

CAPE TO CAPE BOAT HIRE AGREEMENT

SCHEDULE

TERM	MEANING
we, us or our	Ilich Enterprises Pty Ltd ACN 651 483 662 t/a Cape to Cape Boat Hire ABN 12 651 483 662 Address: 5 Isaacs St Busselton Email: hires@capetocapeboathire.com.au
you or your	Name: Address: Email: Licence Number: Licence Expiry Date: Recreational Skippers Ticket:
Additional Designated Drivers	Name Licence Number: Licence Expiry Date: Recreational Skippers Ticket :
Equipment	Equipment includes the boat, trailer, safety equipment (life jackets, Epirb, flares, waterproof torch, bail bucket, bilge pumps, propulsion system, safety whistle), electrical /electronic equipment including GPS/Sounder, transducer, vhf and stereo.
Services	The Services are the following: <ul style="list-style-type: none">• leasing the Equipment to you for the Hire Period;• providing safety equipment as specified in the Equipment section;
Bond	\$ This Bond represents a full day's rental fee, fully refundable upon safe return of the Equipment in its Original Condition.
Insurance Excess	\$1,000 Basic \$1,000 Liability \$200 Equipment
Cleaning Fee	A minimum fee of \$75 + GST may be charged if the Equipment is returned in a condition requiring cleaning beyond normal use. This fee may increase for more extensive cleaning requirements, as reasonably determined by us. The Cleaning Fee will only be charged in circumstances where additional cleaning is required and may be deducted from your Bond.
Hire Period	Date :
Hire Fees	\$
Late Return Charge	\$50 + GST per hour the Equipment is returned after the Hire Period has lapsed.
Payment Terms	Full payment of the Hire Fees and bond is required upfront, prior to collection of the Equipment. The Bond will be refunded upon safe return of the Equipment in its Original Condition.

Term	This Agreement will commence on the date of hire and will continue until the date on which you have returned the Equipment to us in Original Condition (as reasonably determined by us).
Our Disclosures	<p>Please read this Agreement carefully before you sign. We draw your attention to:</p> <ul style="list-style-type: none"> • the Indemnity Form and Conditions of Hire; and • clause 9 (Liability) which sets out exclusions and limitations to our liability under this Agreement. <p>This Agreement does not intend to limit your rights and remedies at Law, including any of your Consumer Law Rights.</p>
Special Conditions	

TERMS AND CONDITIONS

This Agreement is entered into between us and you, together the **Parties** and each a **Party**.

1. Indemnity Form and Conditions of Hire

- 1.1 The Indemnity Form and Conditions of Hire, a copy of which is attached to this Agreement, form an integral part of the terms and conditions of this Boat Hire Agreement.
- 1.2 By signing this Agreement, you represent and warrant that:
 - (a) You have read and understood the Indemnity Form and Conditions of Hire in full;
 - (b) You agree to be bound by its terms; and
 - (c) The information you provided in the form is true, complete, and accurate to the best of your knowledge.
- 1.3 Failure to comply with any obligation set out in the Indemnity Form and Conditions of Hire may result in the immediate termination of the hire and/or forfeiture of any bond or deposit paid.

2. Services

- 2.1 In consideration of your payment of the Hire Fees, we will provide the Services in accordance with this Agreement, whether ourselves or through our Personnel.
- 2.2 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the scope of the Services or our obligations under this Agreement, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.

Collecting the Equipment

- 2.3 If we are responsible for delivering the Equipment to you, we will use reasonable endeavours to deliver the Equipment by the time agreed between the Parties, and risk in the Equipment will pass to you once we have delivered the Equipment to the agreed delivery location. You will be responsible for the costs of delivery.
- 2.4 If you are responsible for collecting the Equipment from us, you must collect the Equipment by the time agreed between the Parties, and risk in the Equipment will pass to you once you have collected the Equipment from the agreed collection location. You will be responsible for the costs of collection.
- 2.5 Prior to collection, we will provide you with instructions for the specific Equipment you are hiring.
- 2.6 By collecting the Equipment, or taking it off the hire premises, you confirm that you take the Equipment:
 - (a) in the condition set out in the Condition Report;
 - (b) with the manufacturer supplied accessories and equipment, keys, global positioning system (GPS), navigation accessories (where applicable), and any other items specified on the Vessel Condition Report;
 - (c) The boat will be given to you full of fuel and needs to be returned full, unless otherwise agreed in writing between the Parties.

