

## **USER AGREEMENT**

Welcome to **Ivacay**,

This **User Agreement** (hereinafter referred to as the “**Terms**” or “**Terms & Conditions**” or “**Terms of Service**”) shall govern the relationship between **Ivacay, having its office at Po Box 81027, Rancho Santa Margarita, California - 92688** (hereinafter referred to the “**Company**” or “**Ivacay**” or “**us**” or “**our**” or “**we**”) and you (hereinafter referred to “**you**” or “**your**” or “**user(s)**”) and shall govern your use of our website – [www.ivacay.co/](http://www.ivacay.co/) (hereinafter individually as well as collectively, referred to as the “**Site**” or “**Platform**”).

Ivacay is a one stop all-inclusive company that offers discounted vacation packages and various customized services for our client’s adventures and entertainment. We offer local entertainment, excursions and tour guides. We are an online marketplace platform that connects you with various tour and activity providers and guides. The activities and tours (collectively “**Activity**” or “**Activities**”) are offered by a variety of third-party local suppliers (“**Suppliers**”) and tour guides services are provided by the guides registered on our platform (“**Tour Guides**”). Together, the Suppliers and Tour Guides are referred to as the “**Service Providers**” in this Agreement. We act as an intermediary between you and the Service Providers. The Service Providers may provide their own terms and conditions in their respective offers/services. (hereinafter referred to as the “**Services**”)

This electronic record is generated by a computer system and does not require any physical or digital signatures.

These terms are applicable on the users and other general visitors of the platform. Please read this User Agreement carefully, as this, along with our **Disclaimer, Cancellation and Refund Policy, Community Guidelines, Cookie Policy** and **Privacy Policy** statement forms the entire agreement between you and Ivacay. If you do not accept this User Agreement in its entirety, then you shall not use the Platform or avail any of our services. In case you are a Service Provider, please refer to our **Service Provider Terms**.

Additionally, how we collect, use, store, share and transmit your data is governed by our **Privacy Policy** statement. This User Agreement shall be read in conjunction with our **Disclaimer, Cancellation & Refund Policy, Community Guidelines, Cookie Policy**, and **Privacy Policy** statement.

## 1. ACCEPTANCE OF THESE TERMS

By accessing or using or registering or availing services on/through our Site in any way or by clicking on a button or taking similar action to signify your affirmative acceptance of this User Agreement, you hereby represent that:

- i. You have read, understood, and agreed to be bound by this User Agreement and any future updates and additions to this User Agreement, as published from time to time on the Site.
- ii. You are of **sound mind** and at least of such minimum **legal age** as per the jurisdiction in which you reside, in order to form a binding contract with us. In case you are not of the age of majority as per the laws of the State that you reside in, then you must have the permission of your lawful guardian to use and access the services and content on the Platform, and to make purchases.
- iii. We must not have previously disabled your account for violation of law or any of our policies.
- iv. You must have read all the appropriate travel and State guidelines before booking any tour or activity.
- v. You agree, understand and acknowledge that we are an intermediary between you and Suppliers/Tour Guides. The listings posted on our Platform are posted by third party Service Providers, and as such we are only a facilitator between you and such Service Provider, and we cannot be a party to or control in any manner any transactions on or off the Site, or your interaction with the Supplier or Tour Guide, as the case may be. **Accordingly, the contract of service shall be a strictly bipartite contract between you and Supplier/Tour Guides.**
- vi. You have read, understood and consented to our **Disclaimer, Cancellation & Refund Policy, Community Guidelines, Cookie Policy**, as well as our **Privacy Policy** statement.

## 2. ACCOUNTS, PASSWORDS AND SECURITY

- a) **Account:** To access various parts of the Platform, and to avail various services, including without limitation, booking various tours and activities listed by the Suppliers, availing the tour guide

services listed by the Tour Guides, making payments, you might be required to register and create an account with us. When setting up and maintaining your account, you must provide and continue to provide accurate and complete information about yourself. As part of the registration process, you will create a password and an account.

- b) **Social Media Signup:** Besides having the option to sign up using email, you also have an option of signing up using social media accounts, such as Google and Facebook on the Site. In case you choose to sign up using any of the social media accounts, you will be redirected to the website of such social media accounts, and therefore, in addition to this Agreement and our Privacy Policy, you will also be subject to the terms and privacy policy of such social media websites. We are not liable for any loss caused to you due to any action of such third-party websites.
- c) **Security:** You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your account. You agree to (a) immediately notify us of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. We ask that you should not share your account or password with any third party. We cannot and will not be liable for any loss, damage or other liability arising from your failure to comply with this Section or from any unauthorized access to or use of your account.
- d) **Inaccurate Information:** If we have reasonable grounds to suspect that any of the information submitted by you is untrue, inaccurate, outdated, or incomplete, or that you have created a duplicate account, in that case, we may terminate your account, and refuse current or future use of any or all of the services.
- e) **No Selling:** You are expressly prohibited from selling or transferring or gifting your account to any other person, or from sharing the login credentials of your account with any third party, without our prior written consent.

