

TERMS AND CONDITIONS
POSITIVE ENERGY ADVENTURES & RETREATS PTY LIMITED
(ACN 658 018 903)
LORD HOWE ISLAND TOUR

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1. Definitions

- 1.1. **"Company"** means Positive Energy Adventures and Retreats Pty Limited (ACN 658 018 903).
- 1.2. **"Guided Activities"** means the 3 scenic Guided Hikes, 3 invigorating Guided Swims and 3 rejuvenating Wellness sessions as per and outlined in the Tour notes on the company website.
- 1.3. **"Holding Deposit"** means \$550.00 (including GST) per person required on booking.
- 1.4. **"Itinerary"** means the planned route of the tour.
- 1.5. **"Jurisdiction"** means New South Wales.
- 1.6. **"Final Deposit"** means the second half and final deposit of \$550.00 (including GST) payable to secure your booking following provision of your Flights and airfare confirmation to the satisfaction of the Company.
- 1.7. **"Flights"** mean airfare and airline tickets purchased to arrange transportation of Participant to and from Lord Howe Island.
- 1.8. **"Force Majeure Event"** means an event or circumstance which is outside of your control which prohibits the performance of obligations under the contract. This includes acts of god which can be bushfires, major flooding, impassable snow, earthquakes or hurricanes or other catastrophic events such as war, nuclear contamination, terrorism, riots, pandemic, or epidemic.
- 1.9. **"Free Time"** means any periods of free time which may be made available to you during the tour in which you may undertake activities which are not limited to or are include on the itinerary, walking notes or planned or supervised by the Tour Guides.
- 1.10. **"Guided Hikes"** – means a tour guided in person by a staff member of Positive Energy Adventures. The Lord Howe Island Tour includes 3 scenic guided including the Southern hike, Northern hike and the Central Hike.
- 1.11. **"Lord Howe Island"** means the Lord Howe Island located in NSW, 2898.
- 1.12. **"Tour"** means the Tour to Lord Howe Island.
- 1.13. **"Tour Dates"** means the Lord Howe Island Tour dates as stipulated by the Company from time to time.
- 1.14. **"Tour Guides"** means any employee, director, contractor officers or agent employed by the Company engaged for the purpose of leading the Tour Guides.
- 1.15. **"Participant"** means any participant participating on the Lord Howe Island Tour.

- 1.16. **“Positive Energy Adventures”** means the Company, Positive Energy Adventures and Retreats Pty Limited (ACN 658 018 903).
- 1.17. **“Purchase Price”** means \$3,470 (excluding GST) per person (twin share) which is the total price of the Tour excluding Flights and travel insurance.
- 1.18. **“Services”** means any hiking, walking, ocean swim, wellness session additional amenities activity inclusion provided by the Company to the Participant on Tour.
- 1.19. **“Walking Notes”** means the walking notes prepared by the Company and provided to Participants on receipt of your Final Deposit payment.
- 1.20. **“We/us”** is, where the context permits, a reference to the Company.
- 1.21. **“You/your”** is, where the context permits, a reference to the Participant.

2. How to book

- 2.1. You can make a booking for the Lord Howe Island tour and wellness retreat through our website or by emailing our reservations team.
- 2.2. A holding deposit of \$550.00 (including GST) per person is required to secure your initial position on the Tour (**Holding Deposit**).
- 2.3. Participants will then have 21 days from the date the Holding Deposit is received to finalise arrangements transporting the Participant to and from Lord Howe Island.
- 2.4. Participants must book and purchase an airline ticket within 21 days of payment of the Holding Deposit to secure your position on the Tour.
- 2.5. Evidence of airline tickets and flight bookings to and from Lord Howe Island must be provided to the Company and accepted to its satisfaction within 21 days of payment of the Holding Deposit, failing at which the Company may exercise its discretion and reserves the right to:
 - 2.5.1. Cancel the Participant’s booking; and
 - 2.5.2. Refund the Holding Deposit.
- 2.6. Upon provision of airfare details and flight tickets, Participants must pay \$550.00 (including GST) being the balance of the Final Deposit to secure your position on the Tour.
- 2.7. Full payment of the balance of the Purchase Price is required 120 days before departure of the Lord Howe Island Tour.
- 2.8. Once your booking has been made for the Holding Deposit, you’ll receive a booking confirmation email and be asked to complete all your participant information. All

participants partaking in the Lord Howe Island Tour must be over the age of 18 and must complete the participant information.

