

# LAKE KUNUNURRA BOAT HIRE AGREEMENT

## ITEM 1 - HIRER

Hirer's Name		Hirer's Mobile Phone Number	
Hirer's Date of Birth		Hirer's Email	
Hirer's Address			
Boat Licence (Skipper's Ticket)/Driver's Licence			

## ITEM 2 - BOAT

Boat Type		Vessel ID and Name	
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## ITEM 3 - HIRE PERIOD AND HIRE FEE

The Boat shall be hired for the time period and rate specified as follows:

Date of Hire		Start Time	
Booking Reference #		End Time	
		Hire Fee	\$
		Security Bond	\$ 200
		Total	\$

## ITEM 4 - PASSENGERS

No of adults		No of children (under 12 year)	
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The Trustee for The Graham and Sharyn Vick Family Trust (ABN 80 210 966 978) trading as "Lake Kununurra Boat Hire" (**Owner**) agrees to hire the above mentioned Boat to the Hirer on the terms and conditions set out in this Agreement.

By signing this Agreement on page below, the Hirer confirms that they have read and understood this Agreement and agreed to be bound by the terms and conditions of the Agreement.

**Please arrive 15 minutes prior to your booking time at Lot 509 Millington Drive Kununurra. Don't forget to bring your Driver's License/Skipper's Ticket for verification.**

**A Safety Briefing will be given prior to your departure.**

**PLEASE READ THE FOLLOWING SECTIONS CAREFULLY PRIOR TO SIGNING ON PAGE . THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE HIRER AND LAKE KUNUNURRA BOAT HIRE**

**1. Definitions**

In this Agreement, unless stated otherwise:

- (1) **Boat** means the boat, the details of which are set out at Item 2 on page 1 of this Agreement and includes any inventory, machinery, safety and other equipment attached to the Boat and other detachable items included as part of the hire of the Boat.
- (2) **Boat Licence** means a Recreational Skippers Ticket or Recreational Boat Licence.
- (3) **Equipment** means any items hired with the Boat as part of the Services;
- (4) **Hirer** means the person or persons named as the Hirer at Item 1 on page 1 of this Agreement and any person signing or initialling this Agreement on behalf of the Hirer.
- (5) **Hire Fee** means the amount specified as the hire fee at Item 3 on page 1 of this Agreement.
- (6) **Hire Period** means the period commencing at the Start Time and ending at the End Time as set out at Item 3 on page 1 of this Agreement.
- (7) **Late Return Fee** means a fee payable under clause 4(5)(b).
- (8) **Limits of Operation** means the areas within which the Boat is permitted to travel, depending on the type of Boat hired, as set out at Items 1 and 2 of Annexure A of this Agreement.
- (9) **Owner** means the Trustee for The Graham and Sharyn Vick Family Trust (ABN 80 210 966 978) trading as "*Lake Kununurra Boat Hire*" and any person acting with due authority of the Owner.
- (10) **Security Bond** means the amount specified as the security bond at Item 3 on page 1 of this Agreement.
- (11) **Services** means the additional items and services supplied by the Owner to the Hirer, depending on the type of Boat hired, as set out at Items 1 and 2 of Annexure A of this Agreement.

**2. Interpretation**

- (1) Words denoting the singular include the plural and vice versa and words denoting a gender includes every other gender.
- (2) Grammatical forms of defined words or phrases have corresponding meanings.
- (3) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (4) An agreement, covenant, representation, warranty or indemnity:
  - (a) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (b) on the part of two or more persons binds them jointly and severally.
- (5) "Including" is deemed to be followed by the words "but not limited to."
- (6) No rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that that party put forward this Agreement or any part of it.
- (7) A reference to a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (8) A reference to a person includes that person's heirs, executors, administrators, successors, substitutes (including persons taking by novation), transferees and assigns and this Agreement is intended to be binding upon such persons.
- (9) Time is of the essence unless specified otherwise or the contrary intention appears.
- (10) All prices are in Australian dollars (AUD) and include GST (goods and services tax).

