

## 1. DEFINITIONS

In this agreement, the following terms have the following corresponding meaning:

**Agent** means the agent through which the Charter was booked.

**Charter** means the cruise for which the Charterer is paying and the Operator is providing.

**Charterer** means the client who is paying for the Charter.

**Charterer's Group** means all the passengers who will take part in the Charter.

**Master** means the duly qualified person in charge of the Vessel.

**Operator** means the owner or operator of the Vessel as specified in the Booking Confirmation.

**Vessel** means the Operator's vessel or vessels specified in the Booking Confirmation.

**Partner vessels** all vessels other than Silver Spirit or Free Spirit

## 2. LEGALLY BINDING CONTRACT

The following terms & conditions apply to any services provided by The Agent: Hens Party Cruises/Spirit Fleet (ABN 45 607 013 525 Whale Swim Safaris Pty LTD)

### 2.1 Acceptance

- (1) By accepting the quotation and paying a deposit, the Charterer agrees to be bound by these Terms and Conditions.
- (2) The Charterer acknowledges that they have read and understood these Terms and Conditions and has or will convey these conditions to all of the Charterer's Group.

## 3. CONFIRMATION OF BOOKING / DEPOSIT / PAYMENT

### 3.1 Quotations

Quote prices are valid for 7 days only.

### 3.2 Tentative Bookings

Tentative reservations will be held in good faith for up to 7 days pending payment of a deposit, or until another party wants to book the same vessel, whichever is sooner. The booking is not secured until a deposit has been received.

### 3.3 Confirmation of Booking

A Charter will be confirmed on receipt of the deposit specified in the quotation. All bookings made within 14 days of Charter date require payment in full at the time of booking.

### 3.4 Deposit

The deposit payable will be 50% of the boat charter fee unless otherwise specified in the quotation.

### 3.5 Final Payment

- (1) Final guest numbers and final payment is required 14 days prior to the Charter unless otherwise agreed.
- (2) The final guest numbers specified by the Charterer at least 14 days prior to the Charter will be deemed the minimum number of guests for charges. After this time the guest numbers may increase if agreed by the Agent/Operator, however they cannot decrease.
- (3) Any additional passengers on the day are charged accordingly.
- (4) If the balance has not been made within 10 days of the scheduled charter date, the Agent reserves the right to cancel the charter with no deposit refunded.

### 3.6 Methods of payment

EFT or credit card; Visa, MasterCard or Amex. Credit card surcharge of up to 1.5% will apply.

### 3.7 Additional charges

Any additional charges on the day of service are to be immediately charged to the credit card provided by the charterer. This includes but is not limited to extensions of Charter, additional guests, additional services, pay-on consumption beverages, waiting time for embarking and disembarking at wharves, water taxis and any other additional charges notified by the Operator.

### 3.8 Right of refusal

- (1) The Agent reserves the right to refuse bookings which contravene these Terms and Conditions.
- (2) The Charterer must provide all necessary details to the Agent about the Charter and the Charterer's group.

- (3) The Charterer must not mislead the Agent in anyway. By providing false or misleading information regarding the nature of the Charter and/or the Charterer's group, the Agent and/or Operator reserve the right to refuse boarding of any or all passengers with no refund offered.

### **3.9 Changes to confirmed bookings**

Menu, guest numbers and extras can be amended up until the 14 days before the Charter date. You are not permitted to change the package (vessel) for your booking, this would be deemed cancellation, refer to point 4.1. Date and time changes refer to point 4.2.

## **4. RESCHEDULING AND CANCELLATIONS**

All rescheduling requests and cancellations must be made in writing and emailed to [info@spiritfleet.com](mailto:info@spiritfleet.com) or [info@henspartycruisesydney.com.au](mailto:info@henspartycruisesydney.com.au)

### **4.1 Cancellations**

- (1) Cancellations within 14 days of the charter date incur a 100% fee and no refund will be offered;
- (2) Cancellations 14 days or more incur a 50% cancellation fee. The 50% fee is calculated on the original charter booking made;
- (3) The deposit will not be refunded for a booking cancellation.

