

WAIVER, RELEASE, DISCHARGE AND INDEMNITY

This document contains provisions which affect the legal rights of the Customer and are to be read in conjunction with the T&C. Where there is any inconsistency between the T&C and this document, the provisions contained within this document will prevail.

The Customer has read and understood the disclosure of risks set out in this Waiver, and voluntarily accepts those risks and agrees to be bound by this Waiver.

1. This Waiver is between the Manager and the Customer and applies to the Customer at all times whilst at the Mackerel Islands.
2. In consideration for and as a condition of being permitted access to the Mackerel Islands, the Customer agrees to this Waiver.
3. A reference to Customer shall include all persons that have been included in the Customer's Booking.
4. The definitions in the T&C apply to this document, together with the following:

"Activities" incorporates the definitions of 'Accommodation', 'Activities' and 'Equipment'.

"Claim" means any claim, allegation, debt, cause of action, liability, proceeding, suit or demand of any nature and whether present or future, actual or contingent, fixed or unascertained and arising at law, in equity, under statute or otherwise.

"Implied Warranties" means all warranties of any nature in relation to the Mackerel Islands or the Activities (as the case may be) which are implied by law (whether pursuant to the *Competition and Consumer Act 2010* (Cth) or otherwise).

"Liabilities" mean any and all liabilities, debts or obligations, whether actual or contingent, present or future, quantified or unquantified or incurred jointly or severally with any other person.

"T&C" means the Terms and Conditions published by the Manager as accepted by the Customer at the time of making the Booking.

"Waiver" means this Waiver, Release, Discharge and Indemnity.

5. The Customer represents and warrants that the Customer:
 - 5.1. is over 18 years old (other than any minors accompanying the Customer);
 - 5.2. is medically fit to perform, or engage in the Activities;
 - 5.3. is competent to safely engage in the

Activities;

- 5.4. has not relied on any representations or warranties that may have been made by the Manager or its Representatives in relation to the Mackerel Islands or the Activities;
 - 5.5. has taken, or had the opportunity to take, independent medical, legal and other relevant advice as to the nature, effect, meaning and extent of this Waiver; and
 - 5.6. has authority to, and does hereby, enter into this Waiver on the Customer's own behalf and on behalf of all minors accompanying the Customer.
6. The Customer acknowledges the risks associated with participating in the Activities include, but are not limited to:
 - 6.1. loss or damage to property, injury, illness or death;
 - 6.2. slipping and falling, collisions with fixed objects and or other participants, falling off objects, over-exertion;
 - 6.3. attack or injury from wildlife, polluted or contaminated water, dangerous or inclement weather conditions, contracting illnesses from contact with objects and surfaces within the Mackerel Islands;
 - 6.4. heart attack, panic, hyperventilation, drowning, air expansion, decompression sickness, perils of the sea, harm caused by marine creatures (including bites), being cut or struck by a boat while in the water, entering and exiting the water, boarding or disembarking boats;
 - 6.5. limited mobile telephone reception and access to medical facilities and assistance;
 - 6.6. the behaviour and acts or omissions of other participants;
 - 6.7. equipment failure and improper or inadequate equipment maintenance;
 - 6.8. improper or inadequate instruction or supervision regarding the Activities or use of the Mackerel Islands' facilities and equipment; and
 - 6.9. first aid, emergency treatment, safety rescues or services rendered or failed to be rendered by the Manager or its Representatives.
 7. The Customer acknowledges that the Activities may