- 2.9. By confirming your booking, you agree to accept and be binding by these terms and conditions, as set out in this document.
- 2.10. If you are booking on behalf of another person, the Company relies on the authority of the person making the booking to act on behalf of any other traveller on the booking and that person will bind all such travellers to these terms and conditions, and any amendment made from time to time.

3. Pricing Inclusions and Exclusions

- 3.1. The Tour prices include:
 - 3.1.1. Transfers pick up and return from the collection and return point designated by the Company;
 - 3.1.2. The Guided Activities;
 - 3.1.3. Accommodation including linen;
 - 3.1.4. day packs and insulated lunch boxes (participants to borrow);
 - 3.1.5. SwimCaps (participants to keep);
 - 3.1.6. breakfast each morning, walkers lunch each day and dinner for 2 (two) nights;
 - 3.1.7. all National Park admission and entry fees;
 - 3.1.8. bikes;
 - 3.1.9. Boat Safety and Water Safety for Guided Swims;
 - 3.1.10. qualified staff for the duration of the Tour;
 - 3.1.11. Positive Energy Adventures Hiking Notes, maps and local knowledge; and
 - 3.1.12. use of backpack and weatherproof jacket (if required) for duration of walk.
- 3.2. The Tour pricing excludes the following expenses which the Participant will incur:
 - 3.2.1. Wetsuits and snorkelling equipment which must be hired at Participants own cost;
 - 3.2.2. Dinner for 2 (two) nights at per pre arranged bookings at top rated local restaurants;

- 3.2.3. Flights; and
- 3.2.4. Optional Mount Gower Day Hike on Day 4.
- 3.3. Without limitation, the following items are also excluded from the pricing:
 - 3.3.1. pre and post walk departure travel arrangements, including accommodation and transport to the collection point and from the return point designated by the Company; and
 - 3.3.2. any expenses not defined as an inclusion in the pricing including tips, personal clothing, medical expenses, items of a personal nature and emergency evacuations.
- 3.4. Participants agree to bear all other costs as incurred and required on an as necessary basis whilst on Lord Howe Island to the exclusion of the Company.
- 3.5. Positive Energy Adventures has the discretion to apply discounts towards children under 18 years of age participating in the Tour, depending on variable factors including but not limited to the circumstances, age and requirements.
- 3.6. The specifics and inclusions of the Tour are flexible and may be altered depending on the particular requests of the Participant and other factors, out of the Company's control. Positive Energy Adventures reserves their right vary the Pricing of the Tour depending on variations as requested by the Participant.
- 3.7. Positive Energy Adventures has the discretion to charge additional costs for third party inclusions not specifically referred to or outlined in Clause 3.2 which may be incurred on its part in attending to the requests of the Participant. For example, may include but not limited to meal preference variations, dietary requirements, additional accommodation, altered bus pick up routes.
- 3.8. Included in the price is an allocation of wine per night. Although we do not promote doing so, you may bring your own alcohol (within reason), but you are responsible for carrying it and any bottles, cans etc. must also be taken out of the National Park by you. Final approval for any additional alcohol will be made by your guides, at their absolute discretion, on the day of departure.
- 3.9. No price reduction is available for guests who either elect to bring their own alcohol or choose not to avail themselves of the food or drink provided.
- 3.10. The Company abides by responsible service of alcohol principles as it promotes a safe and enjoyable environment for all guests and staff, and reduces the risk of alcohol-related injury. Your guides have absolute discretion around the provision of alcohol (including BYO alcohol) and will stop serving and/or prohibit continued consumption of alcohol if guest(s) appear (in the opinion of the guides) drunk or become violent, quarrelsome, disorderly or behave indecently.

