Booking Terms and Conditions for Australian Tours and Cruises

1. YOUR AGREEMENT WITH US

(a) These terms and conditions (**Terms and Conditions**) form part of the Agreement by which You book Your travel through Us. You are bound by these Terms and Conditions, so it is important that you read them carefully.

(b) This Agreement does not create a relationship of employment, joint venture, agency or partnership between us.

(c) By confirming Your Booking and making a payment, including a deposit, You are warranting to Us that You are 18 years old or over and that You have the authority to bind to this Agreement, all persons travelling under this Booking. Deposits are non-refundable.

(d) All monies paid by You to Us will be Our property and is not held by Us on trust for You. Upon payment, We will have a debt due and payable by Us to the Supplier in relation to the component of the Booking that relates to the products and services offered by them to You.

2. OUR SERVICES TO YOU

(a) We will provide you with the Services.

(b) We will provide the Services to you:

(i) within a reasonable time;

(ii) with due care and skill;

(iii) in a manner that is reasonably fit for the purpose made known to Us by You; and

(iv) in a manner that can reasonably be expected to achieve the desired result made known to Us by You.

(c) We may subcontract or appoint another person or entity to perform any obligations or the Services under this Agreement without Your prior consent, subject always to clause 9(f)(ii).

(d) Except as expressly provided for in the Booking Form, Our Services do not include, and we hereby expressly exclude services relating to:

(i) Insurance;

(ii) Travel documentation such as passports, visas and health documentation (e.g. vaccination evidence); and

(iii) Travel advice relating to the safety of, and Department of Foreign Affairs warnings concerning, the various destinations You wish to visit.

(e) The Suppliers are solely responsible for the information, products and services offered by them to You. We therefore do not represent or warrant the accuracy of that information. Any information provided by Us to You regarding a Supplier's product and service is not a representation by Us. We are merely passing on the information for what it is worth.

(f) All information, including Your itinerary, is subject to change without notice. As such, and subject to clause 9(f)(i), we do not guarantee that Your itinerary, including Your mode of travel or destinations, will not change.

(g) We act as an agent for, and sell various travel related products and services as agent on behalf of Suppliers. Any product or services We provide to You are collateral to that agency relationship. By these Terms and Conditions, You expressly authorise us to make travel bookings on Your behalf and to arrange relevant contracts between You and Suppliers. We are not a provider of travel products and services and have no control over, or liability for, the services provided by Suppliers. All Bookings are made on your behalf subject to the terms and conditions, including conditions of carriage and limitations of liability, imposed by those Suppliers. We can provide You with copies of the relevant Suppliers' terms and conditions on request. Your legal rights in connection with the provision of the Suppliers' products and services are against the specific Supplier and, except to the extent a problem is caused by fault on Our part, are not against Us. Specifically, if for any reason (excluding fault on Our part) any Supplier is unable to provide their product or services for which You have contracted, Your rights are against that provider and not against Us.

3. YOUR OBLIGATIONS

(a) You agree to:

(i) pay the Total Fare and any part thereof, in the amount and by the time requested by Us;

(ii) provide Us with adequate and timely instructions; and

(iii) provide Us with accurate and honest information.

4. OUR CHARGES

(a) We will charge You the Total Fare which is inclusive of:

(i) the amount payable to Us for providing the Services; and

(ii) the amount payable by Us to the Supplier.

5. CANCELLATIONS, CHANGES AND REFUNDS

(a) You may cancel this Agreement at any time on the giving of reasonable notice.

(b) We may cancel this Agreement and cease providing the Services to You if:

(i) You fail to pay the Total Fare or any part thereof, when requested to do so or within a reasonable time;

(ii) You fail to provide us with adequate instructions within a reasonable time;

(iii) You give instructions that are deliberately false or intentionally misleading;

(iv) You indicate or it becomes apparent to Us that You have lost confidence in Us or We in You; or

(v) A Supplier cancels their component of the Booking for the supply of their products and services to You.

(c) Subject to Your Non-excludable Rights, if You:

(i) cancel Your Booking, We will charge You a cancellation fee of the deposit paid on the Total Fare or any part thereof as relates to the cancelled component of Your Booking, plus the Supplier Fee; or

(ii) change Your Booking, We will charge You a change fee of:

(A) $50 per passenger for each change to a domestic or trans-Tasman booking plus the Supplier Fee; and

(B) $100 per passenger for each change to an international booking plus the Supplier Fee.

6. PRIVACY

(a) Where We collect or handle Personal Information in the course of processing and administering your Booking, We will ensure that We take and continue to take all reasonable technical and organisational measures against the unauthorised or unlawful processing or disclosure of the Personal Information.

(b) All Personal Information collected by Us will be treated in accordance with Our Privacy Policy from time to time. The Privacy Policy also includes information about how individuals can request access to or correction of their personal information and about how We will handle any privacy-related complaints.

7. LIMITATION OF LIABILITY

(a) The Services come with guarantees that cannot be excluded under the Australian Consumer Law (Non-excludable Rights). In relation to those Non-Excludable Rights, if a major failure, You are entitled to terminate this Agreement or, subject to these Terms and Conditions, to compensation for any other reasonably foreseeable loss or damage. If a minor failure, You can require that We remedy the failure within a reasonable time and if We fail to do so, You can either terminate this Agreement or have the Services remedied by someone else and claim from Us the reasonable costs of doing so.