- be inherently dangerous activities and are “dangerous recreational activities” within the meaning of the *Civil Liability Act 2002* (WA).
8. The Customer is aware of the dangers associated with the consumption of alcohol, mind altering substances, drug (including over the counter or prescribed medication) or other substance which may impair any judgment or physical ability or capacity to safely participate in the Activities and accepts full responsibility for any injury, loss or damage associated with the Customer’s consumption of alcohol, mind altering substances, drug or other substance which impairs the Customer’s judgment, physical ability or capacity to safely participate in the Activities.
 9. The Customer unconditionally and irrevocably acknowledges and agrees that:
 - 9.1. the Manager and its Representatives are not responsible for any Claims or Liabilities for:
 - (a) any injury, illness or death of any person; or
 - (b) any injury, illness or death that the Customer may sustain; or
 - (c) any loss, damage or theft of the Customer’s property;
 - 9.2. the Manager may, in its sole discretion:
 - (a) refuse to permit the Customer access to the Mackerel Islands;
 - (b) require the Customer to leave the Mackerel Islands at any time;
 - (c) refuse to permit the Customer to engage in the Activities;
 - (d) require the Customer to cease the Activities; or
 - (e) change or vary the conditions of entry to the Mackerel Islands or participation in the Activities.
 10. The Customer has had the opportunity to consider the risks associated with participating in the Activities and freely and voluntarily accepts:
 - 10.1. all of the risks (foreseeable and unforeseeable) that may result from the Customer participating in the Activities;
 - 10.2. any and all consequences which may result from those risks (whether foreseeable or unforeseeable); and
 - 10.3. that all Implied Warranties are excluded to the fullest extent permitted by law.
 11. To the extent any Implied Warranties cannot be excluded, liability for any breach of any Implied Warranty is limited to:
 - 11.1. in the case of any Implied Warranty relating to goods:
 - (a) the replacement of those goods or the supply of equivalent goods; or
 - (b) the cost of replacing those goods or supplying equivalent goods; and
 - 11.2. in the case of any Implied Warranty relating to services:
 - (c) the re-supply of those services; or
 - (d) the cost of re-supply of those services.
 12. The Customer has read, understood and agrees to comply with all rules, regulations, procedures, instructional material and other information provided to the Customer or published at the Mackerel Islands or relating to the Activities.
 13. While at the Mackerel Islands or participating in the Activities the Customer will, at all times, follow:
 - 13.1. the lawful directions of the Manager or any of its Representatives; and
 - 13.2. any signage displayed at or in relation to the Mackerel Islands and the Activities.
 14. If the Customer observes any uncontrolled hazard or risk, the Customer will immediately cease any act the Customer undertakes contributing to that hazard or risk, take those steps which are available to the Customer to reduce the hazard or risk and inform the nearest Representative or the Manager of the hazard or risk and the steps taken by the Customer.
 15. To the fullest extent permitted at law, the Customer waives, releases and discharges each of Manager and its Representatives from and against any and all Claims or Liabilities which the Customer has, or may at any time have, arising out of or in relation to the Mackerel Islands and or the Activities. This waiver, release and discharge extends to all acts, omissions, defaults, failures or errors on the part of all or any of the Manager and or its Representatives.
 16. The Customer agrees to indemnify, and keep indemnified, each of the Manager and or its Representatives from and against any Claims and

Liabilities, whether direct or indirect, arising out of or in relation to:

- 16.1. the Customer being at the Mackerel Islands;
 - 16.2. the Customer observing or participating in the Activities (whether at the Mackerel Islands or elsewhere and whether operated by the Manager or a third party); and
 - 16.3. the Customer's acts or omissions while at the Mackerel Islands or observing or participating in the Activities.
17. The Customer covenants not to sue or commence any proceedings against any of the Manager and or its Representatives in respect of any loss or damage arising out of or relating to any loss, damage, injury or illness the Customer may sustain (whether to the Customer personally or to any of the Customer's property) which occurs at the Mackerel Islands or in any way relates to the Activities.
18. While at the Mackerel Islands, the Customer will:
- 18.1. abide by all laws;
 - 18.2. not introduce or create any hazards to persons, property, flora or fauna; and
 - 18.3. not, by the Customer's acts or omissions, breach any terms of this Waiver.
19. The Customer acknowledges that the Mackerel Islands are located within the Indian Ocean which:
- 19.1. is subject to certain customs, weather conditions and physical challenges which may vary without warning; and
 - 19.2. is subject to its own risks for which the Manager and any Representatives have no control over.
20. If anything in this Waiver is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction then it is severed for that jurisdiction and the rest of this document remains in full force and effect in all other jurisdictions.
21. This Waiver is governed by and shall be construed in accordance with the laws of the State of Western Australia, the parties submitting to the exclusive jurisdiction of the Courts of Western Australia for determination of any dispute claim or demand.