4. Accommodation

- 4.1. The accommodation is at Leanda Lei Apartments and is for 4 (four) nights only on the Tour Dates.
- 4.2. All Participants will be in twin room accommodation.
- 4.3. Requests for the couple and group accommodation must be stipulated at the time of booking.
- 4.4. The Company we will use its best endeavours to ensure that couple and group travellers are placed in single rooms together where possible, however make no guarantees or warranties as to accommodation arrangements.
- 4.5. Should any Participant choose to extend its stay outside of the Tour Dates, (and separate from the Tour provided by the Company) the Company makes no guarantees as to the availability of accommodation at Leanda Lei Apartments. In this instance, the Participant acknowledges and agrees it will bear all responsibility of arranging for and paying all additional costs of its own accommodation to the exclusion of the Company outside of the Tour Dates.

5. Payment

- 5.1. All pricing is Australian Dollars
- 5.2. **DEPOSIT:** As above, Participants will secure its booking on the Tour by;
 - 5.2.1. Paying the Holding Deposit to the Company;
 - 5.2.2. Purchasing the airline ticket to and from Lord Howe Island within 21 days of purchasing the Holding Deposit;
 - 5.2.3. Providing flight details to the Company; and
 - 5.2.4. Paying the Final Deposit of \$550.00 (including GST) per person.
- 5.3. **FINAL PAYMENT FOR LORD HOWE ISLAND WELLNESS RETREAT:** The balance of the Purchase Price is payable to the Company 120 days prior to departure. The balance of the Purchase Price is non-refundable.
- 5.4. For bookings made 120 days or less from the departure date, full payment of the Purchase Price is due at the time of booking and is non-refundable.
- 5.5. Once you have paid the deposit, any subsequent discounts or price reductions that are advertised by the Company or any third party will not be applied retrospectively.

- 5.6. Payment may be made by direct deposit, credit card or Australian debit cards. We do not accept payment by any other method, including cheque or foreign debit cards.
- 5.7. We do not charge a fee for payments made via
 - 5.7.1. Direct deposit, or Australian Visa or MasterCard "debit" card.
- 5.8. However, we do charge for the following payment fees for the following transactions
 - 5.8.1. 1% fee for Australian Visa and MasterCard "credit" cards;
 - 5.8.2. 2% fee for all foreign Visa and MasterCard "credit" cards; and
 - 5.8.3. 3% fee for all American Express cards.
- 5.9. Gift Vouchers are available for purchase on our website and must be used in accordance with the following:
 - 5.9.1. must be used within 12 months from the date of purchase, otherwise it will be voided and may not be redeemed after expiry date.
 - 5.9.2. Gift Vouchers are not redeemable for cash and cannot be refunded for cash or credit.
 - 5.9.3. Purchases exceeding the available balances on the Gift Voucher will require the difference to be paid at the time of booking.
 - 5.9.4. A Gift Voucher is redeemable for any tour and/or product we offer on our website.
 - 5.9.5. Gift Vouchers cannot be used in conjunction with promotional offers.

6. Request to Change Booking by Participant

- 6.1. If you wish to change your booking, you must notify the Company in writing as soon as possible.
- 6.2. Once the Company receives your notice, the Company within its discretion will use all of its endeavours to accommodate amendments subject to the following provisions:
 - 6.2.1. one change request seeking an alternate Tour Date can be made to your original booking, up to 120 days prior to the date of Tour departure, at no cost;
 - 6.2.2. Any subsequent date change within 120 days prior to the date of departure will incur a non-refundable fee of \$550.00 per person;

- 6.2.3. Within its discretion, the Company will use all of its endeavours to accommodate booking change requests but makes no guarantees or warranties and are subject to availability; and
- 6.2.4. If the Company cannot facilitate a date change that is suitable to or acceptable by the Participant, the Participant agrees and acknowledges no refund is payable by the Company.
- 6.3. Changes to the Tour, or transfer of booking to an alternate Tour Date may incur additional costs payable by you for any difference in pricing. We will do our best to change your booking to your preferred date, but subject to availability this may not always be possible.

