

AdventureSmith Travel Services Inc., d/b/a AdventureSmith Explorations  
40169 Truckee Airport Road, Suite 201, Truckee CA, 96161  
530-583-1775  
CST No. 2069288

## **TERMS AND CONDITIONS**

**The terms and conditions contained in this agreement contain legal obligations, waivers of liability, cancellation and refund policies, and express assumptions of risk. You should read this entire document carefully.**

### **A. Agreement**

These terms and conditions represent an agreement between each person booking, reserving, purchasing, or traveling on a Tour (as that term is later defined), and their successors, agents, or assigns (collectively, “Client,” “Your,” or “You”); and AdventureSmith Travel Services, Inc., a California Corporation D/B/A AdventureSmith Explorations, and each of its owners, employees, shareholders, subsidiaries, affiliates, officers, directors, successors, agents and assigns (“AdventureSmith,” “We,” “Our,” or “Us”). By making a reservation and in consideration for the opportunity for You to participate in an AdventureSmith Tour (“Tour”), You agree to the terms and conditions of this agreement, and any and all other applicable operating rules, policies, price schedules and other supplemental terms and conditions or documents that may be published from time to time, which are expressly incorporated herein by this reference (collectively, the “Agreement”). No alterations, updates, or variations to this Agreement are effective unless made in writing by AdventureSmith.

### **B. Third Party Suppliers**

#### **1. Relationship With AdventureSmith**

AdventureSmith organizes, promotes, and sells certain travel services provided by independent third-party suppliers (individually, a “Third Party Supplier,” and collectively, “Third Party Suppliers”). You acknowledge that all travel activities and services provided in connection with any Tour, including, without limitation, hotels and lodging facilities, restaurants and other food providers, equipment providers, Tour guides, local guides, or transportation of any kind by any vessel, aircraft, bus, train, kayak, or other mode of transportation, are provided, owned and operated by Third Party Suppliers and not by AdventureSmith. Third Party Suppliers are independent contractors not subject to the supervision and control of AdventureSmith and are not the agents, employees, servants, or joint venturers of AdventureSmith.

#### **2. Third-Party Supplier Terms and Conditions**

You may obtain a Third Party Supplier contract by simply requesting it in writing from AdventureSmith. You agree to abide by the terms and conditions of any Third Party Supplier

with respect to Your Tour (“Third Party Supplier Terms”). Notwithstanding the foregoing, if no Third Party Supplier Terms apply, this Agreement shall prevail.

## **C. Reservations, Pricing, and Payment**

### **1. Reservations**

Prior to making a reservation (“Reservation”) and/or participating in a Tour, You must complete and sign the forms provided to You by AdventureSmith, including, without limitation, liability releases, Third Party Supplier forms, and traveler information forms (collectively, “**Traveler Forms**”). Although Reservations may be subject to Third Party Supplier Terms, all Reservations are by and between You and AdventureSmith and are made when: (1) AdventureSmith receives a fully completed Traveler Forms from You and every individual in Your party (whether in paper or electronic form), (2) the required deposit payment for the Tour is received by AdventureSmith (“**Deposit**”), and (3) AdventureSmith has confirmed acceptance of the Reservation to You in writing (whether in paper or electronic form). You acknowledge that Deposit amounts (and cancellation terms and fees) may vary by Tour and are subject to change in accordance with the terms of this Agreement and Third Party Supplier Terms.

### **2. Confirmation**

Upon receipt of Your Deposit and all signed Traveler Forms, AdventureSmith will send You a comprehensive Adventure Planner dossier (“**Dossier**”) either by regular or electronic mail. The Dossier contains the AdventureSmith destination handbook and map, as well as various travel recommendations, including, without limitation and for example, suggestions regarding immunization, entry and visa requirements, insurance, packing lists, and suggested reading. Two to three (2-3) weeks prior to Your Tour, You will receive a final Tour packet that includes final reminders and local contact information for Your destination, and any applicable tickets and vouchers. You acknowledge that any information or advice provided to You by AdventureSmith in the Dossier or at any time related to the Tour, including, without limitation, information regarding visas, vaccinations, climate, clothing, baggage, or special equipment, is provided to You as a courtesy only, and AdventureSmith does not warrant or guarantee the accuracy or applicability of any such information. You are responsible for confirming the applicability and accuracy of all such information necessary for Your travel.