**3. Commencement of this Agreement**

Any further performance of this Agreement after the Hirer has received a copy of this Agreement and any subsequent or other offers or agreements between the Hirer and the Owner for the supply of a boat or any equipment will be on the terms and conditions contained in this Agreement unless otherwise agreed in writing.

#### **4. Boat delivery and return**

- (1) In return for the Hirer paying the Hire Fee and the Security Bond, the Owner will allow the Hirer to hire the Boat for the Hire Period.
- (2) The Owner agrees to deliver the Boat, clean and in full working order, to the Hirer, at the start of the Hire Period, at **Lot 509 Millington Drive Kununurra** or such other location as agreed between the parties.
- (3) The Hirer agrees to return the Boat to the Owner, at the end of the Hire Period, at **Lot 509 Millington Drive Kununurra** or such other location as agreed between the parties.
- (4) If the Hirer fails to return the Boat as specified in clause 4(3) by the end of the Hire Period, such failure may constitute an unauthorised taking of the Boat and the Hirer will be liable for all resulting legal fees, costs and expenses including to regain possession of the Boat and Equipment and any consequential loss of hire fees or potential hire fees to the Owner. The Hirer is therefore advised to ensure that adequate time is allowed to return the Boat on time and to otherwise contact the Owner well in advance to advise that they expect to return the Boat late.
- (5) If the Hirer returns the Boat after the end of the Hire Period:
  - (a) the Security Bond will be forfeited; and
  - (b) the Owner may charge a Late Return Fee in addition to the agreed Hire Fee. The Late Return Fee will be calculated on the basis of \$50 for each 30 minutes past the end of the Hire Period.
- (6) The Hirer will not be entitled to a refund of any or all of the Hire Fee if the Hirer:
  - (a) arrives after the start of the Hire Period; or
  - (b) returns the Boat before the end of the Hire Period.

#### **5. Hire Fee and Security Bond**

- (1) The Hirer agrees to pay the Hire Fee to the Owner, at least 48 hours prior to the start of the Hire Period or as otherwise required by the Owner. The Hirer must provide evidence of full payment to the Owner, if requested.
- (2) The Hirer must also pay the Security Bond (which is separate and in addition to the Hire Fee) before the start of the Hire Period.
- (3) The Security Bond will be returned to the Hirer within 48 hours upon return of the Boat, provided the Boat is returned in the condition set out in clause 6(5).
- (4) The Hirer acknowledges and agrees that:
  - (a) the Security Bond may be used by the Owner to cover items including cleaning and any Late Return Fee payable under clause 4(5)(b); and
  - (b) the Security Bond will not be returned to the Hirer if the hire is terminated under clauses 12(1) or 12(3) or if the Boat is returned after the end of the Hire Period.
- (5) The Hirer acknowledges and agrees that the Security Bond is not intended to cover the cost of repairing any damage to the Boat. This is dealt with in clause 10.
- (6) Payment of the Hire Fee and the Security Bond must be made in such manner as the Owner reasonably requires.

#### **6. Condition of Boat at delivery and return**

- (1) The Hirer must inspect the Boat upon delivery and notify the Owner immediately of any concern the Hirer has about the Boat. The Hirer must also notify the Owner of any issue identified during the course of their hire as soon as practicable after it is identified.
- (2) If the Hirer fails to inspect the Boat or notify the Owner of any issue with the Boat in accordance with clause 6(1), then in the absence of clear contrary evidence, the Boat is deemed to have been in good condition when delivered by the Owner.
- (3) If through no fault of the Hirer, a material fault is identified in the Boat then, provided that the Hirer has complied with this Agreement, the Owner will repair the Boat, replace the Boat, or refund the balance of the Hire Fee (at the Owner's sole discretion) except where:
  - (a) The Hirer fails to follow the Owner's instructions in relation to the proper use of the Boat;
  - (b) The Boat or any Services have been used in a manner other than for their intended purpose;

