TERMS AND CONDITIONS

Table of Contents

1 LIVE NINGALOO TOURS 4

2 MATTERS TO CONSIDER BEFORE BOOKING 4

3 TICKETS 4

4 CANCELLATIONS & RESCHEDULING 5

5 NO SIGHTING POLICY 6

6 ON TOUR 7

7 PHOTOGRAPHY & VIDEO 8

8 LIABILITY 8

9 VALUE ADDED COLLABORATIONS (AVCs) 9

10 GENERAL 9

Renlyn Australia Pty Ltd t/as Live Ningaloo (ACN 162 736 003) (**Live Ningaloo**, **we**, **our** or **us**). Provides tour services and owns and operates the website at 'www.liveningaloo.com.au' (the **Website**). Please read these Terms & Conditions carefully before booking a Live Ningaloo tour (**Tour**). By purchasing a ticket to a Tour, or participating in a Tour, you agree (and if you are under 18 years of age, your legal guardian agrees on your behalf) to be bound by these Terms & Conditions. For all bookings, the person making the booking shall be deemed to have accepted these Terms & Conditions on behalf of all the persons named in the booking. Failure to comply with these Terms & Conditions may result in you being refused participation in and/or removal from a Tour, without refund or any other type of compensation. These Terms & Conditions are to be read in conjunction with your Live Ningaloo Ticket and Waiver terms and conditions.

1 LIVE NINGALOO TOURS

1.1 Our Tours. We offer the following tours: Swim with Whale Sharks and Adventure Day Tour, Life on Ningaloo Swimming Tour and Turtle Eco Adventure Tour. Tour price, inclusions and exclusions, as well as any special conditions that may apply to a Tour, are as specified on our Website at the time of booking. Prices are shown in Australian Dollars (AUD$) and inclusive of Australian Goods and Services Tax (**GST**). Our Tours book up quickly, so we recommend booking well in advance. We reserve the right to change our Tours (in whole or part, including pricing), at any time.

2 MATTERS TO CONSIDER BEFORE BOOKING

2.1 Health and Fitness. Medical conditions, dietary restrictions and assistance requirements must be notified to Live Ningaloo at the time of booking, and again if there is any change of circumstances. We recommend you contact us prior to booking to discuss any specific requirements and to make necessary arrangements. Prior to participating in a Tour Live Ningaloo may require that you provide a medical certificate proving fitness. If we form the view that we are unable to accommodate any pre-existing medical condition or assistance requirements, we may refuse your booking or may cancel your Ticket in accordance with clause 4.1.

2.2 Children. Children under the age of 18 years must be accompanied by a paying adult.

2.3 Travel Insurance. We strongly recommend participants take out travel insurance at the time of booking to cover any unforeseen circumstances.

2.4 Gift Cards. All gift cards purchased from our Website are valid for 3 years from the date of purchase and are not redeemable for cash. Gift cards are only redeemable for Live Ningaloo products and services. Gift card numbers must be provided at the time of booking a Tour (either online or by telephone), and cannot be applied after payment has been made. Live Ningaloo will not refund or replace lost or stolen gift cards, or those otherwise used without authorisation of the purchaser.

3 TICKETS

3.1 Booking Procedure. The quickest way to secure your Tickets is by booking through our Website via our online booking system. However, we also take bookings by telephone, email, or via a third party booking agent or platform (**Agent**). If you book directly with us, the total fees payable by you for our Tour services, including any GST, will be specified when making your booking (**Fee**). Two ticket types are available:

(a) Individual Tickets. These tickets are only available to any participants making a booking of 1 to 4 people. You must pay us the Fee in full at the time of booking.

(b) Group Tickets (including private charters). Groups of 5 to 10 participants who travel together on the same Tour must purchase a group ticket. You must pay us the Fee in full at the time of booking. We note that 30% of the Fee is a non-refundable deposit (**Deposit**).

3.2 Credit Card Fees.

Please be aware that credit card fees will be charged when paying the Fee by credit card. Please note that we do not accept payments by cheque or bank transfer.

3.3 Confirmed Booking.

Your booking is confirmed when you have paid us the Fee and you receive an email confirmation from us with your booking number and detailed information about your booking (the **Booking Confirmation**).