### **4.2 Rescheduling**

- (1) Rescheduling dates are permitted on a case by case basis. If a reschedule has been allowed, you will only have that one opportunity to reschedule;
- (2) Rescheduling is not permitted within 30 days of the charter date and not permitted for Charters booked in December;
- (3) Rescheduling dates between 31 days and 60 days of the Charter incur a 50% rescheduling fee. The 50% fee is calculated on the original Charter booking made;
- (4) Rescheduling dates greater than 61 days of the Charter incur a 25% rescheduling fee. The 25% fee is calculated on the original Charter booking made;
- (5) Where the Agent can find a replacement booking to fill the date/time of the original booking, then it is at the discretion of the Agent as to whether the rescheduling fee is waived;
- (6) An admin processing fee of \$500 will apply to all rescheduling of dates;
- (7) All monies for the original Charter date will be transferred to the new date as a credit. Credits are non refundable;
- (8) You will not be entitled to reschedule the charter to a departure date between the months of November to January;
- (9) Any proposed rescheduled date must be within 12 months of the original booking date otherwise the charter will be deemed to be cancelled and all monies paid forfeited as a cancellation fee;
- (10) If pricing for the new date selected has a higher rate, you will be required to pay the difference.

## **5. FOOD AND ALCOHOL**

### **5.1 Responsible service of alcohol**

- (1) The Operator is bound by the NSW Liquor Act and must abide by the guidelines for the Responsible Service of Alcohol;
- (2) Intoxicated guests will not be permitted to board;
- (3) The Operator must refuse service of alcohol to both intoxicated persons and guests under the age of 18;
- (4) The Operator may refuse service of alcohol to any individual, this is the Operator's and/or the Operators employees absolute discretion at any time;
- (5) If the Charter or any of the Charterers group are showing signs of intoxication, including but not limited to; slurring words, rude and/or aggressive and/or inappropriate behaviour, vomiting or loss of coronation, will result in the immediate ejection of any and all passengers at the nearest permissible wharf area with no refund offered;
- (6) The Vessel has the right not to serve shots or doubles under any circumstances. Mixed drinks will be served with a standard 30ml spirit measurement;
- (7) Where alcohol is supplied by the vessel, drinks service will cease 15 minutes prior to the end of the Charter;
- (8) Guests are not permitted to carry liquor from the Vessel on disembarkation;

- (9) Indecent behaviour on a Charter Vessel is prohibited under the NSW Liquor Act and your Charter will be terminated in the event of unacceptable behaviour as determined by the crew, and if such circumstances occur there will be no refunds;
- (10) If the Charter or any of the Charterers group are seen consuming or be showing signs to be under the influence of illegal substances the charter will result in the immediate ejection of any and all passengers at the nearest permissible wharf area with no refund and the relevant authorities notified.

## **5.2 Food**

- (1) The Agent must be advised of any dietary requirements at least seven (7) days prior to the scheduled date of the Charter. The Agent will endeavour to accommodate any dietary requirements but makes no guarantee that all requests made will be accommodated for;
- (2) Whenever alcohol is served on a Vessel, a substantial quantity of food must also be provided to satisfy the RSA obligations. If the charterer chooses one of the Agent's partner vessels and elects not to undertake the Vessels catering services then the charterer will be responsible for and must bring a substantial amount of food that will be consumed in accompaniment with alcohol for the duration of the Charter. As an example, finger foods or appetisers are not considered a substantial amount of food. If you are unsure of the requirements of substantial food, please contact the Agent prior to the Charter date;
- (3) If you choose one of the Agent's partner vessels and elect not to undertake the vessels catering services then the Charterer will be responsible for bringing their own food on the Charter. The Charterer must bring a substantial amount of food that will be consumed in accompaniment with alcohol for the duration of the Charter;
- (4) If you are on the Agent's Partner Vessel where alcohol (including BYO alcohol) is available and you have elected not to undertake the vessel's catering services, then the Agent and/or Operator reserves the right to deny the Charterer's group alcohol if the Operator believes that the food that the Charterer and/or Charterer's group have brought onboard is not substantial enough to alleviate any safety or legal concerns.