- (c) The Hirer wilfully or recklessly causes damage or fails to maintain the Boat;
  - (d) The Hirer continued to use the Boat after an issue with the Boat was identified or would have been apparent to an ordinary person licensed or qualified for the use of that equipment;
  - (e) Any alteration is made to the Boat without the Owner's knowledge and consent; or
  - (f) The fault occurred as a result of circumstances outside the control of the Owner.
- (4) The Owner will not be liable for any losses caused by any delay in repairing or replacing the Boat pursuant to clause 6(3).
- (5) At return, the Hirer must ensure that the Boat is clean and in as good a condition as it was at delivery, normal wear and tear excepted, and that all inventory, machinery and other detachable items are also returned.

## **7. Acceptable Use**

- (1) The Boat is to be used for recreational purposes only during the Hire Period and may not be used for commercial purposes.
- (2) The Boat may only be operated within the Limits of Operation.
- (3) The Hirer agrees and acknowledges that:
  - (a) the Boat will, at all times, be solely in the control of a competent driver, aged 18 years or older, who will use the Boat in a careful, safe and conscientious manner, within the Limits of Operation.
  - (b) where the Boat is one which must be under the control of a person holding a Boat Licence, the person in control of the Boat for the purposes of clause 7(3)(a) must be the person holding the Boat Licence specified at Item 1 on page 1 of this Agreement.
  - (c) they will be responsible for the safety of any and all passengers on the Boat.
  - (d) they will be responsible for the safety and condition of the Boat.
  - (e) they will provide their driver's licence details to the Owner and, where necessary, details of the Boat Licence.
- (4) The Hirer must comply, and must ensure that all passengers on board the Boat comply, with the following during the Hire Period:
  - (a) Only the passengers who boarded the Boat at the start of the Hire Period are allowed onboard the Boat. The Hirer may not replace or add passengers during the Hire Period.
  - (b) No smoking while onboard the Boat.
  - (c) Alcoholic beverages are permitted on the Boat. However the person in control of the Boat (including, the holder of the Boat Licence) must comply with WA State law regarding alcohol consumption (i.e. BAC of less than 0.05%) and drug use.

The Owner reserves the right to terminate the hire if the Hirer or passengers are intoxicated upon boarding the Boat. If the Owner terminates the hire in accordance with this clause, the Hirer will not be entitled to a refund of any or all of the Hire Fee.

  - (d) Swimming from the Boat is permitted, however the Hirer must ensure that the Boat is securely anchored, the engine is switched off, the keys removed from the ignition and secured onboard before the Hirer or any passengers enter the water from the Boat.
  - (e) The Boat may not be tied or otherwise secured to any other boat or vessel.
  - (f) Except in the case of an emergency, the Boat must not be docked at any location other than the Owner's nominated docking area.
  - (g) Children under the age of 12 years are required to have a life jacket available at all times whilst onboard the Boat. (minimum Level 100 Buoyancy)
- (5) The Hirer must supply life jackets for all children under the age of 12 onboard the Boat. The Hirer may request the Owner to supply children's life jackets and if the Owner agrees to do so, the Hirer agrees to pay any additional life jacket hire fee as determined by the Owner.
- (6) The Owner reserves the right to terminate the hire and/or refuse boarding of children under the age of 12 years onto the Boat, if children's life jackets are not supplied by the Hirer. If the Owner terminates the booking in accordance with this clause, the Hirer will not be entitled to a refund of any or all of the Hire Fee.