3.4 Checking the Booking Confirmation.

You agree to read the Booking Confirmation closely when you receive it to ensure that all information in it is correct (e.g. participant names, ages and Tour date). You must notify us by email within 48 hours if any information is incorrect. We will send you an updated Booking Confirmation within 24 hours of your notice. Please call us if you do not receive the updated details within this timeframe. All other terms in these Terms & Conditions will continue to apply even if the details in the Booking Confirmation are inaccurate, including those relating to cancellations.

3.5 Tour Participation.

Participation in a Tour will only be given on presentation of a valid Booking Confirmation or voucher (**Ticket**). If your Ticket is lost, stolen, or damaged and illegible please contact Live Ningaloo. Tickets will only be replaced on the presentation of proof of purchase and the provision of photo identification at least 24 hours prior to the start of the Tour.

4 CANCELLATIONS & RESCHEDULING

4.1 By Live Ningaloo.

We may reschedule or cancel a Tour for safety or other operational reasons, including if minimum numbers are not reached (our tours require a minimum of 4 participants to operate), inclement water and weather conditions, mechanical or personnel issues, unforeseen circumstances, or for any other reason. If we cancel or reschedule a Tour, we will notify you by telephone or email. We will give you the option of attending a rescheduled Tour, subject to availability, or provide you with a full refund of the Fee (less any credit card fees).

No refund if the itinerary changes. The Tour itinerary may change at short notice, even just prior to or during a Tour, to accommodate weather and operational requirements of Live Ningaloo. Live Ningaloo has no obligation to provide a rescheduled Tour or refund of the Fee if the itinerary changes.

4.2 By Participants.

Each Tour is specific to the date and time as stated on the Ticket. If you need to reschedule or cancel your Tour, you should contact us by email at res@liveningaloo.com.au as soon as possible (unless you booked via an Agent, in which case you need to contact the Agent). There are administrative costs associated with cancellations and changes to Tour bookings. Please note that all refunds exclude any credit card fees, which are non-refundable.

4.2.1 Rescheduling.

The following terms apply if you wish to reschedule your Tour:

All rescheduling requests will incur a AUD$25 re-booking fee and are subject to availability.

(a) Individual Tickets:

(i) If you notify us that you want to reschedule 15 days or more before the Tour date, we will reschedule your Tour.

(ii) If you notify us that you wish to reschedule 14 days or less before the tour date, you will not be entitled to any refund of the Fee.

(b) Group Tickets:

(i) If you notify us that you want to reschedule 46 days or more before the Tour date, you will lose the 30% non-refundable Deposit. To secure a new Tour date you must pay the Deposit again.

(ii) If you notify us that you want to reschedule 45 days or less before the Tour date, you will not be entitled to any refund of the Fee.

4.2.2 Cancellation. The following terms apply if you wish to cancel your Ticket:

(a) Individual Tickets:

Note: Any reduction in the number of booked participants is treated as a cancellation.

(i) If you notify us that you want to cancel 15 days or more before the Tour date, you will receive a 100% refund of the Fee.

(ii) If you notify us that you want to cancel 14 days or less before the Tour date, you will not be entitled to any refund of the Fee.

(b) Group Tickets:

Note: Only a reduction in the number of booked participants which results in less than 5 persons is treated as a cancellation.

(i) If you notify us that you want to cancel 46 days or more before the Tour date, you will lose the 30% non-refundable Deposit, but will receive a 70% refund of the Fee.

(ii) If you notify us that you want to cancel 45 days or less before the Tour date, you will not be entitled to any refund of the Fee.

4.2.3 Rescheduling or Cancellation Confirmation. If we receive a rescheduling or cancellation request from you, we will confirm cancellation or rescheduling of your booking by email and provide any refunds due within 21 days (circumstances where a refund is payable are set out in clauses 4.2.1 and 4.2.2 above). If you are rescheduling, you will receive an updated Booking Confirmation by email. Call us on +61 86373 5187 if you do not receive confirmation of cancellation or rescheduling by the end of the next business day after your request, as we may not have received it. Your current Ticket details continue to apply until you receive an email confirmation from us that your booking has been rescheduled or cancelled.