7. Cancellation by Participant

- 7.1. If you wish to cancel your booking, you must notify the Company in writing as soon as possible.
- 7.2. Once the Company receives your notice in writing, cancellation will take effect subject to the following:
 - 7.2.1. the date of cancellation is the date that the Company receives written notice of the cancellation; and
 - 7.2.2. if the cancellation is made:
 - 7.2.2.1. more than 120 days from the scheduled departure date, a fee of \$550 per person will be charged with the balance payment refunded to you; or
 - 7.2.2.2. within 120 days of departure of the Tour, no refund is available.
 - 7.2.3. cancellation by the Participant will also take effect if:
 - 7.2.3.1. you fail to arrive at Lord Howe Island; or
 - 7.2.3.2. your payment of the balance of the Purchase Price is not received by the Company 90 days before the Tour.
- 7.3. No refund will be paid to you:
 - 7.3.1. voluntarily leave the Tour after it has commenced, including (without limitation) for reasons of bereavement, injury or illness; and
 - 7.3.2. are directed by the Company to leave or not commence the Tour in accordance with these terms and conditions.

- 7.4. The Company reserves the right to not provide a refund if you arrive on the day of the Tour with inappropriate footwear, equipment and are unable to join the activities.

8. Cancellation by Company

- 8.1. We will under no circumstance knowingly place at risk the health and well-being of our Participants and guides.
- 8.2. In the case of a Force Majeure Event (defined in these terms and conditions), we may need to cancel the Tour and reserve the right at all times to exercise our judgment to make that decision.

9. Unforeseen changes to Itinerary

- 9.1. All of our walks take place in very special wilderness settings. We are at the mercy of nature in all her beauty and all her fury.
- 9.2. We will under no circumstance knowingly place at risk the health and well-being of our Participants and guides.
- 9.3. In the case of a Force Majeure Event (defined in these terms and conditions), we may need to cancel certain activities on the Tour as planned including but not limited to a walk, swim or wellness session with very little notice. In some cases, this can occur after the walk, swim or wellness session has commenced.
- 9.4. If a walk, swim or wellness session does not meet minimum numbers, the Company reserves the right to cancel, alter or postpone the departure. However the Company warrants it will make every effort to consolidate numbers so that the booked activity will successfully proceed. The Participant agrees to be flexible in this regard.
- 9.5. If we need to cancel a walk or swim departure or wellness session for any reason, we will provide you with the following options:
 - 9.5.1. provide a replacement walk, swim or wellness session that complements your existing travel arrangements (subject to availability); and/or
 - 9.5.2. use its best endeavours to provide a replacement walk swim or wellness session at a later date convenient to both parties.
- 9.6. There is a risk prior to the Tour or during the Tour that there may be unforeseen obstructions to the walking track, such as fallen trees, or a landslide and your Tour Guide may be required to take you an alternative route to avoid the obstruction and protect your safety.
- 9.7. The Participant acknowledges and agrees that you will not claim a refund of the Purchase Price in the event the Company is required to alter, change, amend or cancel certain components of the itinerary due to an unforeseen obstruction which is out of the control of the Company.

10. Force Majeure

- 10.1. In circumstances where the tour is required to be cancelled due to a Force Majeure Event, no refunds will be granted, and Participants will be given the opportunity to reschedule their tour to a future date within 12 (twelve) months, plus pay a surcharge for unrecoverable costs, comprising any costs, fees, expenses or the like that the Company has paid or is liable to pay and which the Company is unable to recover.

11. Free Time

- 11.1. You agree and acknowledge that you may be given Free Time through the duration of the Tour and during this Free Time or if you choose to leave the tour for any reason you agree to:
 - 11.1.1. participate in Free Time at your own risk and you understand the extent of the risk involved in undertaking any activity as chosen by you in Free Time;
 - 11.1.2. fully release and indemnify the Company and each of its officers, employees, contractors, and agents, for any and all liability arising from any claim you may have relating to your death, injury, illness and loss and damage suffered during Free Time; and
 - 11.1.3. participate in Free Time willingly, freely and voluntarily.
- 11.2. You are free to leave the Tour at any point at your own discretion. If in the instance you decide to leave the supervision of the Tour Guide or the Tour; you understand, acknowledge and agree the Company will not be liable for you death, injury, illness, loss or damage you may suffer.

