa*.

4.2 Quotations are valid only for the dates specified and are subject to adjustment if the services quoted for are not available at the time of actual booking. Any changes to the quotation requested by the traveller and incurring additional costs will be charged accordingly.

- 4.3 Quoted prices are subject to adjustment in the event of fluctuating costs that may change and that relate to, but are not limited to government-imposed taxes, fuel prices, air fares, accommodation tariffs, tourism levies and/or the introduction of national, regional or local taxes or levies of whatever nature.
- 4.4 Notice of confirmation, amendment or booking cancellation must be received in writing through the *Webconnect* or via email. Please note that it is the agent's responsibility to ensure that all correspondence and information were received by *Involv Africa*.
- 4.5 Services booked via *Webconnect*, on **all Live Connectivity rates Bar / Rack or Live STO** rates are immediately confirmed once you choose the book option, this service will display an OK status in your itinerary. Note you are immediately liable for any terms and conditions that the hotel /property impose on this rate type. *Involv Africa* has no contract in place for any Live rates other than our STO rates.

## 5. Cancellation of Services

- 5.1 If it becomes necessary to cancel a reservation, it must be done in writing to an *Involv Africa* consultant. Cancellation will take effect upon receipt and acknowledgement of your cancellation.
- 5.2 All travel arrangements, such as flight bookings, hotel and accommodation reservations, motor transport bookings and the like made by *Involv Africa* are subject to the booking conditions and cancellation provisions of the relevant supplier thereof.
- 5.3 **Cancellations fees on Live Connectivity rates** comes into immediate effect at time of booking and it is the terms and conditions of the specific hotel as per the specific live rate you have booked i.e. BAR / RACK or any rate that was displayed. Live Connectivity rates if not our STO rates are not subject to *Involv Africa's* cancellation fees but the Hotels direct policy depending on the rate type you booked.
- 5.4 Live Availability Connection through *Webconnect* is expressly conditioned on your acceptance of all terms and conditions by *Involv Africa*.

## 6. Ownership

- 6.1 *Webconnect*, and each of its modules, together with the arrangement and compilation of the content found on this site, is the copyrighted property of *Involv Africa* and/or its various third party providers and distributors.
- 6.2 Nothing contained on this site should be construed as granting, by implication or otherwise, any license or right to use any of the Trademarks without the written permission of *Involv Africa*.

## **7. Exclusion of Warranty**

*Involv Africa* and any third-party providers and distributors make no warranty of any kind regarding this site and/or any materials provided on this site, all of which are provided on an "as is" basis. *Involv Africa*, any third-party providers and distributors do not warrant the accuracy, completeness, currency or reliability of any of the content or data found on this site and all such parties expressly disclaim all warranties and conditions, including tacit or implied warranties and conditions of merchantability, fitness for a particular purpose and non-infringement, and those arising by statute or otherwise in law or from a course of dealing or usage of trade. Neither *Involv Africa* nor any third-party providers or distributors warrant that this site, its servers or any e-mail sent from *Webconnect* are free of viruses or other harmful components.

## **8. Indemnity**

8.1 You agree to defend and indemnify *Involv Africa* and/or their respective suppliers and any of their officers, directors and employees from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including but not limited to reasonable legal and accounting fees, brought by third parties as a result of:

- (a) your breach of this Agreement or the documents referenced herein;
- (b) your violation of any law or the rights of a third party; or
- (c) your use of this Booking Engine tool.

## **9. Governing Law and Modification**

This Agreement and its performance shall be governed by the laws of the Republic of South Africa. *Involv Africa* may at any time modify these terms and conditions and your continued use of this site will be subject to the terms and conditions in force at the time of your use.

## **10. Termination, Breach and Jurisdiction**

10.1 *Involv Africa* or any of its third parties may terminate this User Agreement and these terms and conditions and/or the provision of any of the services at any time for any reason, including any improper use of this site or your failure to comply with these terms and conditions. Such termination shall not affect any right to relief to which *Involv Africa* and its third-party providers and distributors may be entitled, at law or in equity. Upon termination of this User Agreement and these terms and conditions, all rights granted to you will terminate and revert to *Involv Africa* and its third-party providers or distributors, as applicable.

10.2 In the event that this User Agreement is terminated due to the breach of the terms and conditions thereof by the Agent, the Operator's rights are fully reserved to institute any action against the Agent for damages suffered as a result of such breach. It is recorded that, should the Operator institute any action or other steps to enforce its rights in terms of this User Agreement or to recover damages suffered, the Agent shall be liable for all legal costs at a scale as agreed to between the operator and its own attorney, expenditure, tracing fees, collection commission and interest.

10.3 The parties to this agreement consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in the event of a dispute between them arising from the agreement.

## **11. Entire Agreement**

This User Agreement, together with any terms and conditions incorporated herein or referred to herein constitute the entire agreement between us relating to the subject matter hereof, and supersedes any prior understandings or agreements (whether oral or written) regarding the subject matter, and may not be amended or modified except in writing or by making such amendments or modifications available on this site.

## **12. General**

12.1 No Party shall, without the prior written approval of the other Parties assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to any other person.

12.2 No provision of this Agreement (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an Agreement in writing signed by the duly authorized representatives of the Parties.

12.3 Any relaxation, indulgence or delay (collectively referred to as "Indulgence") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).

12.4 The waiver of any right under this Agreement shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorized representative(s) of the waiving Party.

12.5 This Agreement supersedes all prior representations, communications, negotiations and understandings between the Parties concerning the subject matter of this Agreement.

- 12.6 Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.
- 12.7 This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one Agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.
- 12.8 The Parties choose their respective physical addresses in the preamble to this agreement as their respective *domiciliacitandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domiciliumcitandi et executandiof* the relevant Party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domiciliumcitandi et executandi*.
- 12.9 The Parties agree to perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by Law or as may be desirable or necessary to implement or give effect to this Agreement and the transactions contemplated therein.
- 12.10 The person signing this agreement on behalf of a company, close corporation, trust or other legal entity, whether existing or to be incorporated or registered:
- a) guarantees that the company, close corporation, trust or other legal person is properly incorporated and/or registered as such; and
  - b) warrants that he/she has the necessary authority to negotiate and sign the agreement on behalf of the party it claims to represent; and
  - c) warrants proper authority to bind such party which he/she/it purports to represent; and
  - d) hereby binds himself/herself in his/her personal capacity, in favour of the Seller, as guarantor and co-principal debtor, jointly and severally, with the said company, close corporation, trust or other legal entity for the due compliance of all obligations, terms and conditions of the agreement.