4.2.3 Situations or Events Outside Our Reasonable Control

There are certain situations or events which occur which are not within Our reasonable control (some examples are given in the next numbered paragraph). Where one of these occurs, We will attempt to recommence performing the Services as soon as the situation which has stopped Us performing the Services has been resolved. In such circumstances there may be a delay (sometimes a substantial delay) before We can start or continue performing the Services. We will not be liable for any failure or delay in the performance of Our obligations under this Agreement if such failure or delay is caused by a situation or event which was not within Our reasonable control.

The following is a non-exhaustive list of examples of events or situations which are not within Our reasonable control:

a) where You make a change in the Services You wish Us to perform and we cannot provide the new Services to you within the same timeframe;

b) where weather conditions are so severe as to prohibit us from performing the Services at the specified time or on the specified date; and

c) in circumstances of government intervention, such as a change in government policy or regulation regarding human interaction with whale sharks and humpback whales.

5 NO SIGHTING POLICY

5.1 No guarantee of a sighting. Wildlife is unpredictable and we do not guarantee that wildlife sightings on any Tour with us at any time. Unless the following clause 5.2 applies, you will not be entitled to any refund in circumstances were no wildlife is sighted.

5.2 Whale Shark Tours. This clause only applies if you book a Swim with Whale Sharks and Adventure Day Tour with us between 15 April and 15 July each year (**WS Tour**). If you book a WS Tour with us, and our personnel do not sight a whale shark during the WS Tour, we will provide you with another WS Tour on the next available date (which may not be the following day) at no extra cost to you. If you are unable to attend on the next available date, we will

provide you with a non-transferable voucher for another WS Tour only which will remain valid for 2 years from the date of issue.

6 ON TOUR

6.1 Arrival. You should arrive at least 15 minutes prior to the start time of your Tour at the pick-up point specified in the Booking Confirmation. As stated above, participation in a Tour will only be given on presentation of a valid Ticket. Live Ningaloo is under no obligation to reschedule your participation in a Tour and will have no liability to refund the price of a Ticket if you are late or cannot show us a valid Ticket prior to boarding.

6.2 Directions. You must comply with the directions of Live Ningaloo personnel at all times during the Tour. Participants who do not comply with the directions of Live Ningaloo personnel, including any failure to comply with any government public health measures, may be refused boarding or removed from the Tour. In such cases, you will not be entitled to a rescheduled Tour, or any refund or other form of compensation.

6.3 Safety. You must exercise all due care and control for your own safety, and for that of any other persons under your control or supervision whilst participating in the Tour. Children must be accompanied by an adult at all times, who will be responsible for their care and conduct whilst participating in the Tour. Live Ningaloo may take any action which appears appropriate to us (including but not limited to refusing boarding, refusing entry into the water, restricting you to a specific area of the boat, or removing you from a Tour), if we consider that you are unfit or are engaging in any unsafe or unacceptable behaviour, including without limitation being threatening or abusive behaviour towards others, or being under the influence of alcohol or drugs. In such cases, you will not be entitled to a rescheduled Tour, or any refund or other form of compensation.

6.4 Medication, COVID-19 & other diseases. You must bring any medication you require during the Tour on board with you. By attending a Tour participants acknowledge and agree to assume all risks associated with COVID-19 and any other communicable diseases whilst on tour with us. You agree to comply with any government public health measures that may apply as a result of the COVID-19 pandemic, or any other disease at the time of the Tour.

6.5 Prohibited Items. Smoking (including e-cigarettes) is not permitted on Tour. Participants must not bring on board the boat any flammable or dangerous goods, including firearms, knives, fireworks, alcohol or illegal drugs.

6.6 Your Property. You are solely responsible for any personal belongings you bring on the Tour. Live Ningaloo will not be responsible for damage, loss or theft of your personal property. Live Ningaloo will be entitled to remove any items of personal property left on the boat at the conclusion of a Tour. Any such property will be retained by us for a period of 30 days only, and thereafter may be disposed of by Live Ningaloo in its absolute discretion without incurring any liability to you.