## **6. GENERAL CONDUCT AND SAFETY**

### **6.1 Charter Course**

The course to be undertaken during the Charter may be agreed in advance with the Operator or with the Master on the occasion of the Charter. The Charterer acknowledges that the Master has the sole discretion at all times to take whatever action is necessary to protect and maintain the safety, welfare and good order of the vessel, its passengers and crew with regard to the weather conditions and other activity on the Harbour.

### **6.2 Embarkation and Disembarkation**

- (1) The Charter time includes boarding and disembarking. The Charter will not be extended if the Charterer or the Charterers group are late.
- (2) The Vessel will dock at the times stated on the booking confirmation.

### **6.3 Responsibility of the Charterer**

The Charterer is at all times responsible for the conduct of the Charterer's group.

### **6.4 Damage to the Vessel**

The Charterer shall be liable for any loss or damage to the Vessel or its equipment or fittings howsoever caused by the Charterer's Group. Fair wear and tear excepted.

### **6.5 Swimming**

- (1) Swimming is only permitted during daylight hours when the Vessel is stationary and in the absolute discretion of the Master;
- (2) The Operator, the Agent, their agents and employees, accept no responsibility for The charterer's or the charterer's groups safety or for any injury incurred once you have left the vessel, whilst in the water or when re-boarding the vessel from the water. If you leave the vessel to enter the water, you do so at your own risk and you are solely responsible for any injuries incurred.

### **6.6 Weather Conditions**

- (1) All Charters will proceed regardless of weather conditions unless deemed unsafe by the Master on the day.
- (2) The Master and the Agent reserve the right to make a determination on the day that the charter is to be rescheduled due to adverse weather conditions. This right solely rests with the Master and the Agent. The Charterer is not entitled to reschedule the Charter at any time due to current or forecasted weather conditions.

- (3) If there is any rescheduling of the charter due the determination of the master or the agent, we will attempt to either reschedule the charter at no cost or issue you with a credit voucher which must be used by you for a booking within 12 months of the cancelled booking.

### **6.7 Substitute Vessel**

In the event of a mechanical problem to the booked vessel, the Agent reserves the right to provide another vessel of similar style and capacity in order for the Charter to be completed.

### **6.8 Music**

- (1) Music is turned off 5 minutes prior to the end of the charter.
- (2) DJ's are not permitted on the Agents' Vessels Silver Spirit and Free Spirit.
- (3) Should you choose the Agent's partner vessels that permit DJs, relevant DJ surcharges apply and you must advise The Agent of your intent to supply a DJ. The relevant surcharges will be advised at time of booking.
- (4) DJ's music must be turned off 10 minutes before the end of the charter and be packed up ready for disembarking within those 10 minutes.

### **6.9 Decorations**

Decoration of the vessel is allowed with the Master's consent, provided no damage occurs to the vessel when installing or removing these items. The Agent recommends that you keep decorative items simple and conservative. Confetti, glitter, flower petals, tinsel, feather boas, crepe/tissue paper or other items that will shed, run colour or create excess mess on board the Vessel are not allowed.

### **6.10 Responsibility of the Charterer**

The Charterer is at all times responsible for the conduct of the Charterer's group.

### **6.11 Damage to the Vessel**

The Charterer shall be liable for any loss or damage to the Vessel or its equipment or fittings howsoever caused by the Charterer's Group. Fair wear and tear excepted.

## **7. SECURITY BOND**

### **7.1 Security Bond**

The Charterer is required to pay a Security Bond (ordinarily held through a credit card authorisation). The amount of the Security Bond applicable to the booking will vary according to the Vessel selected.