### 3. HOW CAN YOU USE THE PLATFORM?

#### i. Allowed uses:

- a) **Directions of Use:** You must follow any and all guidelines or policies or directions of use as associated with each of the services on the Platform.

- b) **Rules:** You must read all the details, description, safety instructions and eligibility criteria mentioned in the respective tour and/or activity you are looking to book. If you do not meet the eligibility criterion, or don't follow the rules or safety instructions, you might not be allowed to participate in the tour or activity. All tours, activities, and services are subject to prevailing guidelines of the appropriate governmental authority. You must follow all the applicable laws and rules, including covid and vaccination related guidelines and directions. Please read all travel and State guidelines as well before booking any service.
- c) **Information:** Whenever prompted, you must provide us with the correct, accurate and updated information. All the submitted information will be processed in accordance with our **Privacy Policy** statement.
- d) **Community Guidelines:** You must comply with the terms and rules stated in our Community Guidelines.
- e) **Material:** For the purposes of this User Agreement, "**material**" shall mean any logos, trademark, text, video, graphics, sound material, published on the Platform, whether a copyright of Ivacay, Suppliers, Tour Guides, other users, our licensors or any third party. You are not allowed to download or print the material, or extracts from it, in a systematic or regular manner or otherwise so as to create a database in electronic or paper form comprising all or part of the material appearing on the Platform. You must not reproduce any part of the Platform or the material or transmit it to or store it in any other Platform or disseminate any part of the material in any other form, unless we have indicated that you may do so.

**ii. Restricted uses:**

- a) You can't impersonate others, create duplicate accounts, or provide inaccurate information about yourself, or your experiences.
- b) You can't post, message, raise, or comment on any political, racist or such other issue which affects a person, community or society. You must comply with the

**Community Guidelines** while posting anything on the Site, or messaging the Service Provider.

- c) You must not misuse or interfere with the Services or Platform or try to access them using a method other than the interface and the instructions that we provide. You may use our Services only as permitted by law and as per the directions provided by us.
- d) You must not:
- republish material from this Platform;
  - sell, rent or sub-license material from the Platform;
  - show any material from the Platform in public without our consent;
  - edit or otherwise modify any material on the Platform (other than editing your own information/content as per the method provided);
  - reproduce, duplicate, copy or otherwise exploit material on our Platform for a commercial purpose; or
  - redistribute material from the Platform, except for content specifically and expressly made available for redistribution with our written consent and according to our terms;
  - infringe or violate our Intellectual Property Rights or Intellectual Property Rights of our Service Providers, other users, licensors or any third party;
  - We reserve the right to restrict your access to any areas of our Platform, or indeed our whole Platform, at our discretion.
- e) You must not use our Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform; or in any way which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- f) You must not use our Platform to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, trojan horse, worm, keystroke logger, rootkit or other malicious computer software.

- g) You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to our Platform, without our express written consent.

In case of your violation or non-compliance of any of the terms mentioned in this User Agreement, we reserve the right to suspend or terminate your account or your access to the Platform or our services, at our sole discretion.

#### **4. WRITING A REVIEW OR LEAVING A FEEDBACK**

You may be able to rate the services you avail from the Platform, share your experience and provide feedback or review. In such a case, you shall provide your honest and true feedback and opinion. You agree not to post anything or perform any act that is deemed to be abusive, derogatory, political, immoral, unlawful, inappropriate, objectionable, or that infringes on any third-party rights. You must follow our **Community Guidelines** while posting anything on the Site or messaging the Service Provider. We reserve the right to delete or not display your feedback, at our sole discretion.