6.7 Our Property. You agree that any Live Ningaloo equipment you use on a Tour is used for recreational purposes only and entirely at your own risk. You must not deface, damage or remove any property of Live Ningaloo. You acknowledge and agree that you will pay Live Ningaloo the cost of repairing or replacing any defaced, damaged or lost property where such damage or loss was caused by you during a Tour.

6.8 Leaving Early. You agree that if you choose to leave a Tour before it is completed for any reason (including as a result of feeling seasick) Live Ningaloo has no obligation to take you to shore, nor will you be entitled to a rescheduled Tour, or any refund or other form of compensation.

7 PHOTOGRAPHY & VIDEO

7.1 Your Materials: For personal use only. You agree that any photographs, videos and other recordings you take during a Tour (**Your Materials**) will be for personal use only (not commercial use). As a result of the obligations in our government National Parks Licence (**Licence**), any use and reproduction of Your Materials for commercial purposes without our express prior written consent is strictly prohibited.

7.2 Our Materials. You give Live Ningaloo personnel a right to take photographs, videos and other recordings during a Tour, including your participation in a Tour (**Our Materials**). Live Ningaloo will own all copyright in Our Materials, but we may provide you with a copy for your personal use only. Any use or reproduction of Our Materials for commercial purposes without our express prior written consent is strictly prohibited. You consent and agree to Live Ningaloo using and reproducing Our Materials in any media (including on our Website and social media accounts, third party websites and print media) for advertising, publicity or promotional purposes, and other business purposes including to comply with any obligations under our Licence, without payment of any kind to you.

8 LIABILITY

8.1 Acknowledgment of risk. You acknowledge that the Live Ningaloo Tour is a recreational activity and participation in the Tour is at your own risk. These risks include the risk of physical injury or death, the inducement or exacerbation of medical conditions and mental harm or distress. You acknowledge that your health, ability and conduct will affect such risks.

8.2 Limitation of Liability. To the extent the Live Ningaloo Tour is a "recreational service" within the meaning of section 139A of the *Competition and Consumer Act 2010* (Cth), and to the extent permitted by law, Live Ningaloo and all its officers, employees, contractors, representatives and agents (together, **Personnel**) exclude all:

a) liability for death or personal injury in relation to supply of recreational services;
b) express or implied warranties and conditions, including without limitation that the Tour will be provided with reasonable care and skill.

To the extent permitted by law all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on Live Ningaloo and its Personnel are excluded under these Terms & Conditions.

If a supply under these Terms & Conditions is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law (**ACL**), nothing contained herein excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the ACL, provided that, to the extent that the ACL permits Live Ningaloo to limit its liability, then Live Ningaloo's liability shall be limited to:

a) in the case of services, supplying the services again or payment of the cost of having the services supplied again; and
b) in the case of goods, replacing the goods, supplying equivalent goods or repairing the goods, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

To the extent permitted by law, by participating in a Tour you agree that Live Ningaloo and its Personnel, shall not be liable to you, or anyone under your care and control, for any loss or damage (including without limitation, loss or damage caused by the negligence of Live Ningaloo or its Personnel, and incidental and consequential loss or damage) arising out of or in any way in connected with your participation in a Tour.

8.3 Indemnity. You indemnify and will keep indemnified Live Ningaloo and its personnel against all costs, losses or damages arising out of or in any way in connected with your

participation in a Tour, or a breach by you of these Terms & Conditions, except to the extent the costs, losses or damages were caused or contributed to by the negligence of Live Ningaloo and/or its Personnel.

8.4 General. Nothing in clauses 8.1 to 8.3 (inclusive) limits or excludes the liability of Live Ningaloo or its Personnel for any liability that cannot be excluded under applicable law.

8.5 Waiver. All participants are required to sign our online waiver of liability before they can participate in a Tour (**Wavier**). The Waiver can be accessed via your Booking Confirmation. You may decline to sign the Waiver, but if you do you will not be able to participate in a Tour. All other obligations in these Terms & Conditions will continue to apply even if you do not sign the Waiver, including those relating to cancellations.

9 VALUE ADDED COLLABORATIONS (AVCs)

9.1 Availability and Eligibility**.** From time to time, Live Ningaloo may offer added value collaborations with third-party operators (**AVC Offers**).

a) AVC Offers are only available during the advertised promotional period, for eligible bookings as specified (including ticket type), and subject to availability.
b) Unless otherwise stated, AVC Offers apply only to swimmer seats (not observer seats), are limited to one per person per booking, and cannot be applied retrospectively to existing bookings.