### **3. Pricing and Payment**

- (i) **Method of Payment.** Accepted methods of payment for Tours are determined by Third Party Suppliers and subject to change from time to time. Generally, payment may be made by personal check from United States financial institutions, or by credit card through VISA, MasterCard, or American Express. Notwithstanding the foregoing, different forms of payment may be required for a Tour. AdventureSmith does not control payment terms for Reservations made by travel agents.
- (ii) **Time for Payment.** You must pay the balance of the Tour price to AdventureSmith at least ninety (90) days before the Tour Start Date. For the purposes of this Agreement,

**“Tour Start Date”** shall mean the first date on the Tour itinerary that You have reserved with AdventureSmith Explorations and not any earlier departure date that You may have planned including, without limitation, airline flights arranged for and necessary to Your embarkation on the Tour. Failure to deliver complete payment in accordance with the terms of this Agreement will be deemed to be notification of cancellation by You and is subject to the cancellation policies of this Agreement. Notwithstanding the foregoing, AdventureSmith may waive the provisions of this section in its sole and absolute discretion, provided that any such payments accepted within ninety (90) days of the Tour Start Date shall be subject to a late payment fee (“Late Payment Fee”). The Late Payment fee shall be two percent (2%) of the total price of the Tour per person.

- Reservations made less than ninety (90) days prior to the Tour Start Date (“Last Minute Reservations”) may be accepted at the discretion of AdventureSmith and require payment in full. Last Minute Reservations are subject to a fifty dollar (\$50) late booking fee per person.

## **D. Changes to Tours**

### **1. Changes by AdventureSmith or Third Parties**

- **(i) Changes to Itineraries.** AdventureSmith intends to deliver Tours as advertised. However, the nature of adventure travel is inherently uncertain. For example, changes to Tour itineraries may occur as a result of events relating, but not limited to, safety or security concerns, inclement or uncertain weather, animal behavior, economic or political instability, or public health. Itineraries provided to You by AdventureSmith are not intended to be contracts or legally binding documents of any kind. You acknowledge that changes to Tours, including, without limitation, changes to Tour itineraries, services, and facilities may be modified from time to time, without prior notice, by either AdventureSmith or Third-Party Suppliers in their sole and absolute discretion, and you agree that sufficient consideration for such modifications is present and acknowledged by you. AdventureSmith also reserves the right to substitute vessels or accommodations for those of similar quality, with or without previous notice to You.
- **(ii) Changes to Tour Prices and Surcharges.** AdventureSmith publishes Tour prices in advance and may be required to increase Tour prices due to cost increase and factors out of AdventureSmith’s control. AdventureSmith reserves the right to impose surcharges up to thirty (30) days before the first day of the Tour for increases in costs due to, among other things, changes in group size, rooming status, exchange rates, increases in airfares or transportation costs, or government action. If any surcharge results in an increase of more than twenty percent (25%) of the Tour price, the client may cancel the Reservation within fourteen (14) days of notification of the surcharge and obtain a full refund, to the extent permitted by any relevant Third Party Supplier Terms.
- **(iii) Personal Expenses.** In the event changes to Your Tour itinerary occur, You will not be reimbursed for any expenses You may have incurred as a result of Your Reservation, including, without limitation, visas, vaccinations, travel insurance, transportation costs, lodging fees, other fees, and taxes.