### **7.2 Application of Security Bond**

- (1) You authorise us to deduct from the Security Bond all costs and expenses incurred, or to be incurred by us, in connection with any of the following matters:
  - (a) Any part of the vessel is damaged by you or the passengers in which case we will deduct such costs as are necessary to repair such damage. This may include an immediate deduction of the full Security Bond as soon as practical, with any excess funds to be returned once the full amount of damage has been assessed;
  - (b) The vessel is left in a state that additional or professional cleaning services are required beyond the regular Operator's routine in which case such costs will be deducted as are necessary to clean the Vessel and will be a minimum of \$300.00. Such deduction is at the Operator's absolute discretion and this decision is final and binding;
  - (c) Failure to comply with any provision of these terms and conditions, in which case we will deduct such costs as are necessary for any costs and damages suffered by us as a result of your breach;
- (2) The amount of the Security Bond in no way limits any claims against you.

### **7.3 Authorisation**

The Charterer must declare that the credit card details provided for the authorisation of the Security Bond are true and correct.

## **8. LIMITATION OF LIABILITY AND RISK WARNING**

### **8.1 Limit of Liability**

It is a condition of the Charter that the liability of the Operator, its servants, agents, employees and subcontractors is agreed to be limited in accordance with the *Limitation of Liabilities and Maritime Claims Act 1989 (Cth)* and that any claim for loss or damage must be notified in writing within 7 days from the day of the Charter and any court action, suit or proceeding must be brought within 1 year of that date.

## **8.2 Indemnity**

The Charterer agrees to indemnify and hold harmless the Operator, the Agent, their agents and employees, from and against any and all losses, claims, actions, costs, expenses, fees, damages, fines and liabilities (including reasonable legal fees) caused by any negligent act or omission by the Charterer or members of the Charterer's Group including:

- (a) Failure to follow any reasonable direction given by the Master or crew;
- (b) Failure to comply with any of these terms or conditions;
- (c) Failure to comply with any warning sign;
- (d) Unreasonable or unsafe behaviour;
- (e) Wilful misuse of the equipment or facilities of the vessel;
- (f) Intoxication or the use of prohibited drugs.

## **8.3 Risk warning**

There are inherent risks and dangers on board any vessel. All passengers participate in the Charter entirely at their own risk.

## **8.4 Jurisdiction**

The laws of New South Wales govern this agreement and the parties agree to submit to the jurisdiction of the Courts of New South Wales in respect of any disputes arising between them.

## **9. GOVERNMENT ORDERS, COVID-19 AND EVENTS OUTSIDE OF OUR CONTROL**

### **9.1 Your compliance**

- (1) Charters are classified under the hospitality and recreational sector. The Agent, The Operator and The Charterer agree to comply with all government orders relevant to the hospitality and recreational sector and/or charters in general. This includes any orders and requirements of the Australian government relating to COVID-19.
- (2) The Agent and/or Operator reserve the right to refuse any of The Charterer's group to board any Vessel if they have not complied with any relevant and applicable government orders, with no refunds offered.

### **9.2 Government orders**

- (1) The Agent is only accepting bookings for tours and Charters that are within the vessel's COVID capacity and in accordance with the relevant government guidelines and travel restrictions. This capacity can change based on government orders. The Charter will be held to the capacity that was in place at the time The Charter was booked.
- (2) Based on current guidelines at the time The Charter is confirmed, The Charter can proceed on the selected vessel, and operators and vessels work within COVID safe guidelines.
- (3) The Agent and/or Operator reserve the right to refuse entry of anyone on the vessel if it will cause non-compliance with any Government order or law. No refunds will be offered.
- (4) Closure of state/national borders should not be deemed a reason for a reschedule/cancellation based on the below policy, if the charter can operate under NSW government orders.

