

Last updated: 12 September 2017

KAYAKABLE RENTAL AGREEMENT

READ THIS THROUGH CAREFULLY BEFORE YOU RENT OR LIST A KAYAK OR CANOE

For the purposes of this Agreement, (a) the “Boat” is any type of kayak or canoe made available through the Kayakable website (the “Site”); (b) the “Renter” is the person renting the Boat and any other equipment using an account created on the Site) and includes any person the Renter allows to use the Boat, and the “Lister” is the owner or authorised agent for the Boat made available for rent via the Site. This rental agreement (“Agreement”) is a binding agreement between Renter and Lister. Kayakable is a party to this Agreement solely to the extent necessary to facilitate the rental transaction and collect and pay any fees that may be owed hereunder, and is otherwise a third party beneficiary of this Agreement. This Rental Agreement, the Kayakable Guarantee and the Terms of Service contained on our Site (Service Terms) are read in conjunction with one another. In the event of any inconsistency between such documents, this Agreement shall prevail to the extent of any such inconsistency.

Lister enters into this Agreement and accepts the Service Terms and allows Renter to rent and use the Boat, along with any associated equipment (the “Rental”) only on the condition that Renter accepts all of the terms in this Agreement and the Service Terms. By entering into this Agreement to rent and use the Boat, each party acknowledges that:

- he or she has read and understood this Agreement;
- he or she agrees to be bound by all of the terms of this Agreement;
- he or she is knowledgeable with respect to the type of equipment being rented and adjustments required for safe operation and use; and
- if Renter is not properly qualified with respect to the equipment, Renter is hereby advised to seek assistance of a qualified person with proper evaluation, adjustment and tuning of equipment.

IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU WILL NOT BE PERMITTED TO LIST OR RENT A BOAT OR ANY OTHER EQUIPMENT. KAYAKABLE RESERVES THE RIGHT TO REJECT OR REFUSE TO PROVIDE SERVICES TO ANY LISTER OR RENTER IN ITS TOTAL DISCRETION.

This Agreement is binding on the Lister on the date of placing a listing on the Site. This Agreement is binding on the Renter on the date the Renter makes a booking for a Boat.

Renter and Lister agree as follows:

1. RENTAL

1.1 Agreement to Rent. Lister agrees to rent the Boat to Renter, and Renter agrees to rent the Boat from Lister, on the terms and subjects to the conditions set forth herein and in the Service Terms, and for the period agreed via the Site (the “Rental Period”).

1.2 Condition of Boat. By making the Boat available for rent hereunder, and agreeing to the terms of this Agreement, Lister represents and warrants that (a) Lister is the sole owner of the Boat, or Lister has full agency or other authority to enter into this Agreement and to rent the Boat to Renter; (b) the Boat has been accurately described on the Site, including any known faults or mechanical issues; (c) except as clearly set forth on the Site, the Boat is in proper working condition, has been professionally maintained, and contains all functionality necessary for the Renter to attain its expected use of the Boat during the Rental Period, other than any adjustments necessary to properly fit the equipment to Renter’s height and skill level. Unless expressly agreed, the Rental does not include additional equipment, such as trolleys, personal flotation devices (“PFD”), safety equipment and navigational equipment such as “EPIRBS” or personal flotation beacons, bilge pumps, skirts etc.

1.3 Refunds and Cancellations. All Rentals are subject to our Cancellation Policy, which is set forth as Exhibit A below.