(b) With the exception of Non-excludable Rights and subject to clause 7(e), and notwithstanding any other provision of these Terms and Conditions, Our liability to You, whether arising under or in connection with these Terms and Conditions or the performance or non-performance thereof or anything

incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort for negligence or otherwise, or on any other basis in law or equity is hereby limited and excluded as follows:

(i) We shall have no liability whatsoever to You for any indirect loss; and

(ii) Our total aggregate liability to You is at all times limited to the amount equal to the Total Fare less the Supplier Fee (if any).

(c) Subject to 9(f)(i), to the maximum extent permitted by law, Our liability pursuant to any Non-Excludable Right is limited to:

(i) remedying the failure within a reasonable time; or

(ii) payment of the reasonable costs of having the Services remedied by someone else.

(d) Our liability will be reduced in proportion to any negligence or fault on Your part.

(e) Save for liability for significant person injury caused by Reckless Conduct by Us, We exclude liability for any and all Excluded Recreational Liabilities arising out of the supply of Recreational Services of and incidental to Your Booking.

(f) We act only as a booking agent. The Suppliers are solely responsible for the information, products and services offered by them to You and their terms and conditions will apply to your Booking insofar as it relates to those Supplier's products and services. Any arrangements made by or for You with Suppliers is Your responsibility and at Your own risk.

(g) Subject to 9(f)(i) and Our ability to provide the Services, You must indemnify and hold Us and the Suppliers harmless against all loss howsoever caused (excluding fault on Our part), arising out of or in any way connected with cancellation by You or any breach by You of this Agreement. We hold the benefit of this indemnity on trust for Us and the Suppliers. It is not necessary for Us or the Suppliers to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement or to mitigate its loss.

8. FORCE MAJEURE

(a) Neither of us will be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any obligations under this Agreement to the extent such delay or non-performance is due to a Force Majeure Event.

9. GENERAL MATTERS

(a) NOTICES

A Party giving notice or notifying under this Agreement must do so in writing and delivered either by hand delivered, by prepaid post or sent by electronic mail (Email) to the address specified on the Booking Form.

(b) SEVERABILITY

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

(c) VARIATIONS AND ASSIGNMENTS

(i) This Agreement may be varied or amended only in writing signed by each Party.

(ii) The Booking is not assignable and is personal to You. As such, a change to the name of a passenger on a Booking is deemed to be a cancelation of the Booking and a new Booking in the name of the new passenger.

(d) GOVERNING LAW

This Agreement is governed by the laws applicable in the State of Queensland, Australia. Each Party submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.

(e) GOODS AND SERVICES TAX

All fees, rates, charges and expenses are GST exclusive unless otherwise stated. Where the Service provided is subject to GST, GST of 10% will be added and charged to you.

(f) QUALIFICATION

(i) If a term in these Terms and Conditions is expressed to be subject to this clause (i) then, but not otherwise, the qualification contained in subclause (ii) shall apply to the interpretation and application of that clause.

(ii) A clause that is expressed to be subject to clause (i) that empowers Us to exercise a right or discretion is to be read as limiting the conferral and exercise of the right or discretion to the extent that:

(A) it is reasonably necessary to protect Our and the Suppliers' legitimate interests or it is required or permitted by law;

(B) it is exercised within reason and in conformity with the express provisions of these Terms and Conditions; and

(C) it is not exercised capriciously, arbitrarily, unconscionably or for a purpose ulterior to which the contractual right, power or discretion was conferred.

10. DEFINITIONS

(a) "*Agreement*" means this Agreement comprised of the Booking Form and Terms and Conditions;

(b) "*Booking*" means the specific Services sought by You from Us regarding Your acquisition of the products and services from the Suppliers;

(c) "*Booking Form*" means the document/s completed by You, and any amendments thereto, relating to Your Booking;

(d) *Excluded Recreational Liabilities*" means liabilities described in section 139(3) of the *Competition and Consumer Act 2010* (Cth) which, without limitation, includes liability for death, physical or mental injury, or contraction or aggravation of any disease;

(e) "*Force Majeure Event*" means any cause beyond Our reasonable control including, but not limited to, the acts, defaults or omissions of Suppliers or sub-contractors or strike, lock-out or other form of industrial action, compliance with a government request, a shortage of supply, flood, fire, tempest or earthquake.

(f) "*GST*" has the meaning set out in section 195-1 of the GST Act;

(g) "*GST Act*" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended;

(h) "*Personal Information*" has the meaning given in the Privacy Act 1988 (Cth);

(i) "*Privacy Policy*" means Our Privacy Policy set out at https://www.australiantoursandcruises.info/privacy-policy;

(j) "*Reckless Conduct*" has the meaning set out in section 139A(5) of the *Competition and Consumer Act* 2010 (Cth);

(k) "*Recreational Services*" has the meaning set out in section 139A(2) of the Competition *and Consumer Act 2010* (Cth);

(l) *"Services*" means booking and travel advisory services;

(m) "*Supplier*" means accommodation, airline, coach, bus, transfer, rail or cruise line operators or wholesalers who supply the products or services that form all or part of Your Booking;

(n) "*Supplier Fee*" means the amount charged by a Supplier for, amongst other things, the cancellation of a booking, a change to Your Booking or the re-issuing of tickets or documents.

(o) "*Total Fare*" means the total amount payable by You to Us for Your Booking.

(p) "*Us, We, Our*" means Momentum 17 Pty Ltd Pty Ltd trading as Cruise along the Murray; Cairns 4WD Hire; 4WD Hire Cairns; Cape Your 4WD Tours; Gulf Savannah Tours; Australian Tours and Cruises; Tropical Experience Tours and Travel, Kimberley Tours, Beyond Vision Travel and any related entity within the meaning of that term in section 9 of the *Corporations Act 2001* (Cth);

(q) "*You, Your*" means the person making the booking and all those listed on the Booking Form.