9.2 Redemption of AVC Offers. Any included third-party experience must be booked directly by the participant with the relevant operator, in accordance with instructions provided by Live Ningaloo. AVC Offers must be redeemed within the timeframes specified, and are subject to the operator's availability. If a participant does not redeem the AVC Offer no refund, credit, substitution or extension will be provided; and the offer will be deemed forfeited.

9.3 Third-Party Operators. Third-party operators providing AVC experiences are independent contractors, and are not agents, partners or representatives of Live Ningaloo. Any third-party experience is supplied directly by the relevant operator, and is subject to that operator's terms & conditions, including booking requirements and policies. Live Ningaloo is not responsible for the availability, quality, or delivery of any third-party services, or any acts or omissions of third party operators. Live Ningaloo recommends that you read the terms & conditions of the relevant operator before booking.

9.4 Changes and Withdrawal. Live Ningaloo reserves the right to modify or withdraw any AVC Offer at any time, and may substitute an equivalent benefit where reasonably required.

9.5 Our Combination Packages. Where an AVC Offer is sold as a combined package offering more than one Live Ningaloo Tour for a single price, for example the 'Live Ningaloo Aviation Package' at https://liveningaloo.com.au/collaborations/ additional terms may apply. It is not necessary for the participant to separately book with a third-party provider, as Live Ningaloo may act as the coordinator of all services. To the maximum extent permitted by law, Live Ningaloo's liability for combined packages will be limited in accordance with clause 8 of these Terms & Conditions.

10 GENERAL

10.1 Promotions & Competitions. If you want to participate in a promotion or contest, additional terms and conditions may apply. You must agree to the relevant terms and

conditions applicable to that promotion or contest. In case of any inconsistency between such terms and conditions and these Terms & Conditions, the promotional/contest terms will prevail.

10.2 Complaints. If you have a complaint or concern during a Tour, you may inform our personnel. If our personnel are unable to resolve the issue, you may raise your complaint by email to us at res@liveningaloo.com.au after your Tour. In particular, you agree to contact us in writing before publishing (including posting online) a negative review, so that we may have an opportunity try to resolve your complaint prior to publication. Live Ningaloo will respond in writing within 30 days of receiving your complaint.

10.3 Feedback. You may email us at res@liveningaloo.com.au with any feedback on your experience, or by completing any feedback form we send to you. You agree that any feedback you provide may be used by us for marketing and promotional purposes.

10.4 Privacy. By booking or participating in a Tour, you consent to Live Ningaloo using, and where required sharing, your personal information with a third party, including but not limited to third party payment providers, our Cloud service providers, and any law enforcement agencies (only in connection with investigating any breach or alleged breach of these Terms & Conditions).

10.5 Intellectual Property. Unless otherwise indicated, Live Ningaloo owns or licences from third parties all rights, title and interest (including copyright, patents, designs, trade marks and other intellectual property rights) in the Website and in all materials (e.g. all text, images, graphics, logos and software) made available on the Website and on our Tours (**Content**). The Content is for your personal (non-commercial) use only. All other use, copying or reproduction of this website, the Content (or any part of it) is prohibited, except to the extent permitted by law.

10.6 Governing Law & Jurisdiction. These Terms & Conditions are governed by the laws of Western Australia, and the non-exclusive jurisdiction of the courts thereof.

10.7 Severability. If a Court finds any provision of these Terms & Conditions is invalid, that provision shall be severed and the remaining clauses will be binding on the parties.

10.8 Amendment. Live Ningaloo reserves the right to update, modify or change these Terms & Conditions from time to time. Any changes will be posted and available at our Website, and will take effect 14 days from the date of posting.

10.9 Contact Details. If you have any questions or queries, we can be contacted on:

Address: PO Box 451, Exmouth WA 6707 Australia
Telephone: +61 86373 5187
Email: res@liveningaloo.com.au
*Please note: our Office Hours are 9.00am-5.00pm (WA time), Monday to Friday only.