Operating the Equipment

- 2.7 You will be responsible for the cost of operating the Equipment, including the cost of any consumables such as fuel.
- 2.8 We will be responsible for the cost of maintaining and servicing the Equipment. You will be responsible for the costs of any repairs to the Equipment (including the cost of replacement parts) because of your improper or negligent use of the Equipment, which will be a debt due and immediately payable to us.
- 2.9 You must not moor, anchor, or leave the vessel in the water overnight without the express prior written consent of Cape to Cape Boat Hire. The vessel must be returned to shore and secured in accordance with the instructions provided at the commencement of the hire period unless otherwise approved in writing. Unauthorised overnight mooring may result in additional charges, forfeiture of bond, or termination of the hire agreement.
- 2.10 You agree to (and to the extent applicable, ensure that your Personnel agree to):
- (d) comply with this Agreement, all applicable Laws, our reasonable requests, and any operating instructions for the Equipment;
 - (e) contact us immediately if there is any damage to or defects in the Equipment;
 - (f) ensure that any person using the Equipment is properly qualified or trained to safely do so;;
 - (g) not allow anyone to interfere or otherwise tamper with the Equipment;
 - (h) not allow any third party to conduct repairs or maintenance on the Equipment without our prior consent;
 - (i) pay us the cost of the Equipment (as a debt due and immediately payable) where their loss, theft, damage or destruction occurs;
 - (j) return the Equipment in a clean and tidy condition. If the Equipment is not returned in an acceptable condition, we may charge the Cleaning Fee as specified in the Schedule. This fee may be deducted from your Bond;
 - (k) protect and maintain the Equipment in the Original Condition; and
 - (l) keep the Equipment in your custody and control at all times, and not sublease, rent, sell or otherwise transfer the Equipment to any other person.

Returning the Equipment

- 2.11 You must return the Equipment to us in the Original Condition at the time agreed between the Parties, which will be 24 hours from the time of collection, unless otherwise specified.
- 2.12 You agree that if you do not return the Equipment to the return location by the agreed time, or have not made the Equipment available for our collection at the agreed time (if we have elected to collect the Equipment, in our sole discretion), then we may charge you the Late Return Charge.
- 2.13 You agree that the Late Return Charge is a genuine pre-estimate of loss suffered or incurred by us as a result of your delay in returning the Equipment to us.
- 2.14 If the Equipment is not returned in a clean condition, we may charge a cleaning fee as set out in the Schedule, depending on the extent of cleaning required. This fee may be deducted from your bond.

Title, Risk and Security

- 2.15 Title in any Equipment leased to you will at all times remain with us, and you:
- (a) take the Equipment as a bare bailee only;
 - (b) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure our retention of title to the Equipment, including the registration of any security interest in our favour with respect to the Equipment; and
 - (c) must not allow any other person to have or acquire any security interest in the Equipment without our prior written consent.
- 2.16 To the extent that our interest in the hire of the Equipment is a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**):

- (a) we may register any actual or likely security interest, and you must take all steps that we consider necessary or desirable to ensure our security interest in the Equipment and any proceeds of its sale is enforceable, and to perfect and ensure our priority over all other security interests;
- (b) if we register our security interest in accordance with the PPSA, it is without prejudice to any other rights that we have at law;
- (c) you acknowledge and agree that we have not authorised any disposal or dealing of the Equipment, and our security interest attaches to any proceeds of sale of the Equipment;
- (d) you waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA, including but not limited to notices under sections 95, 118, 121, 130, 132, 135 or 157;
- (e) you agree that sections 95, 96, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA do not apply to the enforcement of our security interest; and
- (f) you must not disclose any information of the kind referred to in section 275 of the PPSA, to the extent permitted under that section.