#### **5. OUR CONTENT AND RIGHTS**

This Site, its logos, its content, designs, trademarks, trade dress, trade name, all of our features, functionalities and services, shall remain the sole property of the Ivacay, Tour Guides, Suppliers, and/or its licensors, as the case may be. Your use of or access to this Platform or availing of our services shall not in any way transfer or assign to you any ownership or other proprietary rights in or to this Platform, our services, any content (*except your own content*), designs, published by us or our licensors or third parties. This Site, and the content, including but not limited to the trademark, logo, copyright, design, layout, typography, underlying HTML, Java scripts, text, audio clips, video clips and graphics, and in the expression of the information contained herein, whether as a compilation or otherwise is protected by relevant Intellectual Property laws, rules and regulations. Trademarks, trade names and designs appearing on this Platform are the exclusive property of, or are licensed to the Ivacay and are protected. **No use of a trademark, trade dress, trade name or design appearing on this Platform may be made without the prior written permission of the Ivacay.**

## 6. FEEDBACK RIGHTS

To the extent that you provide Ivacay with any comments, suggestions or other feedback regarding the Ivacay platform or Site, as well as other Ivacay services (collective, the “**Feedback**”), you will be deemed to have granted Ivacay an exclusive, royalty-free, fully paid up, perpetual, irrevocable, worldwide ownership rights in the Feedback. Ivacay is under no obligation to implement any Feedback it may receive from users.

## 7. CONTENT POSTED BY SERVICE PROVIDERS

While using our Platform and our services, you may encounter content or information (*including various tours, activities, and guide services*) that are posted by Suppliers and Tour Guides. Therefore, there is a likelihood that such information or content be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise harmful. Ivacay generally does not review the activities or tours or tour guide services posted by the Service Providers. Please read our detailed **Disclaimer** posted on the Site.

## 8. RESERVATION OF RIGHT

- a) Ivacay is under no obligation to pre-screen any offer or deal posted by third party Service Providers or validate the authenticity or genuineness of the services offered by them. However, Ivacay may at its discretion and/or in accordance with applicable law or on receipt of claim or order, may voluntarily take down any such activity, tour or other service listed on the Platform if Ivacay determines that any offer or deal is in violation of our Service Provider Terms, Ivacay may remove such offer or deal from the Platform without notice. Such actions do not in any manner negate or dilute Ivacay’ position as an intermediary or impose any liability on Ivacay with respect to activity, tour or service posted/listed by the Service Providers on the Platform.
- b) Ivacay reserves the right to cooperate fully with governmental authorities, private investigators, injured third parties in the investigation of any suspected criminal or civil wrongdoing and/or any third parties alleging a claim against the Service Providers, or the users, as the case may be.

## 9. PRIVACY

In order to see what data we collect and how we use or store or share such data, please refer to the detailed **Privacy Policy** statement available on our Site.

## 10. LINKS TO THIRD-PARTY SITE

The Platform might contain links to third-party websites, products and services. Such third-party links are not under the control of Ivacay, and Ivacay is not responsible for any third-party links. Ivacay provides access to these third-party links only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to third-party links. You shall use all third-party links at your own risk, and should apply a suitable level of caution and discretion in doing so. Whenever you click on such links, you are taken to such a third-party Platform, and you get out of the jurisdiction of our Platform. Therefore, you shall be governed by the terms, privacy policy and other policies of such third-party websites and we suggest that you read those policies. **In case of any damage due to such action of third-party links, Ivacay shall not be responsible.**

## 11. PRICES AND PAYMENT

- a) All prices quoted are inclusive prices, i.e. all taxes are already included. However, it is possible that additional local taxes (e.g. local tax) are levied locally. We have no influence on this.
- b) The booking prices set by the Service Providers may be subject to special provisions, *for example, with regard to cancellations and the refund of payments made.* You must independently check before booking whether the respective Service Provider prescribes deviating conditions.

## 12. COVID19

The user agrees that due to recent outbreak of COVID-19 which has been declared as pandemic, there may be instances, where the end service provider either cancels the booking or refuses to provide the services, as agreed with the user, by assigning or not assigning any specific reason for such refusal. Refusal of service may be due to the reasons including but not limited to the user:

- Exhibiting any symptoms associated with COVID 19; or



- Refusing to comply with safety advisories, like wearing protective gear, complying with social distancing norms etc.; or
- Suffering of any ailment making the user or other persons vulnerable to the virus; or
- Posing a threat to the health and safety of others; or
- Any other condition put forward by the appropriate governments.

In such cases Ivacay will assume no liability for the refusal of service by the end service provider. The user also agrees that refund, if any, for such bookings will be processed by Ivacay to the user subject to receipt of the same from the Service Provider.

The user further understands that due to the outbreak of COVID-19, there may be frequent changes in guidelines and/ or SOPs issued by the appropriate governments that a traveler will have to follow in order to undertake the travel.

The user agrees to abide with all such guidelines/SOP while undertaking any travel. In case a user fails to adhere to the same which results in the refusal to travel, Ivacay will not be held liable for such refusal and refund, if any, shall be strictly as per the terms of the Service Provider.