## **8. Safety**

- (1) Prior to starting their hire of the Boat, the Hirer (and any other person holding the Boat Licence specified at Item 1 on page 1 of this Agreement) must:
  - (a) attend the safety briefing provided by the Owner. This briefing will include operating instructions, the location and activation of safety equipment and the Limits of Operation for the Boat; and
  - (b) make themselves familiar with both the location and content of the Boat's safety management plan.
- (2) The Hirer must comply with all rules and guidelines provided by the Owner as well as all applicable laws, regulations, requirements and rules relating to the safe and lawful operation of the Boat during the Hire Period including being responsible for any fishing licenses required.
- (3) The Hirer is responsible for all persons onboard the Boat and must ensure that they comply with this Agreement, all applicable laws, regulations, requirements and rules and the safety management plan during the Hire Period. The Hirer must advise all persons of the risks and hazards of using and boarding the Boat prior to them boarding the Boat.
- (4) The Hirer must not operate the Boat in adverse or unsafe weather conditions, or where such conditions are imminent. Weather forecast monitoring is the responsibility of the Hirer.

## **9. Assumption of Risk**

- (1) The Hirer acknowledges that they are hiring the Boat relying solely upon their own skill and judgment and not upon any representations or statements by the Owner (including representations or statements of a broad or general nature).
- (2) The Hirer acknowledges that the activities for which the Boat is designed include inherent dangers, including the risk of bodily injury and/or death.
- (3) The Hirer assumes and accepts all dangers and risks associated with the use of the Boat and hereby indemnifies the Owner for any losses suffered by the Hirer, any passengers or any third parties as a result of the materialisation of those dangers and risks.

## **10. Damage to the Boat**

- (1) The Hirer agrees to:
  - (a) immediately report any accident, loss or damage to the Boat or Equipment to the Owner;
  - (b) cooperate and provide written or oral statements to the Owner or their designated representatives; and
  - (c) follow all instructions issued by the Owner in the event of accident, loss or damage arising during the Hire Period.
- (2) The Hirer agrees to pay for any damage or losses caused to the Boat or Equipment during the Hire Period.
- (3) The Hirer agrees that clause 10(2) applies whether or not the damage was caused or contributed to by the Hirer and includes damage or losses caused by third parties, passengers, weather conditions, vandalism or theft.
- (4) The Hirer acknowledges and agrees that the Owner has sole discretion to determine how any loss or damage to the Boat or Equipment will be repaired/replaced.

## **11. Cancellations**

- (1) The Hirer may request a cancellation of the booking or hire of the Boat by written notice provided to the Owner. The Owner has sole discretion to accept or refuse such a request.
- (2) Where a booking or hire is cancelled under clause 11(1) and the Hirer requested the cancellation:
  - (a) at least 48 hours prior to the start of the Hire Period, any Hire Fee paid to the Owner will be returned to the Hirer; and
  - (b) less than 48 hours prior to the start of the Hire Period, any Hire Fee paid to the Owner will be forfeited.

- (3) The Owner may cancel the booking or hire of the Boat at any time prior to the start of the Hire Period and either return the Hire Fee to the Hirer or continue to hold the Hire Fee if the Hirer chooses to re-book the Boat for an alternative date agreed with the Owner.
- (4) The Hirer agrees and acknowledges that the Owner will not be liable for any loss, damage or expense arising from or caused by any cancellation of the booking or hire of the Boat by the Owner pursuant to clause 11(3).

## **12. Termination**

- (1) If at any time the Owner determines that the Hirer has engaged in unsafe or hazardous use of the Boat, the Owner may board the Boat or otherwise notify the Hirer that their hire of the Boat has been terminated immediately.
- (2) The Owner has sole discretion as to whether any behaviour or activity is unsafe or hazardous.
- (3) If the Hirer breaches this Agreement or fails to comply with their obligations under this Agreement, the Owner may board the Boat or otherwise notify the Hirer that their hire of the Boat has been terminated immediately.
- (4) If the hire is termination under clauses 12(1) or 12(3):
  - (a) the Hirer must immediately return the Boat to the nominated docking area; and
  - (b) the Hirer will forfeit the Security Bond and will not be entitled to a refund of any or all of the Hire Fee.
- (5) The Hirer agrees and acknowledges that the Owner will not be liable for any loss, damage or expense howsoever arising from or caused by the termination of their hire of the Boat under this clause 12.