Your Obligations

2.17 You agree to:

- (a) adhere to all Western Australia boating regulations. These are available to read online;
- (b) wear life jackets at all times when required by law, particularly when operating the Equipment after dark;
- (c) display navigation and white lights at all times when operating the Equipment after dark;
- (d) only operate the Equipment within the designated towable areas as shown on the map provided;

D25 4.2m Dinghys

The person hiring/operating the vessel must ensure

- The vessel is only operated during daylight hours.
- The vessel is operated in smooth waters no further than 2 nm offshore and not in shallow reef areas.
- A limit of 4 persons onboard.

P70 Polycraft

The person hiring/operating the vessel must ensure

- The vessel is operated to a maximum of 5nm offshore.
- The vessel is operated to a maximum of 20kts speed.
- The vessel is not operated in seas of greater than 2.5m.
- The vessel must not be operated in winds exceeding 15kts.
- The displacement of the vessel does not exceed 1.9 ton.

P115 Polycraft

The person hiring/operating the vessel must ensure

- The vessel is operated to a maximum of 15nm offshore.
- The vessel is operated to a maximum of 20kts.
- The vessel is not operated in seas of greater than 2.5m.
- The vessel must not be operated in winds exceeding 15kts.
- The displacement of the vessel does not exceed 1.9 ton.

P150 Polycraft

The person hiring/operating the vessel must ensure

- The vessel is operated to a maximum of 20nm offshore.
- The vessel is operated to a maximum of 20kts.

- The vessel is not operated in seas of greater than 2.5m.
- The vessel must not be operated in winds exceeding 15kts.
- (e) be responsible for your own safety, including use of sunscreen and other personal safety measures;
- (f) be liable for any fines incurred or costs associated with running out of fuel or becoming stranded;
- (g) ensure that you and any Designated Drivers operate the Equipment only when under the legal blood alcohol limit of 0.05 and never while under the influence of illegal drugs. You acknowledge that operating the Equipment while intoxicated or under the influence of drugs is illegal and may void insurance coverage.

3. Hire Fees and Payment

Booking Process

1. When looking to book one of our boats please send an email requesting the boat and dates you are wishing to hire.
2. If available I will send an invoice for 20% of the total boat hire cost, this is the Booking Fee. At this point I will pencil you in the calendar, but only once the 20% Booking Fee is paid will your hire be booked.
3. I will also send through another invoice for the other 80% and the Bond with a due date of the day of hire, this is the Hire Invoice.
4. The bond will be one days hire fee and will be refunded on return of the boat undamaged, without loss of property and clean.

If you need to cancel your booking you can do this up until 72 hours before the hire day and be refunded the full 20% Booking Fee.

Weather Policy

On the day of your hire if the wind and ocean conditions are deemed unsafe by Cape to Cape Boat Hire your booking can be cancelled for a refund of the Hire Invoice but not the Booking Fee. This will generally be if a proportion of the day is forecast to be 15 knots or more. Unfortunately, we can not cancel if the weather is just not as good as you were hoping, but with Cape to Cape Boat Hire your safety is the number one priority. If you are hiring one of our boats and travelling outside of the local area the hirer must use their own judgement if they want to move forward with their hire and only use the boat in safe weather and sea state conditions.

- 3.1 In consideration for us providing the Services, you agree to pay all amounts due under this Agreement in accordance with the Payment Terms.
- 3.2 If you are required to pay a bond in respect of any Equipment, you agree that:
 - (a) we will have no obligation to provide the Equipment to you until you have paid the bond in full;
 - (b) the bond will be used as security by us for your obligations under this Agreement, and we may call upon the bond to satisfy any obligations or liabilities owed by you; and
 - (c) subject to your compliance with this Agreement, we will refund you the balance of the bond (if any) within a reasonable time after the end of the relevant lease period.
- 3.3 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under this Agreement or at Law):
 - (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms; and/or
 - (c) enter any premises where the Equipment is stored or held, for the purpose of retrieving and taking possession of the Equipment, and you agree to provide any access, items and consents required to enable us to do so.