1.4 Kayakable Guarantee. Kayakable provides a limited Guarantee to Listers for Rentals in Covered Countries (defined below) of up to (a) AUD\$2,500 for Boats, subject to requirements set forth on the Site, the Service Terms and this Rental

Agreement (the “Kayakable Guarantee”). Lister understands that the Kayakable Guarantee is limited to loss or damage to the Boat during the scheduled Rental period, and does not cover ordinary wear and tear, any repairs paid for by Renter, or any loss or damage occurring prior to or after conclusion of the scheduled Rental period. “Wear and Tear” includes all cosmetic damage, including scratches, dents, dings etc. The Kayakable Guarantee covers only damage that materially compromises the functionality or safety of the Boat. Furthermore, the Guarantee does not cover any other property damage, injuries, loss of use or incidental, special or punitive damages - such damages may only be sought from Renter. The Kayakable Guarantee does not cover Boats that are stored outside and unsupervised at night (including any time from 10:00 p.m. to 6:00 a.m.), and Listers are advised to notify all Renters of this exclusion. Furthermore, Lister acknowledges and agrees that the Kayakable Guarantee is only available if accurate and current photographs of the Boat have been included with the listing *prior to* the Rental period, and to the extent such photographs are sufficient to establish the make, model, components and condition of the Boat and any accessories (if applicable). All loss or damage (other than theft or total loss of the Boat) must be notified by the Lister to the Renter and Kayakable within twenty-four (24) hours of return of the Boat; late notice will void the Kayakable Guarantee. Therefore, we strongly encourage all Listers to examine their Boats for safety and functionality as soon as possible following return.

Where a Boat is not returned on the due time, notice of the failure to return must be given by the Lister to both the Renter and Kayakable within twenty-four (24) hours after the due time for the return of the Boat. The Lister must then allow a further 24 hours from the point of notice for the Renter to propose a satisfactory new return time and pay any additional hire fees. If the Renter does not propose a new time and pay such additional hire fees within that time frame, the Lister must notify the Renter and Kayakable that the Boat is deemed lost or stolen.

No exceptions to these notice periods will be honoured. In the event the Lister does not provide the requisite notice within the time frame, the Guarantee is void and a claim cannot be made by the Lister against Kayakable.

All notices must include photographic evidence of the claimed damage; however, Kayakable reserves the option to require a physical inspection prior to making any payment under the Kayakable Guarantee. Any claim for a stolen Boat must be accompanied by a police report to be valid. The Lister may be required to provide additional documentation, such as purchase receipts for the Boat and any components, maintenance records, and such other documents as Kayakable may request in its reasonable discretion.

Upon notifying the Renter and Kayakable of any alleged loss, damage or theft to the Boat in accordance with this Rental Agreement, the Lister must actively seek to recover its loss or damage directly from the Renter. This includes demonstrating that the Lister has used its best efforts to seek recovery of the Boat and/or reimbursement for its loss or damage, including demonstrating written communications and requests to the Renter, notifying the police and any other reasonable requirements of Kayakable. The Renter is required to promptly answer any claim from the Lister and to pay the Lister for any loss or damage reasonably claimed in accordance with this Rental Agreement within 24 hours of receipt of the written notice setting out the amount and details of the claim being provided by the Lister.

In the event that the Renter fails to pay the Lister for its reasonable loss or damage or return the Boat in its original condition within 7 days ("Payment Period") of the Lister having notified the Renter, and provided that the Renter has complied with its obligations under this Agreement and Kayakable determines in its discretion that the Lister's claim is valid, the Lister may claim against the Kayakable Guarantee within 48 hours of expiry of the Payment Period ("Claim Period"), in accordance with this Agreement. In the event the Lister does not make a claim under the Kayakable Guarantee within the Claim Period, the Kayakable Guarantee is void and a claim cannot be made by the Lister against Kayakable.

If Lister is entitled to coverage under the Kayakable Guarantee for a lost or stolen Boat, or where the repair cost would exceed the replacement value of the Boat, Kayakable may in its discretion make commercially reasonable efforts to provide the Lister with a Boat that is of a similar make, model and year, and with similar components and other aftermarket parts up to the maximum Guarantee Amount. If the Boat or components are not reasonably available at

standard retail prices Kayakable reserves the right to provide a Boat of equal quality and/or value up to the maximum Guarantee Amount. In order to determine the value of the Boat and/or components in question, Kayakable will use market indicators to determine the fair market value. These values are determined by year, condition, and overall value and may use the following sources: product manufacturers websites, boat shops, e-commerce websites such as Ebay and other reliable sources to be used at Kayakable's discretion. Kayakable may use other relevant factors in its reasonable discretion. Kayakable reserves the right to elect to pay the Lister for its loss or damage (including theft and total loss) in cleared funds as opposed to by way of replacement Boat or repair, the nature of the remedy to be determined by Kayakable in its total discretion.