## **13. Retention of Title**

- (1) The Owner retains full ownership and title of the Boat at all times irrespective of the delivery of the Boat to the Hirer, the possession and use of the Boat by the Hirer and any temporary attachment of the Boat to any land, moorings or structures to facilitate use of the Boat.
- (2) The Hirer may not sub-lease or sub-hire or otherwise encumber the Boat in any manner.
- (3) The Hirer must do all things necessary to ensure that, where the *Personal Properties Securities Act 2009* (Cth) applies, the Owner obtains and maintains a perfected security interest in the Boat and Equipment.

## **14. Insurance**

- (1) The Hirer acknowledges that the Owner is under no obligation to maintain any insurance over the Boat and where any insurance cover obtained is not available to the Owner, the Hirer will remain liable for any expenses, losses or damage suffered by the Owner in connection with the Hirer's use of the Boat.
- (2) Without limitation to the other rights of the Owner, the Hirer will be responsible for reimbursing the Owner for any insurance excess which may apply in the event that an insurance claim is made by the Owner in connection with the Hirer's use of the Boat.

## **15. Exclusion and limitation of liability**

- (1) To the maximum extent permitted by law, the Owner and their officers, employees, consultants and agents exclude all liability to the Hirer or any other person for any loss, cost, expense, claim or damage (whether arising in contract, negligence, tort, equity, statute or otherwise, and for any loss, whether it be consequential, indirect, incidental, special, punitive, exemplary or otherwise, including any loss of profits or loss of goodwill) arising directly or indirectly out of, or in connection with, the Hirer's hire or use of the Boat and Equipment or any delay or non-performance of this Agreement by the Owner, their officers, employees, consultants and agents.

- (2) To the maximum extent permitted by law, the Owner and their officers, employees, consultants and agents expressly limit their liability for breach of any non-excludable terms or conditions or any term or condition implied by any legislation to the following remedies (the choice of which is to be at the Owner's sole discretion):
  - (a) the supply of the Boat and/or Services again; or
  - (b) the amount paid by the Hirer to the Owner pursuant to this Agreement.

#### **16. Indemnity and Release**

- (1) The Hirer hereby indemnifies the Owner against all losses, costs and expenses which the Owner or their officers employees, consultants or agents may suffer or incur (including dishonour fees, debt collection costs and legal costs on an indemnity basis) due to:
  - (a) the failure of the Hirer to comply with this Agreement and/or its obligations under this Agreement;
  - (b) any loss of, or damage to, the Boat or the Equipment during the Hire Period including by seizure or confiscation; and
  - (c) any wilful or neglectful conduct during the Hire Period by any person, not directly connected with the Owner, in connection with the Boat.
- (2) The Hirer further indemnifies the Owner against any fines or other penalties issued by any authority in relation to the operation or use of the Boat during the Hire Period.
- (3) To the full extent permitted by law, the Hirer releases and discharges the Owner and its agents and employees from any action, claim, loss or right which the Hirer may now or in the future have against the Owner or its officers, agents, contractors and employees arising from their hire or use of the Boat and Equipment. The Owner may plead this release as a bar and complete defence to any claims or proceedings.

#### **17. Privacy**

- (1) The information requested from the Hirer is to enable the Owner to assess the Hirer's request to hire a Boat. The Hirer does not have to supply this information, but if the Hirer does not, then the Owner is unable to hire the Boat to the Hirer.
- (2) The Hirer acknowledges that the Owner will collect, hold and use the Hirer's personal information for purposes related to the hire of the Boat and the provision of related customer services, including marketing of the Boat and/or the Services by the Owner, its agents, distributors, or contractors, including by electronic message.
- (3) The Hirer further acknowledges that the Hirer's personal information may be disclosed to:
  - (a) agents or contractors assisting with the collection of monies owed to the Owner by the Hirer including debt collection agencies;
  - (b) other parties involved in an accident with the Boat during the Hire Period;
  - (c) other persons in order to give effect to the terms of this Agreement; and
  - (d) any organisations responsible for the processing or handling of infringementsand the Hirer hereby authorises the disclosure of their personal information for such purposes.