### **13. NON-CIRCUMVENTION**

You, either alone or through a partner, company or joint-venturer, shall not make any efforts to solicit any of our Service Providers, either directly, or indirectly, in an attempt to receive the services by circumventing us. This Section shall survive the termination or expiration of these terms or our relationship.

### **14. LIMITATION OF LIABILITY**

To the maximum extent permitted by law, in no event shall Ivacay (or our licensors or affiliates) be liable to you or any third party for any financial loss, travel loss, loss of health, injury, lost data, costs of procurement of substitute products or services, or any indirect, consequential, exemplary, incidental, special or punitive damages arising from or relating to these terms or your use of, or inability to use the Platform, even if Ivacay has been advised of the possibility of such damages. Access to, and use of, the

Platform is at your own discretion and risk, and you will be solely responsible for any damage to your person, device or computer system, or loss of data resulting therefrom. We are not liable for any content posted by the Suppliers or Tour Guides, or their action, inaction, behavior or conduct.

## **15. INDEMNITY**

You acknowledge to defend, indemnify and hold Ivacay, its owners, affiliates, directors, officers, employees, agents, partners, and any other licensors (hereinafter referred to as “**Indemnified Party**”) harmless from and against any claim, disputes, fine, liability, demand or expense, including reasonable attorneys’ fees, made by a third party, relating to, or arising from:

- a) Your violation of ours or any third-party right;
- b) Your wrongful or improper use of our services or Site;
- c) Your violation of any applicable laws, rules or regulations;
- d) Your violation of this User Agreement, or any other policy of Ivacay as associated with our services;
- e) The indemnifications set forth above will survive the termination or expiration of this User Agreement and/or your use of our services.

## **16. TRANSACTION AND DISPUTES BETWEEN YOU AND SERVICE PROVIDERS**

- a) Ivacay is merely a facilitator and is not and cannot be a party to or control in any manner any offers or deals or transactions of sale or purchase, between the Service Providers and you.
- b) When a service is availed through the deal available on the Platform, the same will be governed by the bipartite contractual arrangement entered into directly between the buyer and the Service Provider. Buyer agrees that Ivacay cannot and does not confirm each Service Provider’s purported identity. Ivacay encourages buyers to exercise discretion and caution while dealing with any Service Provider.
- c) For any deal, Ivacay does not represent either the Service Provider or the buyer in specific transactions. Ivacay does not control and is not liable to or responsible for the quality, safety, suitability of services, products, lawfulness or availability of the services offered for sale through the deals, or the ability of the Service Provider to complete a sale or the ability of Buyers to complete a purchase. Ivacay does not implicitly or explicitly support or endorse the

sale or purchase of any service on the Platform. At no time shall any right, title or interest in the service vest with Ivacay nor shall Ivacay have any obligations or liabilities in respect of any transactions on the Platform.

- d) User acknowledges that it is fully assuming the risks of conducting any purchase and sale transactions (hereinafter referred to as “**Transaction Risk**”) in connection with using the Platform, and that it is fully assuming the risks of liability or harm of any kind in connection with subsequent activity of any kind relating to services that are the subject of transactions using the Platform. User acknowledges and undertakes that it is transacting on the Platform at its own risk and is using its best and prudent judgment before entering into any transactions through the Platform.
- e) Ivacay shall neither be liable nor responsible for any actions or inactions of the user, nor any breach of conditions, representations or warranties of the services and hereby expressly disclaims any and all responsibility and liability in that regard. Ivacay shall not mediate or resolve any dispute or disagreement between buyer and the Service Provider.
- f) In the event that any user has a dispute with any party to a transaction, such user agrees to release and indemnify Ivacay (and our agents, affiliates, directors, officers and employees) from all claims, demands, actions, proceedings, costs, expenses and damages (including without limitation any actual, special, incidental or consequential damages) arising out of or in connection with such transaction.
- g) User hereby further agrees, acknowledges and confirms that in case of any dispute, user’s only recourse will be against the Service Provider and we will not be made a party to any such issue and/or dispute between the Service Provider and the user.

#### **17. DMCA NOTICE/COPYRIGHT COMPLAINTS**

Please notify us if you believe any of your intellectual property rights have been infringed on our Platform. Please file your intellectual property infringement claim in accordance with our **DMCA Notice** posted on the Site.

#### **18. LEGAL ACTION**

If you are found to be degrading, tarnishing, maligning the image, goodwill or reputation of **Ivacay** or its directors/owners, by spreading hate, insulting, false, fake reviews or engaging in mala fide actions against the above, strong legal actions will be taken immediately.