12. Evacuations

- 12.1. In rare and extreme circumstances during the Tour, you may be injured or suffer an unforeseen illness which requires you to be evacuated from the tour. In instances where you are in a remote location and your condition is deemed to be potentially life threatening, a Government Funded Search and Rescue helicopter may be dispatched at no cost to you.
- 12.2. In circumstances where you are injured and you require a rescue helicopter for injuries such as broken or sprained limbs or even illnesses such as severe fatigue however, your condition is not life threatening; you will be liable for any third-party costs incurred and associated with your evacuation. An evacuation by ambulance or rescue helicopter can cost anywhere between several hundred to several thousand dollars, depending on the individual circumstances of the rescue.
- 12.3. We note the Australian Government Medicare Act prohibits domestic travel insurance from reimbursing costs associated with ambulance or air ambulance services. To ensure you are covered for these unforeseen costs, we recommend obtaining private

health insurance which includes specific ambulance cover or inquiring with your current private health provider to ensure your policy includes specific ambulance cover.

- 12.4. In addition to the cost of rescue helicopters and ambulances, you acknowledge and agree that you will be liable for all costs incurred and associated with any ground transportation and staff wages if the evacuations prohibit the continuation of the tour.

13. Travel Insurance

- 13.1. All travel arrangements including flights and airfares to and from Lord Howe Island are the sole responsibility of the Participant.
- 13.2. When selecting a travel insurance product, please ensure that it provides cover against, at a minimum, personal accidents or injury, medical expenses, Force Majeure Events, emergency repatriation and personal liability, cancellation for any reason including bereavement, delayed flights, lost luggage and personal effects.
- 13.3. It is highly recommended Participants purchase travel insurance at the time the Holding Deposit is made and the flights are purchased to cover against cancellation fees, charges and unforeseen circumstances due to a forced majeure event as described in these terms and conditions.
- 13.4. Lord Howe Island is an island and it should be taken into consideration that flights can be subject to aircraft diversions in extreme weather conditions or any other circumstance which may cause major disruption to schedule.
- 13.5. The Participant agrees and acknowledges it is solely responsible for ensuring its own compliance with such travel arrangements it has made to and from Lord Howe Island. The Participant indemnifies the Company against any loss incurred due to fault of the Participant.
- 13.6. The Company takes no responsibility for any loss, damage or disruption to the schedule or Tour Itinerary incurred or caused by the Participant's flight, airfare and travel arrangements to and from Lord Howe Island.
- 13.7. The Participant fully releases and indemnifies the Company for any loss incurred due to flight cancellations or flight delays due to extreme weather and or any other unforeseen circumstances out of the control of the Company and the Participant.

14. Indemnity Form

- 14.1. We require that all participants of the Lord Howe Island Tour sign an indemnity prior to departure on the Tour. This form indemnifies the Company, its officers, directors, employees, servants, agents or consultants or any of them from and against all costs, claims, actions, demands and liability whatsoever and howsoever arising from or in any way connected with Tour (including travel arrangements to and from Lord Howe

Island, any transportation to or from the area in which the tour is to take place for example but not limited to swimming or bike riding on the Tour) including such costs, claims, actions, demands or statutory duty or otherwise on the part of the Company, or any of its officers, directors, employees, servants, agents or consultants, and including any liability in respect of or related to your death, personal injury or loss of or damage to any property owned or possessed by you, but excluding any liability in respect of which the Motor Accidents Insurance Board (if/as applicable) is bound to indemnify the Company, its officers, directors, employees, servants, agents or consultants.

- 14.2. By signing the indemnity form, you will also give the Company various acknowledgements including confirmation that you have been informed of the most appropriate form of footwear for the hike you are undertaking, swimwear for the swim and all equipment as may be necessary and required on any activity on the Tour.

