

## **New York Off Road LLC - Terms & Conditions of Use Agreement**

Thank you for choosing New York Off Road LLC (“NYOR”) to book your walking tour of Miami. NYOR operates <http://offbeat-miami.com/> and conducts guided private and group walking tours sharing historical, cultural, and interesting facts about Miami (“Services”). We want you to understand how we operate. So, please take the time to read this document carefully because it is a binding agreement (“Agreement”). By accessing, using, or participating in our Services and other consideration (the sufficiency of which you acknowledge), you and any third person(s) whose participation in our Services you enable agree to be bound by the terms & conditions of this Agreement.

**Reservations, payment, and pricing.** Private tours are open only to your party; group tours are open to everyone. To reserve a private tour, you must pay fifty (50%) percent of the total walking tour price to place a hold on a desired date and time. The remaining fifty (50%) percent balance is due thirty (30) days before the tour. Private tour pricing is as follows: up to four (4) participants, the cost is two-hundred-thirty-nine (\$239.00) dollars for 2 hours; or two-hundred-ninety-nine (\$299.00) dollars for three (3) hours; or five-hundred-forty-nine (\$549.00) dollars for seven (7) hours. Customized pricing is available for private tours having more than four (4) participants. To reserve a group tour, you must access NYOR’s website, make a reservation, and pay in full for all members in your group. Group tours require a minimum of four (4) people, but can accommodate up to twelve (12) people. A group tour reservation will remain confirmed provided that there are at least four (4) members in your party. Group tour pricing is as follows: thirty-nine (\$39.00) dollars per adult and twenty-five (\$25.00) dollars per child (up to 12 years old) for 2 hours. No Miami Walking Tour will commence unless full payment has been received by NYOR. Payment can be made using PayPal.

**Cancellations, date transfers, no shows, or defaults.** NYOR recommends that you appear at the place of departure fifteen (15) minutes in advance of a scheduled walking tour. While a walking tour is an all-weather activity, it may need to be cancelled due to severe weather. Severe weather is determined solely by NYOR. NYOR will use its best efforts to notify you by phone or email at least forty-eight (48) hours before a scheduled walking tour in case of cancellation. Thereafter, NYOR will use its best efforts to reschedule a walking tour. If a walking tour is unable to be rescheduled, then NYOR will refund to you one-hundred (100%) percent of the price paid directly to NYOR.

You may cancel a scheduled walking tour only by sending a written email to NYOR care of Elise Goujon at [contact@newyorkoffroad.com](mailto:contact@newyorkoffroad.com). In such a case, NYOR will refund one-hundred (100%) percent of the price paid directly to NYOR provided that you cancel at least thirty (30) days before a scheduled walking tour. NYOR will not provide a refund if you fail to cancel or fail to appear. The applicable time for cancellations is New York Eastern-Standard Time.

**Special Conditions during Covid-19 pandemic:** For all bookings made from March 15th 2020 and until further notice, in case of closed borders or of symptoms preventing you from traveling, your tour(s) may be rescheduled at no extra cost, to the date of your choice without any time limit, in any of our destinations (New York, Los Angeles, Miami), and can be transferred to the person of your choice. Please write to our team at [contact@newyorkoffroad.com](mailto:contact@newyorkoffroad.com) for all modification requests.

**Personal Expenses and Property.** You, and everyone in your party, are solely responsible for all costs associated with a walking tour including without limitation the following: (a) getting to and from the departure point of your tour; (b) food; (c) transportation; (d) lodging; (e) parking; (f) recreation activities, etc. In addition, NYOR is not responsible for personal items left unattended, lost, or damaged during a walking tour.

**Conduct while using or participating in a walking tour.** By using or participating in a walking tour, you agree to conduct yourself in a safe, courteous, and lawful manner. If you are accompanied by minors or pets, you also agree to be responsible for their safe, courteous, and lawful conduct. The following are non-exclusive examples of the kind of conduct and activities that are prohibited in connection with your use or participation in a walking tour: (a) carrying alcohol, illegal substances, or contraband of any type or kind; (b) initiating, promoting, or encouraging any criminal or tortious activity; (c) littering; (d) initiating, promoting, or encouraging behavior that could be reasonably perceived as harassing, racist, posing a security risk, or otherwise resulting in psychological or physical harm of any type or kind against anyone; (e) disseminating information that you know, or reasonably believe, is false or misleading, abusive, threatening, obscene, defamatory, or libelous; (f) violating or acting in a manner inconsistent with any and all applicable laws, rules, regulations, or codes, or otherwise engaging in any illegal activity; (g) theft, assault, battery, or initiating, promoting, or encouraging personal injury or property damage; or (h) initiating, promoting, or encouraging any activity contrary to, or which would adversely affect, the purpose or intent of a walking tour. Engaging in any of these activities will result in the immediate termination of a walking tour without refund.