### **2. Changes by the Client**

- **(i) Changes to Tours.** You may request changes to Your Reservation for a Tour prior to ninety (90) days before the Tour Start Date (“**Change Request**”). AdventureSmith will work in good faith with Third Party Suppliers to accommodate Change Requests. However, AdventureSmith makes no warranties or guarantees that any Change Request will be approved. If AdventureSmith approves Your Change Request, You will be responsible for any additional costs associated with such change, including, without limitation, cancellation charges imposed by Third Party Suppliers and airline cancellation fees. AdventureSmith reserves the right to charge You an additional administration fee of ten percent (10%) of the value of Your original tour.
- **(ii) Additions to Tours.** You may request additions to existing Reservations, including booking additional accommodations, transfers, or excursions (“**Tour Additions**”), prior to ninety (90) days before the Tour Start Date. Requests for additions made within eighty-nine (89) to thirty-one (31) days prior to the Tour Start Date shall incur an additional administrative fee (“**Tour Addition Fee**”) of fifty dollars (\$50).
- **(iii) Transfers.** Transfers of Tours are not permitted. In the event You wish to book a different Tour, You must cancel Your Reservation and make a new Reservation. The terms and conditions imposed by this Agreement and any Third Party Supplier Terms apply to such cancellation, including, without limitations, cancellation fees and penalties.

## E. Cancellations

### 1. Cancellation by AdventureSmith

AdventureSmith reserves the right to cancel any Tour at any time prior to the Tour Start Date if, due to terrorism, natural disasters, political instability, disease, or other external events out of AdventureSmith’s control, including, without limitation, acts or omissions by Third Party Suppliers (“**External Events**”), it is not viable for AdventureSmith to operate the Tour in AdventureSmith’s reasonable discretion. In the event AdventureSmith cancels Your Tour, You may either:

- (i) Request a full refund, provided that if the cancellation is due to External Events, such refund shall not include any unrecoverable costs incurred by AdventureSmith, including, without limitation, funds advanced by AdventureSmith to Third Party Suppliers that do not allow for refunds. Notwithstanding the foregoing, AdventureSmith will use good faith efforts to recover any such funds advanced to Third Party Suppliers and refund any remaining and available balance to You; or
- (ii) Request to transfer the Tour to an alternative Tour date. If the alternative Tour, or any part thereof, is of lesser value than the original Tour, You may be entitled to a refund of the price difference (subject to the provisions of this Agreement). If the alternative Tour is of greater value than the original Tour, You will be required to pay the difference in price subject to the terms and conditions of this Agreement.

In the event Your Reservation is canceled, AdventureSmith is not responsible for any expenses You may have incurred as a result of Your Reservation, including, without limitation, visas, vaccinations, travel insurance, transportation costs, lodging fees, other fees, and taxes.

## **2. Cancellation by Client**

A cancellation fee (“**Cancellation Fee**”) shall apply if You cancel Your Tour after You pay a Deposit. Any request to cancel a Tour made by You must be made to AdventureSmith in writing via U.S. mail or electronic mail, provided that AdventureSmith may cancel Your Tour for failure to submit timely payment in accordance with the terms and conditions of this Agreement. The date of AdventureSmith’s receipt of such written request shall be deemed the date of cancellation (“**Cancellation Date**”) for purposes of determining the applicable cancellation fees pursuant to this section. Unless otherwise specified, if You cancel a Tour, You will be responsible for the following Cancellation Fees:

- (i) If the Cancellation Date is ninety-one (91) days or more prior to the Tour Start Date, the Cancellation Fee shall be fifty percent (50%) of Your Deposit;
- (ii) If the Cancellation Date is thirty-one (31) to ninety (90) days prior to the Tour Start Date, the Cancellation Fee shall be fifty percent (50%) of the total cost of the Tour;
- (iii) If the Cancellation Date is zero (0) to thirty (30) days prior to the Tour Start Date, the Cancellation Fee shall be one hundred percent (100%) of the total cost of the Tour.