In the case of damage, the repair cost of the Boat shall be in Kayakable's reasonable discretion, in consultation with professional repair personnel knowledgeable in the appropriate field, and shall account for any salvage value of the Boat, if applicable. Lister will be entitled to select a preferred repair shop, but any costs in excess of Kayakable's estimated repair cost shall be Lister's sole responsibility. Kayakable reserves the right to pay the Lister for such repair costs in cleared funds as opposed to by way of direct payment for the repairs. In this instance, it is the Lister's responsibility to arrange such repairs.

"Covered Countries" currently consist of the United States, Canada, United Kingdom, Ireland, South Africa, New Zealand and Australia. The list of Covered Countries is subject to change from time to time, and this Agreement will be updated to reflect any such changes.

The Kayakable Guarantee only provides coverage for Boats rented through the Kayakable platform. No coverage is provided for third party property, personal injuries or other losses, which are the sole responsible of the Renter or the Lister, as applicable.

1.5 Lister Obligations. If there is loss, damage or theft of/to a Boat during a Rental, the Lister must notify Kayakable within the time frames set out in this Agreement or prior to any subsequent rental, whichever occurs first. If any damage is not reported during such period, then the damage shall be presumed to have occurred subsequent to the Rental. Lister shall be responsible for the cost of any diagnostic fees, estimates, tune-ups, adjustments, etc.

If Renter does not return a Boat at the conclusion of the Rental Period, and does not agree within twenty-four (24) hours to schedule a new return time, or does not return the Boat at such rescheduled return time, then Lister agrees to file a report with the applicable police department and provide a copy of such report to Kayakable. In filing the report, Lister is required to notify the police department of the Kayakable Guarantee, and that Kayakable may ultimately be subrogated to Lister's right to recovery of the Boat. Lister must also authorise the police department to discuss and provide any information regarding the case with Kayakable.

Lister must not hire the Boat, including agreeing to additional hire days, directly to the Renter (or any associate or affiliate of the Renter) without using the Site and processing the transaction via Kayakable. In the event that the Lister directly hires a Boat to the Renter, Kayakable may charge the Lister its full hire commission (and may deduct such charge directly from the Lister's nominated credit card) and/or may terminate the Lister's access and use of the Site.

2. RENTER OBLIGATIONS

2.1 Usage. No other person may operate the Boat except Renter. The Renter warrants and agrees that it is 18 years or over. Unless expressly included in the Rental, Renter is responsible for provision of trolleys, PFD jackets, bilge pumps and any other necessary equipment. Renter is also responsible for making proper, non-permanent adjustments to the Boat and associated equipment, if any, to match Renter's height and skill level. Renter is advised to seek professional assistance with these adjustments. Without limiting the assumption of risk and waivers set forth in Section 3, Renter knowingly and voluntarily waives any claim it may have against Lister and Kayakable with respect to the proper adjustment of bindings, seats and other onboard Boat fittings.

Renter must follow all laws, rules and regulations, as well as posted signs and warnings. Renter should always be aware of water conditions, as well as weather and other environmental factors which may affect safe operation of the Boat. Renter is responsible for securing the Boat at all times, including the use of theft prevention devices, where appropriate, and only storing the Boat in an enclosed area at night. Renter is also responsible for any injuries to themselves or other people, or damage to the Boat or any other property during the Rental Period.

Renter (or any associate or affiliate of the Renter) must not hire the Boat, including for additional hire days, directly from the Lister without using the Site and processing the transaction via Kayakable. The Renter's use of the Site may be terminated in the event that Renter breaches this obligation.