## **19. GOVERNING LAW AND DISPUTE RESOLUTION**

- i. Governing Law:** This User Agreement and any dispute arising from the same will be governed by applicable laws of the **State of California (USA)**.
- ii. Exclusive Jurisdiction:** All disputes must first be attempted to be resolved amicably, failing which, such controversy, conflict or dispute shall be finally settled by bringing it exclusively before the appropriate State or Federal courts situated in **Rancho Santa Margarita, California (USA)**.
- iii. Disputes between users and Service Providers:** You understand and acknowledge that Ivacay is a mere facilitator between you and the Service Providers, and we in no way are responsible for the conduct of either the users or Service Providers. Therefore, if you have any claim or dispute against one of the Service Providers, you undertake to take it up directly with the concerned Service Provider, as the case may be. Ivacay shall not mediate or resolve such disputes, and nor shall become a party to such disputes. However, if you believe that any other Service Provider has violated our Service Provider Terms, applicable law, or any other policy of Ivacay, you can file your complaint at [combinedsun@icloud.com](mailto:combinedsun@icloud.com), and we will take necessary action in accordance with our policies and applicable law.

## **20. Notices**

When you use the Platform or send emails to Ivacay, you are communicating with us electronically. You consent to receive electronically any communications related to your use of this Platform. Ivacay will communicate with you by email or by posting notices on this Platform. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing. We may give notice by means of a general notice via electronic mail to your email address as available with us. If You want to give a notice to us, you can do so by dropping an electronic mail to [combinedsun@icloud.com](mailto:combinedsun@icloud.com).

## 21. Miscellaneous

- i. **Independent Legal Advice:** It is your obligation to obtain independent legal advice at your own expense to ensure you understand the provisions of this Agreement.
- ii. **Headings:** The section headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- iii. **Breach:** In case of any breach or threatened breach to the provisions of this Agreement, we reserve the right to suspend your account, and your access to our website, at our sole discretion.
- iv. **Severability:** If any provision of this User Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this User Agreement will continue in full force and effect.
- v. **Waiver:** Our failure to insist on or enforce strict performance of this User Agreement shall not be construed as a waiver by us of any provision or any right that we have to enforce this User Agreement and nor shall any course of conduct between Ivacay and you or any other party be deemed to modify any provision of this User Agreement.
- vi. **Survival:** Notwithstanding any other provisions of this User Agreement, or any general legal principles to the contrary, any provision of this User Agreement that imposes or contemplates continuing obligations on either party shall survive the expiration or termination of this User Agreement, for any reason whatsoever.
- vii. **No Third-Party Beneficiaries:** Except as otherwise expressly provided in this User Agreement, there shall be no third-party beneficiaries to this User Agreement.
- viii. **No Assignment:** You may not assign this User Agreement (or any rights, benefits or obligations hereunder) by operation of law or otherwise without the prior written consent of Ivacay, which may be withheld at Ivacay's sole discretion. Any attempted assignment that does not comply with this User Agreement shall be null and void.
- ix. **Entire Agreement:** The **User Agreement, Disclaimer, Cancellation & Refund Policy, Community Guidelines, Cookie Policy** and our **Privacy Policy** statement, together with any additional terms and conditions incorporated herein or referred to herein constitute the entire Agreement between Ivacay and you, relating to the subject matter hereof, and supersedes any

prior understanding 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 our Site.

- x. **Force Majeure:** Ivacay and its third party service providers will be excused from performance for any period during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, power failures and government-imposed lockdowns or similar restrictions.
- xi. **Updates to this User Agreement:** We may add to or change or update this User Agreement at any time, from time to time, entirely at our own discretion, with or without any prior written notice. You are responsible for checking this User Agreement periodically. Your use of the Platform after any amendments to this User Agreement shall constitute your acceptance to such amendments.

## 22. Grievance Officer/Designated Representative

In the event you have any grievance regarding anything related to this **User Agreement or Disclaimer or Cancellation & Refund Policy or Community Guidelines or Privacy Policy**, or with any content or service of Ivacay, in that case you may freely write your concerns to the Grievance Officer/Designated Officer appointed below:

- **Name:** Francis Banda
- **Email:** [combinedsun@icloud.com](mailto:combinedsun@icloud.com)
- **Phone:** 9499935368
- **Postal:** Po Box 81027, Rancho Santa Margarita, California – 92688

## 23. Feedback and Information

We welcome your questions or comments regarding this User Agreement. You can write to us via email: [combinedsun@icloud.com](mailto:combinedsun@icloud.com).

Last updated on **July 26, 2022**