Notwithstanding the foregoing, additional and/or different cancellation fees, terms, and conditions may apply to Your Tour (“**Third Party Cancellation Terms**”). If Third Party Cancellation Terms apply, we will provide those terms to You upon written request. In the event of any conflict between the terms of this agreement and any Third Party Cancellation Terms, the Third Party Cancellation Terms shall apply. In all other circumstances, the terms and conditions of this Agreement shall apply. Notwithstanding the foregoing, AdventureSmith shall not issue any refunds for unrecoverable costs incurred by AdventureSmith, including, without limitation, funds advanced by AdventureSmith to Third Party Suppliers that do not allow for refunds. It is Your responsibility to be ready to embark on the Tour as specified in the itinerary.

AdventureSmith is not responsible for any losses due to cancelled or missed flights, changed flight itineraries, late arrivals, or early departures.

## **3. Unused Portions of Tours and Services**

No refund is provided for any unused portion of a Tour, including the entire Tour in the event You do not commence the Tour on the Tour Start Date. Partial refunds are not available for any unused Tour services, including but not limited to lodging, meals, transportation expenses, activities, or other sightseeing excursions (collectively, “**Services**”). Notwithstanding the foregoing, if a portion of the Services of Your Tour are cancelled by us or a Third Party Supplier(s) because of an event that is within the control of AdventureSmith or a Third Party Supplier(s), We will endeavor to offer you a replacement or alternative. If You are not offered a replacement or alternative, We will refund the cost of that portion of the Services.

## **F. Age and Health Requirements**

### **1. Age Requirements**

All travelers under the age of eighteen (18) years old must be accompanied by a parent or legal guardian.

## **2. Health Requirements**

Good physical and mental health is essential for the enjoyment of active Tours arranged by AdventureSmith. By forwarding the Deposit and signed Reservation form, the Client certifies that he/she does not have any physical or other condition of disability that would create a hazard for him/herself or other clients, Tour leaders, Third Party Suppliers, or AdventureSmith representatives. Any Client or potential participant with medical conditions that may be affected by motion on a body of water, vigorous activity, high altitude, headache, cold, other natural phenomena, or by particular foods or allergic reactions, must notify AdventureSmith in writing not less than ninety (90) days in advance of travel. Participants may also be required to provide a statement of good health certified by a doctor or medical professional.

At any time before or during a Tour, AdventureSmith and/or Third Party Suppliers may, but are not obligated to, make a determination that an individual Client's fitness or health to embark upon, participate in, or continue a Tour is inadequate. In that case, the Client may be prohibited from embarking, continuing, or participating in all or any portion of a Tour. AdventureSmith supports the judgment of its Third Party Suppliers, Tour leaders, agents, or representatives in such cases and You agree to honor such determinations. Once a Reservation has been made, medical circumstances or fitness will not be considered exceptions to our cancellation policy.

**You expressly acknowledge that AdventureSmith and Third Party Suppliers are not required to make any determination regarding Your health or fitness to embark, continue, or participate in a Tour, and that AdventureSmith expressly disclaims any such warranties or representations to that effect. You further acknowledge that it is solely Your responsibility, and not the responsibility of AdventureSmith or any Third Party Supplier, to determine whether You should embark, continue, or participate in all or any portion of a Tour. AdventureSmith expressly disclaims and you hereby waive any and all liability for Your medical care or for Your special dietary requirements on any Tour.**

## **G. Insurance**

### **1. Medical Insurance**

Personal, travel-related medical insurance is required for all Clients at the time of travel. Your insurance must provide coverage against personal accident, death, medical expenses, air ambulance, loss of effects, emergency repatriation, and all other expenses which might arise as a result of any loss damage, injury, delay or inconvenience relating to the Tour.

### **2. Trip Cancellation Insurance**

It is highly recommended that You obtain trip cancellation insurance in the event that Your Tour is canceled for any reason. You are solely responsible for obtaining such insurance and for understanding the scope of coverage, if any.