### **9.3 Rescheduling and cancellations**

- (1) If the Australian government enforces stricter conditions, and accordingly, The Charter cannot proceed as per the original booking confirmation, you may be given the following options:
  - (a) reschedule for a date within twelve (12) months of your original booked date; or
  - (b) obtain a refund of any monies paid, minus a \$500.00 administration fee. If your booking has been made on one of the Agent's partner Vessels, this option may not be available
- (2) The option selected at the time the Agent contacts you to advise The Charter has been affected will be deemed the final decision. You cannot change from a reschedule to a refund at a later date or vice versa.
- (3) A change to the date or refund would only be allowed if Government orders or laws mean that The Charter or tour cannot proceed. A reschedule or cancellation for any other reason will be subject to the reschedule/cancellation policies noted in condition 4.
- (4) If catering has been ordered for The Charter, and The Charter is cancelled or rescheduled within 4 days of The Charter date, you will be required to pay for this catering, irrespective of the reason for the reschedule or cancellation.
- (5) You will not be entitled to reschedule The Charter to a departure date between the months of November to January;
- (6) If pricing for the new date selected has a higher rate, you will be required to pay the difference.

- (7) All monies for the original Charter date will be transferred to the rescheduled date as a credit. Credits are non refundable;
- (8) If 25% or more of The Charter's group, attending The Charter return a positive COVID-19 result or are directed to isolate by the Government due to being a close contact, you will be offered a reschedule for a date within three (3) months of the original charter date. You will need to provide proof of this;
  - (a) A rescheduling fee of \$500 will apply, along with unrecoverable staffing, catering and extras costs (if applicable);
  - (b) Rescheduled dates are only available for Sunday to Thursday and are subject to availability;
  - (c) The Charter will be rescheduled for the same amount of guests originally booked. You can add more guests for the relevant per person price, however there are no refunds for guests unable to attend the new date.
  - (d) If the number of guests that cannot attend falls below the 25% criteria, The Charter will proceed as planned, or if a reschedule is requested then the terms noted in condition 4 are applicable;
  - (e) There are no refunds for rescheduled charters. Should you not reschedule the cruise within the 3 months the balance is forfeited as a cancellation fee;
  - (f) Proof of all guests positive results will need to be provided at time of reschedule.

**10. MEDIA RELEASE AND WAIVER**

**10.1 Consent**

- (1) The Charterer and each member of the Charterer's Group hereby consent the Agent, the Operator and/or the Master to take, or have taken by others, including the Vessel Silver Spirit's Photo Booth, your photographs, digital images, audio, video footage and/or any other recording (Images); and publish the Images in any form, in whole or in part, and distribute them in any medium including, but not limited to, print media, the internet, the Agent's social media accounts, other multi-media uses, advertisements or graphic representation in connection with the Agent's business.
- (2) To the extent that the images contain another person who is:(a) under the age of 18, you consent to the use of their Images in accordance with this form and warrant that you are the parent or guardian of that child; and/or over the age of 18, you confirm and warrant that they have consented to the use of their Images in accordance with this form.
- (3) If you do not wish for any pictures of you to be taken, please inform our staff prior to your cruise that you do not consent and we will make the appropriate arrangements.

**10.2 Waiver and acknowledgements**

The Charterer acknowledges and agrees that the Images, including the photo booth images, are the absolute property, and remain in the ownership, of The Agent. You confirm that neither you nor any other person in the Images will be paid for giving this permission and you hereby waive any claim that you may have for any remuneration, residuals, royalties or any other payment in respect of use of the Images. The Charterer or any member of the Charterer's Group cannot make any claim (of any nature) against, and hereby discharge, the Agent and/or the Operator and their employees in connection with the use of the Images in accordance with this condition.

**10.3 Communications**

You must not distribute, communicate or disseminate any material or information or message on any medium or platform (whether online or offline) which may damage, defame or otherwise negatively affect the reputation of the Agent. You acknowledge that a breach of the above covenant may result in loss and damage to the Agent and the Agent reserves the right to terminate the booking and/or seek damages against you. This condition continues to apply at all times, including after the charter.

I, ..... agree to these Terms and Conditions.

Signed;

Date;