2.2 Return. Renter agrees to return the Boat to Lister in the same condition as received, except for ordinary wear and tear and ordinary non-permanent adjustments to fit the Boat to the Renter's height and skill level, on the due date and time and at the location specified by Lister at time of rental. Renter understands that there will be additional charges if the Boat is returned at a different time, date, or location than indicated in this Agreement, including late charges and additional rental charges at no less than the daily or hourly rate applicable to the Rental.

If Renter fails to return the Boat at the agreed date, time and location, and has not agreed with Lister or Kayakable on an alternate delivery time and location within 24 hours of the scheduled delivery time, or Renter fails to return the Boat at the rescheduled time and place, then (a) Kayakable shall determine that Renter does not intend to return the Boat; (b) Kayakable will charge Renter's payment method for the full retail value of the Boat, along with any other fees due to Kayakable; (c) Kayakable or Lister may lawfully repossess the Boat; and (d) Kayakable and Lister may exercise any other rights or remedies, and take any other necessary measures, to repossess the Boat and/or collect the full amount owed by Renter hereunder.

If Lister fails to appear at the scheduled time and place for return of the Boat, Renter remains responsible for the safe keeping of the Boat. In such event Renter should contact Kayakable to try to arrange alternate means of return of

the Boat, which may be through a boat shop or other public facility at Kayakable's direction. Lister shall be responsible for any fees incurred by Kayakable in connection with such alternate return method, and understands and acknowledges that, if the such fees exceed the amount of the rental fee due Lister, or any other credit amounts in Lister's account, then the Boat will not be released to Lister until payment arrangement satisfactory to Kayakable have been made. Kayakable shall not be responsible for any delay or loss of use of the Boat due to Lister's failure to appear as scheduled or to make alternate payment and return arrangements.

2.3 Repossession. Lister may repossess the Boat at any time if: (a) the Boat is used in violation of law; (b) it appears the Boat is abandoned, (c) the Boat is used in violation of any term or condition in this Agreement, (d) Renter made a misrepresentation to Lister or (e) Renter fails to return the Boat when due. Lister is not required to notify Renter in advance of repossession.

2.4 Prohibited Use. Use of the Boat is restricted to the general geographical area agreed upon by Renter and Lister. The Renter must not allow any other person to use the Boat other than the Renter. Renter will not operate Boat outside of this area and will not remove Boat from this area. Renter agrees not to use or permit the Boat to be used for hire or in any location that operation would be illegal or a nuisance to others. Renter will not use or permit the Boat to be used for an illegal purpose, including the transportation of a controlled substance or contraband. A violation of this paragraph automatically terminates the rental and makes Renter liable to Lister for any penalties, fines, forfeitures, liens, recovery and storage costs, and any related legal expenses associated with a violation of this paragraph. Boats may not be stored outside overnight, with or without theft prevention devices. Boats stored outside at night are not covered by the Kayakable Guarantee. Lister may not approve overnight storage, and Renters are advised that any approval or direction by Lister will not relieve Renter of potential liability.

2.5 Damage to Boat. Renter shall within 24 hours of a notice setting out a demand for payment from the Lister, pay Lister for all losses and/or damage to the Boat, except for ordinary wear and tear that does not impact the usability of the Boat or significantly impact the resale value of the Boat, regardless of fault (e.g. Renter agrees to pay for the loss or damage even though someone else