## **H. Authority on Tour**

Tours may be run by a Tour guide who is the authority on all decisions that affect the health, safety, and/or wellbeing of Tour participants. Any decisions made by the Tour guide, AdventureSmith, or any Third Party Supplier are final. If You fail to comply with a decision made by a Tour guide, AdventureSmith, or any Third Party Supplier, or interfere with the wellbeing of the Tour or any Tour participant, the Tour guide may direct You to leave the Tour immediately and You shall have no right to any refund. You must, at all times, comply with the laws, customs, foreign exchange, drug and other regulations of all countries and destinations visited on the Tour.

## **I. Travel Documents**

You must obtain possession of a valid passport, all visas, permits and certificates, and vaccination certificates, required for the entire Tour. You accept responsibility for obtaining these documents and any other necessary documents. It is Your responsibility to assure that the name on Your airline ticket, cruise tickets, or any other travel documents matches Your name as printed in Your passport (or domestic identification, where applicable) by providing the exact name as it appears on Your passport (or domestic identification, where applicable) to AdventureSmith before tickets are issued.

## **J. Waiver of Liability and Express Assumption of Risk**

On behalf of You and Your successors, assigns, heirs and representatives, You release from all liability and promise not to sue AdventureSmith, including each of its owners, employees, shareholders, subsidiaries, affiliates, officers, directors, successors, agents and assigns (collectively “**Released Parties**”), from any and all claims, including claims of the Released Parties’ negligence, any physical or psychological injury (including paralysis and death), illness, damages, or economic or emotional loss suffered because of Your participation in any Tour, including travel to, from and during the Tour, and Your and other Tour participant’s use of alcohol or other substances during the Tour. You acknowledge that You are voluntarily participating in the Tour. You acknowledge that You are aware of the risks associated with traveling to and from and participating in this Tour, which include but are not limited to physical or psychological injury, pain, suffering, illness, disfigurement, temporary or permanent disability (including paralysis), economic or emotional loss, and/or death. You acknowledge that You understand that these injuries or outcomes may arise from Your or other’s actions, inaction, or negligence; conditions related to travel; use of alcohol or other substances; or the condition of the Tour location(s). Nonetheless, You acknowledge that You assume all related risks, both known or unknown to You, of Your participation in any Tour, including travel to, from and during the Tour.

You agree to hold the Released Parties harmless from any and all claims, or damage to Your personal property, that may occur as a result of Your participation in a Tour, including travel to, from and during such Tour. If You need medical treatment, You agree to be financially responsible for any costs incurred as a result of such treatment. If the Released Parties incur any such expenses on your behalf, including, without limitation, medical expenses or costs, You agree to reimburse the Released Parties in full. You acknowledge that You are aware and understand that You are required to have medical insurance pursuant to this Agreement.

You acknowledge that You understand the legal consequences of this document, including: (i) releasing the Released Parties from all liability; (ii) promising not to sue the Released Parties; and (iii) assuming all risks of participating in this Tour, including travel to, from and during the Tour. This Waiver of Liability and Express Assumption of Risk is intended to be as broad and inclusive as legally permitted by the State of California.

## **K. Indemnification**

You agree to defend and indemnify AdventureSmith, and each of its owners, employees, shareholders, subsidiaries, affiliates, officers, directors, successors, agents and assigns (“**Indemnified Parties**”), from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties, and other costs or expenses of any kind or nature, including but not limited to reasonable legal and accounting fees and costs brought by third parties arising out of or resulting from (i) Your wrongful or negligent acts or omissions; (ii) any wrongful or negligent acts or omissions of other people for which You are responsible; (iii) Your breach of this agreement or documents referenced in this agreement; (iv) Your violation of any law or the rights of a third party; and/or (v) Your use of the AdventureSmith Explorations website ([www.adventuresmithexplorations.com](http://www.adventuresmithexplorations.com)).

## **L. Acts or Omissions of Third Parties**

As provided in this Agreement, AdventureSmith coordinates with various service providers, including, without limitation, Third Party Suppliers. AdventureSmith assumes no liability for any loss, accident, property damage, delay, inconvenience, expense or injury to You or any persons traveling with You owing to any act of default or negligence caused by any person or company engaged in providing those services.