15. Footwear

- 15.1. Guests are required to wear supportive walking shoes or hiking boots with firm treaded soles. New boots should be worn in prior to the commencement of the walk. Waterproof or water-resistant boots are recommended.
- 15.2. These recommendations are made in the interests of your safety and to give you the best chance of having the most enjoyable experience possible. Arriving on the day of departure for any walk with inappropriate footwear may result in forfeiting your walk without refund. If you are unsure whether your footwear is suitable for your intended walk, please contact our reservations team for further advice.

16. Health and Fitness Requirements

- 16.1. It is your responsibility to read through the itinerary carefully and ensure you have adequate fitness for the Tour.
- 16.2. Participants must be in good health and must be at least moderately fit in order to undertake a walk, swim and wellness session. Some training and preparation work is required prior to departure. The more physically prepared you are, the more enjoyable your walk will be. Speak with our reservations staff for more information about health and fitness requirements and walk preparation.
- 16.3. Participants are solely responsible for making their own enquiries with the Company to determine their own health and fitness requirements and are urged to consult with their medical practitioner to the extent they are unsure of have concerns.
- 16.4. The Company reserves the right in its absolute discretion to refuse a Participant the right to participate in a walk, swim or wellness session on medical or fitness grounds at any time on the Tour as it sees fit.

17. Medical Forms and Doctors Certificates

- 17.1. Pre-existing medical conditions must be disclosed to the Company. Failure to do so may result in the Company using its discretion to refuse a Participant the right to participate in any activity as per the Tour Itinerary as referred to in Clause 15.4.
- 17.2. Participants with a pre-existing medical condition, including allergies, are required to disclose this on the booking form and may be required to supply a doctor's certificate or complete a confidential medical questionnaire at the Company's request, within the Company's discretion.
- 17.3. Participants who are 69 years of age or older, at the time of departure, must supply a doctor's certificate stating that they are in good physical condition and that there are no known ailments or pre-existing medical conditions likely to prevent them from completing the walk. This step assists all participants on the Tour to ensure an enjoyable, relaxed and trouble-free hike for all participants involved.

18. Dietary Requirements

- 18.1. Dietary requirements stating whether it is a lifestyle choice or allergy must be noted on the booking form. We will endeavor to cater to your needs, but make no guarantees or warranties as to catering requirements.
- 18.2. If dietary requirements are not disclosed at least 90 days prior to the Tour, we may not be able to cater to your needs. Should you need to cancel your trip because you have not disclosed such dietary requirements in a timely manner, standard cancellation fees will apply and within the Company's discretion.

19. Guide and Guest Responsibilities

- 19.1. The trip leader includes both the nominated lead guide and any other person nominated by or on behalf of the Company to lead or supervise any aspect of the trip.
- 19.2. The Company's guides and support staff take their roles and responsibilities seriously and if for any reason the trip leader believes, in their absolute discretion, that you should not participate in the trip, they may exclude you from the trip. In this event, without prejudice to any other condition in these terms and conditions, you will be offered the option of taking another walk considered suitable for you.
- 19.3. All our walks, swims and wellness sessions are group trips, Participants need to be conscious and aware of how their action may impact others on Tour or on Lord Howe Island. The trip leader is in charge to ensure not only the safety of all Participants, but the comfort and enjoyment of the entire group on the Tour.
- 19.4. If for any reason during the Tour at any point the nominated trip leader considers you should not participate further due to you committing an illegal act, or in the opinion of the nominated tour leader, your behavior is causing or may cause danger,

intimidation, distress, abusive or infringing conduct or annoyance to other participants, the nominated leader may direct you not to continue such act, conduct or behaviour and agree, acknowledge and warrant you will follow instructions given by the Company.

- 19.5. In this case, you will not be entitled to any refund. Travel insurance may compensate you depending on the circumstances (and the terms and conditions of the relevant policy obtained by the Participant on the recommendation of, but to the exclusion of the Company). The Company makes no warranties or guarantees in this respect and relies on the terms and conditions as set out above.

20. Environment Responsibilities

- 20.1. The Company operates within the Wilderness World Heritage Area and National Parks. The Company's environmental responsibilities are taken very seriously.
- 20.2. Prior to the commencement of the Tour on Lord Howe Island, Participants will be briefed about such responsibilities, however prior knowledge and awareness is extremely helpful and reasonably expected.