- 3.4 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

4. Storage and Security

- 4.1 When storing the Equipment overnight:
- (a) if stored in a secured premises (inside gates or a shed), no additional locks are required;
 - (b) if parked on a street or in an area accessible from a street, you must fit the hitch lock.
 - (c) the hitch lock must be attached to the Equipment at all times;
 - (d) if the Equipment is removed from the care, you must fit the anti-theft lock on the hitch.

5. Licence Verification

- 5.1 Prior to collecting the Equipment, you must provide us with your valid driver's licence.
- 5.2 If you are hiring a boat 3.5m or longer, you must also provide us with your valid boat licence.
- 5.3 We reserve the right to refuse hire if you cannot provide the required licence(s).

6. Warranties and Representations

- 6.1 Each Party represents and warrants that:
- (a) it has full legal capacity, right, authority and power to enter into this Agreement, to perform its obligations under this Agreement, and to carry on its business; and
 - (b) this Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.
- 6.2 You represent and warrant that:
- (a) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
 - (b) no insolvency events (including but not limited to bankruptcy, receivership, voluntary administration, liquidation or creditors' schemes of arrangement) affecting you or your property are occurring or are likely to occur; and
 - (c) if you enter into this Agreement as a trustee of a trust, then:
 - (1) you are the sole trustee of the relevant trust and have been validly appointed;
 - (2) you have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and
 - (3) you have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by you under the Agreement.

7. Confidential Information

- 7.1 Subject to clause 7.2, each Party must (and must ensure that its Personnel) keep confidential, and not use (except to perform its obligations under this Agreement) or permit any unauthorised use of, information provided by the other Party, including information about this Agreement and the other Party's business and operations.
- 7.2 Clause 7.1 does not apply where the disclosure is required by Law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the disclosing Party ensures the adviser complies with the terms of clause 7.1.
- 7.3 This clause 7 will survive the termination of this Agreement.

8. Australian Consumer Law

- 8.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in this Agreement excludes those Consumer Law Rights.

8.2 Subject to your Consumer Law Rights, we provide all material, work and services (including the Services) to you without conditions or warranties of any kind, implied or otherwise, whether in statute, at Law or on any other basis, except where expressly set out in this Agreement.

8.3 This clause 8 will survive the termination or expiry of this Agreement.

9. Liability

9.1 To the maximum extent permitted by law, you are liable for and you and agree to indemnify us and hold us harmless in respect of any Liability which we may suffer, incur or are otherwise liable for as a result of, or in connection with:

- (a) any property loss or damage, death or personal injury, arising from or in connection with your improper or negligent use of the Equipment;
- (b) any loss (including theft) of, or damage to, the Equipment when you are responsible for the risk in the Equipment;
- (c) any failure to return the Equipment in its Original Condition; and
- (d) all Liabilities suffered or incurred by us in repossessing or recovering the Equipment in accordance with this Agreement.

Insurance and Damage Liability

9.2 We maintain insurance coverage for the Equipment.

9.3 You agree that you will be liable for any damage to, or loss of, the Equipment up to the value of \$1,000 (the **Insurance Excess**).

9.4 For any single incident resulting in damage or loss valued at \$1,000 or less, you will be responsible for the full cost of repair or replacement.

9.5 For any single incident resulting in damage or loss valued at more than \$1,000:

- (a) you will be liable for the first \$1,000 of the damage or loss;
- (b) any amount over \$1,000 will be claimed on our insurance policy, subject to the terms and conditions of that policy.

9.6 The Insurance Excess is payable per incident, and multiple incidents may result in multiple charges up to the Insurance Excess amount.

9.7 Your liability under this clause is in addition to, and not limited by, any Bond paid under this Agreement.

9.8 You acknowledge that your liability under this clause may exceed the total Hire Fees paid for the Equipment.

9.9 We reserve the right to claim the full cost of repair or replacement from you if the damage or loss is caused by your gross negligence, or misconduct regardless of the value of the damage or loss.