## **M. Complaints**

Should You have a complaint about a Tour or any Third Party Supplier, we urge You to promptly notify AdventureSmith or Your Tour guide so the matter may be promptly resolved. If You do not reach a satisfactory resolution of Your complaint, You must submit such complaint in writing to AdventureSmith within thirty (30) days of the conclusion of Your Tour.

## **N. Force Majeure**



AdventureSmith will not be deemed in breach of this agreement or otherwise liable to You, by reason of delay in performance or nonperformance of any of its obligations under this agreement to the extent that any such delay or nonperformance is due to any force majeure. “**Force Majeure**” means any circumstances beyond the reasonable control of AdventureSmith including, without limitation, acts of God, terrorist activities, insurrection, explosion, flood, tempest, forceful wind, fire or accident, war or threat of war declared or undeclared, sabotage, civil disturbance, labor strikes, requisition, sickness, quarantine, government intervention, weather conditions, and unforeseen circumstances. If AdventureSmith and/or any Third Party Suppliers are affected by Force Majeure, they shall be entitled to, and may in their sole discretion, vary or cancel any itinerary or arrangement in relation to the Tour.

## **O. Images Release**

You agree that AdventureSmith may use, re-use and reproduce any images, photos or videos that You send to AdventureSmith, or that are taken by AdventureSmith, any Third Party Supplier, any Tour guide, and/or other Tour participants, whether individually or in a group, in any medium, including but not limited to, print, electronic media. You hereby grant AdventureSmith a perpetual, royalty-free, worldwide, irrevocable license to use such images for publicity and promotional purposes.

## **P. Limitation of Remedies**

You agree that the sole remedy for any default by AdventureSmith arising under this Agreement shall be the return of the paid Tour cost or the actual direct economic harm to You, whichever is less. To the maximum extent permitted under applicable law, AdventureSmith shall not be liable for any special, consequential, indirect, incidental or other damages arising out of this agreement, including lost profits, whether such damages arise in contract, negligence, tort, under statute, in equity, at law, or otherwise, even if AdventureSmith has been advised of the possibility of such damages. You expressly waive any right You may have to recover such damages.

## **Q. Severability**

If any provision of this Agreement is unenforceable or invalid under any applicable law, such unenforceability or invalidity shall not render the Agreement unenforceable or invalid. Such unenforceable provision will be replaced with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of the original provision.

## **R. No Waiver**

The failure of AdventureSmith to exercise any right, power or remedy provided under this Agreement or to insist upon strict compliance to any term of this Agreement shall not constitute a waiver by AdventureSmith of its right to exercise any such or other right, power or remedy or to demand such compliance.

## **S. Successors and Assigns**

This Agreement shall inure to the benefit of and be binding upon AdventureSmith and You and Your respective heirs, personal representatives, successors and assigns.

## **T. Updates to Terms and Conditions**

AdventureSmith reserves the right to update and/or alter the terms and conditions of this Agreement at any time. It is solely Your responsibility to be familiar with these terms and conditions. The latest terms and conditions will be provided upon written request to AdventureSmith and can be found on the AdventureSmith website ([www.adventuresmithexplorations.com](http://www.adventuresmithexplorations.com)) and supersede any previous versions.

## **U. Applicable Law and Binding Arbitration**

You agree that any dispute concerning, relating, or referring to this Agreement, any Tour, AdventureSmith Tour brochures, any other materials relating to any Tour, or any claim for damages due to property injury, bodily injury or death which occurs during or in connection with any Tour, shall be resolved exclusively by binding arbitration. The binding arbitration shall take place in Nevada County, California, in accordance with the rules of the American Arbitration Association. Such proceedings will be governed by substantive (but not procedural) California law. The arbitrator and not any federal, state or local court or agency shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, conscionability, or formation of this Agreement, including, without limitation, any claim that all or any of this Agreement is void or voidable.

## **V. Merger**

This Agreement is the final, complete and exclusive statement of the parties' agreement on the matters contained in this Agreement. It supersedes all previous negotiations and agreements.