**Photo Release.** You acknowledge that photos or film may be taken during a walking tour, which may be used by NYOR for promotion and advertising purposes. In consideration of being permitted to use and participate in a walking tour, you do hereby irrevocably consent to and authorize the use and reproduction by NYOR (or anyone authorized by NYOR) of any and all photographs taken of you, or your minor children, in all forms and media to promote NYOR's programs and services.

**Privacy Policy.** NYOR does not collect or store your payment information, and does not have control over third-parties through which you pay for a walking tour. Therefore, NYOR makes no representations, warranties, or covenants regarding third-party vendors, nor assumes any responsibility for their actions or inactions. NYOR does retain your email address and phone number, but does not sell or disclose this information. From time to time, NYOR will email you updates and promotions. You may request that NYOR remove your name and email address from the update and promotion list at any time by sending a written email to NYOR care of Elise Goujon at [contact@newyorkoffroad.com](mailto:contact@newyorkoffroad.com).

**Assumption of Risk.** You agree that you know and understand the scope, nature, and extent of the risks involved in participating in a walking tour and that some dangers cannot be foreseen including without limitation: (a) defects in the streets and sidewalks; (b) proximity to vehicles or traffic; (c) poor lighting; (d) weather; (e) theft of property; (f) incompatibility with other users or the general public; (g) bodily and personal injury; (h) property damage; (i) disfigurement; (j) death; (k) public nuisance, etc. YOU VOLUNTARILY, FREELY, AND EXPRESSLY CHOOSE

TO INCUR, AND TO ASSUME FULL RESPONSIBILITY FOR, ANY AND ALL RISKS ASSOCIATED WITH USING OR PARTICIPATING IN A WALKING TOUR.

**Release, Waiver, and Limitations of Liability.** YOU, ON BEHALF OF YOURSELF, YOUR PERSONAL REPRESENTATIVES, HEIRS, EXECUTORS, AND ADMINISTRATORS, WAIVE ANY AND ALL CLAIMS AGAINST NYOR, HEREBY RELEASE AND DISCHARGE, AND COVENANT NOT TO SUE NYOR OR ITS OWNERS, MEMBERS, OFFICERS, DIRECTORS, AFFILIATES, SPONSORS, PARTNERS, AGENTS, ASSIGNS, AND EMPLOYEES (“Released Parties”) AND AGREE NOT TO HOLD ANY OF THE ABOVE RELEASED PARTIES LIABLE IN ANY WAY FOR ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, EXPENSES, OR CAUSES OF ACTION WHATSOEVER ARISING OUT OF ANY BODILY OR PERSONAL INJURY, DISFIGUREMENT, DEATH, PROPERTY DAMAGE, OR ANY OTHER DAMAGES, KNOWN OR UNKNOWN, WHILE USING OR PARTICIPATING IN A WALKING TOUR, WHETHER RESULTING FROM THE NEGLIGENCE OR OTHER FAULT, EITHER ACTIVE OR PASSIVE, OF ANY OF THE RELEASED PARTIES, OR FROM ANY OTHER CAUSE, EXCEPT DUE TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH OTHER WALKING TOUR USERS, PARTICIPANTS, AND THE GENERAL PUBLIC.

YOU WAIVE ANY RIGHT TO A TRIAL BY JURY, ANY UNFORCEABILITY OR PUBLIC POLICY ARGUMENT, THE DEFENSES OF THE DISCOVERY RULE AND TOLLING OF THE STATUTE OF LIMITATIONS, AND ANY CLAIM TO PUNITIVE, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR OTHER DAMAGES THAT YOU COULD MAKE OR COULD BE MADE ON BEHALF OF YOUR ESTATE OR BY ANYONE WHO WOULD SUE THE RELEASED PARTIES AS A RESULT OF YOUR USE OR PARTICIPATION IN A WALKING TOUR, IN ALL CASES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT. NOTWITHSTANDING, NYOR’S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO NYOR FOR A WALKING TOUR.

**Disclaimers.** OUR SERVICES ARE PROVIDED “AS IS,” “WHERE IS” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NYOR CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF OUR SERVICES. UNDER NO CIRCUMSTANCES SHALL NYOR BE RESPONSIBLE FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR DEATH, RESULTING FROM USE OF OUR SERVICES, ATTENDANCE AT AN EVENT, VENUE, OR OTHER ESTABLISHMENT MENTIONED OR FEATURED AS PART OF A WALKING TOUR, FROM ANY CONTENT POSTED ON OR THROUGH OUR SERVICES, OR FROM THE CONDUCT OF ANY USERS OF A WALKING TOUR, WHETHER ONLINE OR OFFLINE.

**Dispute Resolution, Jurisdiction, and Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of **the State of New York**, without regards to conflicts

of laws principles. The parties agree to use their best efforts and good-faith to resolve amicably any and all disputes which may arise as a condition precedent to seeking court intervention. In the event the parties are unable to resolve a dispute, the parties voluntarily: (a) consent to the exclusive jurisdiction of the state and federal courts sitting in **New York County**; (b) submit to personal jurisdiction in **the State of New York**; (c) waive personal service jurisdiction and the Hague Service requirements; and (d) consent to service by email.