9.10 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by Law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
- (d) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to the Hire Fees paid by you to us in respect of the supply of the relevant Services to which the Liability relates.

9.11 This clause 9 will survive the termination or expiry of this Agreement.

10. Term and Termination

10.1 This Agreement will operate for the Term.

- 10.2 You may cancel your booking up to 72 hours before the scheduled hire period. Cancellations made within 72 hours of the scheduled hire period will incur a cancellation fee of 20% of the Hire Fees.
- 10.3 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
 - (b) (to the extent permitted under the *Corporations Act 2001 (Cth)*) any step is taken to enter into any arrangement between the Defaulting Party and its creditors, any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator or like person of the whole or any part of the Defaulting Party's assets or business, the Defaulting Party is bankrupt, or the Defaulting Party is unable to pay its debts as they fall due.
- 10.4 Upon expiry or termination of this Agreement:
- (a) we will immediately cease providing the Services;
 - (b) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Services already performed are not refundable to you;
 - (c) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;
 - (d) you must return the Equipment to us, or make the Equipment available for our collection (at our sole discretion), and grant us a right of access to your premises where the Equipment is located for this purpose;
 - (e) by us pursuant to clause 10.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
 - (f) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 7.
- 10.5 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 10.6 This clause 10 will survive the termination or expiry of this Agreement.

11. General

- 11.1 **Amendment:** Subject to clause 2.2, this Agreement may only be amended by written instrument executed by the Parties.
- 11.2 **Assignment:** Subject to clauses 11.3 and 11.12, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 11.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.
- 11.4 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- 11.5 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement (**Dispute**) without first meeting a representative of the other Party within 10 Business Days of notifying that other Party of the Dispute. If the Parties cannot resolve the Dispute at that meeting, either Party may refer the Dispute to mediation administered by the Australian Disputes Centre.
- 11.6 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:
- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
 - (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be

effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

- 11.7 **Governing Law:** This Agreement is governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 11.8 **Intellectual Property:** Nothing in this Agreement constitutes an assignment or transfer of a Party's intellectual property rights to the other Party.
- 11.9 **Notices:** Any notice given under this Agreement must be in writing addressed to the addresses set out in this Agreement, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 11.10 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 11.11 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.
- 11.12 **Subcontracting:** We may subcontract the provision of any part of the Services without your prior written consent. We agree that any subcontracting does not discharge us from any liability under this Agreement and that we are liable for the acts and omissions of our subcontractor.
- 11.13 **Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing and will be effective only to the extent specifically stated.

12. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, and:

Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Agreement means these terms and conditions and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in Perth, Western Australia, excluding Saturdays, Sundays and public holidays.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Hire Fees and any other amounts payable under this Agreement will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 8.1.

Equipment means any equipment that we lease to you as part of the Services.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Hire Fees means the fees set out in the Schedule, as adjusted in accordance with this Agreement.

Law means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement or the supply of the Services.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Original Condition means the Equipment being clean and free from damage or defect, and in the same condition in which we provided the Equipment to you, subject to fair wear and tear.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Schedule means the schedule to this Agreement.

Services means the services set out in the Schedule, as adjusted in accordance with this Agreement.

13. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a person includes a natural person, body corporate, partnership, joint venture, association, government or statutory body;
- (d) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns;
- (e) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (f) a reference to time is to local time in Perth, Western Australia; and
- (g) a reference to \$ or dollars refers to the currency of Australia from time to time.

I agree to the above conditions and that I have been supplied with a copy.

EXECUTION

Executed by Ilich Enterprises Pty Ltd ACN 651 483 662 t/a Cape to Cape Boat Hire in accordance with section 126 of the *Corporations Act 2001* (Cth), by its duly authorised agent:

Name of Cape to Cape Boat Hire
Representative

Signature

Date

Name of person hiring the boat

Signature and Date