21. Exclusion of Liability

- 21.1. Participants acknowledge that walking in a wilderness area of a National Park and swimming in an ocean is potentially a dangerous activity and Participants are undertaking such an activity at their own risk. Participants acknowledge and agree that they will undertake the walk and ocean swim freely, voluntarily and absolutely at their own risk and with a full appreciation of the nature and extent of all risks involved in the walk and or the ocean swim. Participants acknowledge and agree the Company is supplying Participants with Recreational Services (as defined in these terms and conditions) for the purposes of applicable laws.
- 21.2. Participant's agree to the fullest extent permitted by law waive all of their legal rights of action against and fully release and indemnify the Company and its officers, directors, employees, servants, agents or consultants from all liability arising from or connected with their death or personal injury howsoever arising out of or in relation to the participation by them on Tour including without limitation, liability for a negligent or tortuous act or omission, breach of duty, breach of contract or breach of statutory duty on the part of the Company, its officers, directors, employees, servants, agents or consultants. This waiver shall bind all Participant's and their legal personal representatives.

22. Limitation of Liability

- 22.1. The Company does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would:
 - 22.1.1. contravene that statute; or

- 22.1.2. cause any part of these terms and conditions to be void.
- 22.2. Except to the extent condition 21.1 applies, and to the extent permitted by law, the Company excludes all:
 - 22.2.1. statutory liability;
 - 22.2.2. tortious liability (including negligence);
 - 22.2.3. conditions and warranties implied by custom, the general law or statute; and
 - 22.2.4. liability for all special, indirect, incidental, consequential or punitive damage and economic loss, loss of profits, loss of revenue, loss of bargain, loss of goodwill, loss of anticipated savings, or loss of use of products or equipment, arising out of or relating to these terms and conditions, the walk, or any failure to supply or delay in supplying the walk, whether or not the Company was aware or should have been aware of the possibility of such loss or damage.
- 22.3. The Company's liability to Participant's for any breach of any express or implied provision of these terms and conditions is limited, at the Company's option, to:
 - 22.3.1. refunding the price of the goods or services in respect of which the breach occurred; or
 - 22.3.2. providing, replacing or repairing those goods or providing those services again.
- 22.4. Participants agree to fully release, indemnify and hold harmless the Company and each of its officers, directors, employees, servants, agents or consultants against any losses, costs, claims, damages, expenses, liabilities, proceedings or demands which any of them may directly or indirectly incur or suffer as a consequence of any breach by them of their obligations under these terms and conditions.

23. Third Party Liability

- 23.1. The Company is an intermediary between the Participant and all external third-party service providers. If the Participant has an incident arising out of or in relation to a service provided by a third party provider, the Participant agrees, acknowledges and warrants it will make a claim directly against the third party provider and not the Company.
- 23.2. The Participant agrees to fully release and indemnify the Company for all claims relating to the damage, destruction or loss of your personal property caused by a third party provider.

24. Intellectual Property

- 24.1. Positive Energy Adventures holds the copyright and owns the intellectual property of the easy-to-follow walking notes for the Tour and Tour Itinerary provided to the Participant absolutely.
- 24.2. You agree and acknowledge that you are not to duplicate the easy-to-following walking notes by any means whatsoever, or any of the information given to you, it remains and belongs to the Company.
- 24.3. No part of the easy-to-follow walking notes or tour itinerary may be reproduced or distributed in any form for any purpose.
- 24.4. Positive Energy Adventures reserves the right to commence proceedings against you in the event of a breach of copyright or intellectual property. In this instance the Company will seek from the Participant all costs associated with enforcing and protecting its legitimate business interests.

25. Jurisdiction

- 25.1. The laws of New South Wales shall apply to these terms and conditions.

26. Acknowledgement

- 26.1. By placing a booking with the Company in accordance with these terms and conditions, Participants acknowledge and agree that the Company has relied on the representations made by you, including in respect of your circumstances, travel insurance availability, flights and airfare arrangements to and from Lord Howe Island, age and medical condition which representations you hereby confirm, and warrant are true, correct and complete in every respect.