caused the damage or is at fault). The determination of whether damage impacts the usability or resale value of the Boat shall be made by Kayakable in its sole discretion. Renter is also responsible for all theft or vandalism losses, even if Renter is not at fault for making the theft or vandalism possible, and regardless of any measures Renter may have taken to secure or protect the Boat, including any instructions or security devices provided by Lister. If the Boat is damaged, Renter agrees to pay the reasonable costs of repair and diminution in value, if any. Renter agrees to compensate Lister for damage according to the schedule of repairs set forth on Annex A to this Agreement. If the Boat is damaged beyond reasonable repair (as determined by Lister), Renter shall be responsible for the retail fair market value of the Boat, less any salvage value if applicable. In addition to the above, Renter shall also be responsible for the reasonable down time ("Loss of Use") if the solution for the case takes more than 10 business days, reasonable administrative fee as determined by Lister or specified by law, plus any towing, pick-up and/or storage charges. Neither Kayakable nor the Renter will provide extra compensation for income lost due to damage or theft. In the event of theft, Renter shall be responsible for paying Loss of Use at the daily rate for each 24 hours Renter delays in paying the total loss. Renter is also responsible for any loss if Renter: (a) abuses the Boat or uses or operates the Boat other than as specified in this Agreement; (b) uses the Boat recklessly; (c) uses the Boat while under the influence of alcohol or a controlled substance; (d) fails to promptly report an accident to the police and Lister; (e) fails to complete an accident report; (f) obtains the Boat through fraud or misrepresentation; or (g) uses the Boat for an illegal purpose. Renter authorises Lister to collect from a responsible third party any applicable loss and/or damage. In the event Lister obtains a recovery from a third party after Renter has paid Lister for all or part of any loss, Lister will refund to Renter any excess above the amount of the loss plus administrative fees and other collection costs and attorneys' fees incurred.

2.6 Payment. Renter agrees to pay upon demand all rates, charges, (including those applicable to miscellaneous services and equipment), plus applicable taxes, fees, and surcharges (if applicable), which may apply to the Rental, including, without limitation, charges for loss and/or damage to the Boat in accordance with this Agreement. Renter specifically agrees and authorises Kayakable to apply any charges to the method of payment used by Renter at the time of rental.

2.7 Booking and Payment. Renter authorises Kayakable to charge the amounts due as a result of the Booking Rental process to Renter's credit card. Charges for upcoming rentals will be processed at the time of the booking. Kayakable may cause an additional charge authorisation to be processed against Renter's credit card or other payment method as a security deposit, which will be credited back to Renter's payment method upon satisfactory return of the Boat without damage or delay. Kayakable is also authorised to make additional charges to Renter's credit card related to late return fees, Boats that are lost or damaged during the Rental Period.

2.8 Repairs. If Renter experiences any malfunctions with the Boat during the Rental period, Renter should immediately notify Kayakable and Lister to obtain authorisation for repairs. Renter agrees that he or she will be responsible for any unauthorised repairs or modifications to the Boat. Renter understands that Lister will not reimburse Renter for any authorised repairs without receipts. All repairs needed as a result of the use of the Boat will be performed at the normal labour rates and the cost of such repairs, including all parts, shall be paid by Renter. Lister shall be responsible for returning the Boat to its prior state due to adjustments necessary to properly fit the equipment to Renter's height, weight and skill level. If a malfunction compromises the safety or usability of a Boat during a Rental, the Renter should contact the Lister immediately and arrange for return of the Boat to the Lister. In such an event, the cost for any remaining days of the Rental would be refunded to the Renter.

2.9 Ownership. The Boat, at all times, remains the exclusive property of Lister. Renter is responsible for damage to or loss of the Boat. If the Boat is lost, stolen, destroyed or damaged beyond repair in the judgment of Lister, Renter agrees to pay Lister the value of the Boat.

3. RISK AND LIABILITY TERMS

3.1 Acknowledgement of Risks. Renter understands and acknowledge that the Boat is provided “as is” and without warranties. Renter further understands and acknowledges that kayaking or canoeing can be a hazardous activity that entails known and unanticipated risks which could result in physical or emotional injury, paralysis, death, or damage to self, to property, or to third parties. Renter understands that such risks cannot be eliminated by Lister without jeopardising the essential qualities of this activity. The risks include, without limitation, falling, collision with other marine craft, striking obstructions such as rocks or other persons, equipment failure, and weather conditions including temperature exposure (hypothermia, sunstroke, sunburn, heat exhaustion and dehydration).

Renter understands that protective gear such as helmets and gloves are recommended for white-water kayaking, for example, but they do not eliminate the risk and may not reduce the risk of injury in the event of an accident.