**Entire Agreement and Modification.** This Agreement contains the entire agreement between you and NYOR. No agreements, undertakings, representations, warranties, or covenants exist between you and NYOR other than those set forth in this Agreement. NYOR reserves the right to modify this Agreement at any time.

**Binding Agreement.** This Agreement shall be binding upon you and your heirs, executors, legal representatives, and successors. You agree not to take any actions or fail to undertake any action which would frustrate the purpose of this Agreement.

**Severability and Interpretation.** This Agreement operates to the fullest extent permissible by applicable law. Every provision of this Agreement is intended to be severable, and all assumptions of risk, releases, waivers, limitations of liability, disclaimers, representations, warranties, and covenants are intended to be as broad and inclusive as permitted by applicable law. In the event that any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions, which shall remain binding and enforceable. Thereafter, the parties shall negotiate in good-faith for the purpose of replacing any invalid or unenforceable term or provision with a valid and enforceable term or provision having a legal effect as similar as possible to the original term or provision. This Agreement shall not be construed against the party preparing it, but rather shall be construed as if it were prepared jointly by the parties and any uncertainty or ambiguity, or both, shall not be interpreted or construed against any party to this Agreement. The sections, titles, and headings in this Agreement are for convenience only and have no legal or contractual effect. The failure of NYOR to exercise or enforce any right, term, or provision of this Agreement shall not operate as a waiver of such right, term, or provision.

**Assignment.** You shall not transfer, assign, sublicense, nor pledge in any manner whatsoever, any of your rights or obligations under this Agreement. NYOR may transfer, assign, sublicense, or pledge in any manner whatsoever, any of its rights and obligations under this Agreement to a subsidiary, affiliate, or successor thereof or to any third party whatsoever, without notifying you or receiving your consent.

**No Third-Party Beneficiaries.** This Agreement and its terms do not create any third-party beneficiary rights. Therefore, anyone not a party to this Agreement does not have any remedies, claims, liabilities, reimbursements, or causes of action against NYOR.

**Representations, Warranties, and Covenants.** By using or participating in our Services, you represent, warrant, and covenant as follows: (a) you have the full and complete authority, authorization, and legal & mental capacity to execute this Agreement and to take care or cause to be taken all acts contemplated by this Agreement; (b) you are medically able to use and

participate in a walking tour; (c) you are at least of majority age in all jurisdictions relevant to the validity and enforcement of this Agreement; (d) your use or participation in our Services does not, and will not, violate any applicable laws, rules, or regulations; (e) if you purchased our Services for any third person or group, that you have informed all such persons of this Agreement and that they have read, understand, and agree to be legally bound by this Agreement; (f) if any minor uses or participates in our Services in connection with your entering into this Agreement, you agree that they will be bound by the terms of this Agreement and that you will be responsible for all minors and accept full responsibility for all medical expenses and any other claims related to such minors' participation and further agree to RELEASE, HOLD HARMLESS, INDEMNIFY, and DEFEND Released Parties from all claims brought by or on behalf of any minor; (g) you will not use our Services for any illegal activity; (h) you will not transport any illegal items or contraband, or engage in any other illegal activity, during a walking tour; (i) that all the information you submit is truthful and accurate; and (j) that you have read and fully understand the terms of this Agreement and, after seeking independent legal advice, voluntarily enter into this Agreement and agree to be bound by its terms.

**Indemnification.** You agree to INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS the Released Parties from any and all losses, claims, damages, expenses, actions, or proceedings of any and every kind, regardless of form or character, including attorneys' fees and expenses, which may be presented or initiated by any other person or entity, and which arise directly or indirectly from: (a) your use or participation in our Services, whether resulting from the negligence or other fault, either active or passive, of any of the Released Parties, or from any other cause except gross negligence or willful misconduct; or (b) your breach of this Agreement or any breach of your representations, warranties, and covenants set forth in this Agreement. NYOR reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification or defense by you, in which event you agree to cooperate with NYOR in asserting any available defenses. In any action against the Released Parties which results in a judgment, decree, order, stipulation, or settlement upholding NYOR's position, you agree to reimburse NYOR's reasonable attorneys' fees, court costs, and expenses.

**Statute of Limitations and Survival.** You agree that any claim or cause of action arising from or related to this Agreement, or your use or participation in a walking tour, must be filed within one (1) year after such claim or cause of action accrues or it will be forever barred, regardless of any statute or law to the contrary. This statute of limitation provision, as well as the following provisions, shall survive the expiration and termination of this Agreement: (a) photo release; (b) privacy policy; (c) release, waiver, limitations of liability, disclaimers, and indemnities; (d) representations, warranties, and covenants; (e) dispute resolution, jurisdiction, and choice of law; and (d) assignment.