#### **18. COVID-19 Measures**

The Hirer must comply with all:

- (1) applicable Commonwealth, Western Australian and Local Government public health directions; and
- (2) COVID-19 guidelines and directions provided by the Owner.

#### **19. General**

- (1) If any provision of this Agreement would, but for this clause, be contrary to any laws, including any conditions, warranties, rights or remedies which the Hirer may have pursuant to the Competition and Consumer Regulations or otherwise then this Agreement will take effect as if that clause or clauses were severed from this Agreement and treated as void, but so that the remaining provisions shall not be affected in any way.
- (2) Where the Hirer constitutes more than one person, the Hirer will be jointly and severally liable for all amounts payable by the Hirer to the Owner in connection with this Agreement.

- (3) This Agreement constitutes the entire agreement between the Hirer and the Owner with respect to the hire of the Boat and Equipment and cannot be varied except in writing.
- (4) Any variation to this Agreement extending the Hire Period will, unless otherwise agreed, be based on the Owner's prevailing rates applicable for the hire of the Boat and Equipment as at the date of variation.
- (5) The Owner may assign or subcontract the whole or any part of this Agreement without the Hirer's consent.
- (6) The Owner will not be liable for any breach of any provisions of this Agreement if the cause is outside of the reasonable control of the Owner.
- (7) A waiver of any provision of this Agreement by the Owner must be in writing. No delay by the Owner in exercising any right or power pursuant to this Agreement will operate as a waiver of that right or power nor will any single or partial exercise of any right or power preclude any other or further exercise of that right or power.
- (8) Any undertakings, agreements and continuing obligations in this Agreement do not merge on completion.
- (9) This Agreement shall be governed by the laws of Western Australia and the parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

**20. Declaration and Acknowledgment**

By signing the Agreement, the Hirer acknowledges they have read and understood and agree to be bound by the terms and conditions of the Agreement.

<p><b>SIGNED BY</b> the Hirer</p> <p>..... Signature of hirer</p> <p>..... Print name of hirer</p> <p>..... Date</p>
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<p><b>SIGNED BY</b> the Owner:</p> <p>.....</p> <p>.....</p> <p>..... Date</p>	<p>)</p> <p>)</p> <p>..... Signature of Sharyn Fiona Vick as trustee for The Graham and Sharyn Vick Family Trust</p>
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## ANNEXURE A

### Item 1 - Pontoon Boat Hire

#### Limits of Operation

As indicated on the map **below**:

- Between Diversion Dam and Crossing Falls Powerlines; but with
- No entry into:
  - Lilly Creek Lagoon;
  - the waterway within Darram Conservation Park; or
  - the waterway adjacent to Sleeping Buddha/ Elephant Rock.



Limits of operation

#### Services

Services included with Pontoon Boat Hire:

- Safety - All safety equipment for adults plus a safety briefing before the Boat departs;
- A chart showing the areas on the river that the Pontoon Boat is permitted to travel;
- Fuel;
- BBQ; gas, utensils, including plates & cutlery;
- 10 x Chairs and a table
- Toilet paper and Garbage bin liners.
- Pool noodles

## Item 2 - Dinghy Boat Hire Limits of Operation

As indicated on the map **below**:

- Between Diversion Dam and the junction of the Spillway Creek; but with
- No entry into:
  - Lilly Creek Lagoon;
  - the waterway within Darram Conservation Park; or
  - the waterway adjacent to Sleeping Buddha/Elephant Rock.
  - the waterway adjacent to Crossing Falls Road/opposite the Powerlines; or
  - Spillway Creek.



## Services

Services included with Dinghy Boat Hire:

- Safety - All safety equipment for adults plus a safety briefing before the Boat departs;
- A chart showing the areas on the river that the Dinghy is permitted to travel; and
- Fuel.