3.2 Assumption of Risk. RENTER KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ASSUME ALL RISKS RELATED TO THE OPERATION AND POSSESSION OF THE BOAT, INCLUDING, WITHOUT LIMITATION ANY BODILY INJURY OR DEATH TO ANY PERSON, OR PROPERTY DAMAGE TO ANY PROPERTY WHICH MAY RESULT FROM THE OPERATION OF THE BOAT OR POSSESSION OF THE BOAT EVEN IF SUCH LOSS OR DAMAGE IS DUE TO ANY NEGLIGENCE OF LISTER, KAYAKABLE, THEIR AGENTS, EMPLOYEES, OFFICERS, PARTNERS, MEMBERS, SUCCESSORS AND/OR ASSIGNS. DESPITE KNOWING ALL ASSOCIATED RISKS, RENTER FREELY ASSUMES ALL RISKS OF PERSONAL INJURY AND/OR DAMAGE IN THE OPERATION OF THIS BOAT AND RENTER AGREES TO HOLD LISTER AND KAYAKABLE HARMLESS FROM ALL CLAIMS OF INJURY OR DAMAGE.

3.3 Waiver and Release. In consideration of Lister renting the Boat, Renter specifically releases and forever discharges Lister, Kayakable, and their affiliates, officers, agents, and employees from any and all liability or claims for injury, illness, death or loss of or damage to property which Renter may suffer while renting this Boat and participating in associated activities. This discharge specifically includes, but is not limited to, liability or claims for injury, illness, death or damage caused by the negligence of Lister, Kayakable, or their

affiliates, officers, agents, or employees. It is the express intent of this Agreement that Renter release Lister and Kayakable and hold them harmless from all liability for any such property loss or damage, personal injury or loss of life, whether caused by the negligence of Lister or Kayakable or whether based upon breach of contract, breach of warranty, or any other legal theory. In agreeing to this Agreement, Renter fully recognizes that if injury, illness, death or damage occurs while engaged in renting this Boat or participating in sports or any other activity associated with the Boat, Renter will have no right to make a claim or file a lawsuit against Lister, Kayakable or their affiliates, officers, members, agents or employees, even if any of them negligently cause any injury, illness, death or damage.

3.4 Indemnification. Renter agrees to indemnify and hold harmless Lister and Kayakable and their subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs and expenses (including attorney's fees) arising from, related to, or in any way connected with, or resulting from Renter's participation in this activity or use of the Boat, including the possession, use, operation, or return of the Boat, and including any such claims which allege negligent acts or omissions on the part of Lister or Kayakable. Should Lister, Kayakable or anyone acting on their behalf, be required to incur attorney's fees and costs to enforce this agreement, Renter agrees to indemnify and hold them harmless for all such fees and costs.

4. Third Party Claims. Neither Lister nor Kayakable shall be responsible if Renter causes injury or death to another person or if Renter damages another watercraft or personal property of another. Renter agrees to protect, defend, indemnify and hold Lister and Kayakable harmless and pay any claim, including attorneys' fees, brought by a third party arising out of Renter's use of the Boat and for any liability associated with any personal accident/injury as a result of Renter's use of the Boat.

4.1 Insurance. Renter certifies that the Renter has adequate insurance to cover any injury or damage Renter may cause or suffer while participating in the activity, or else Renter agrees to bear the costs of such injury or damage. Renter understands and agrees that Lister and/or Kayakable may make a claim against

any insurance coverage Renter maintains, whether liability, casualty, personal or health insurance, in the event of any loss, injury, death or damage to person or property while using or operating the Boat. Neither the maintenance of, or failure to maintain, adequate insurance shall relieve Renter of any liability hereunder.

4.2 Physical Condition. Renter understands that he or she should be in good physical health to participate in kayaking or canoeing. Renter certifies that Renter has no medical or physical conditions which could interfere with Renter's safety in this activity, or else Renter is willing to assume all liability, damages or costs that may be created, directly or indirectly, by any such condition.

5. GENERAL PROVISIONS

5.1 No Warranty. THE BOAT IS PROVIDED TO RENTER ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BOAT IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, LISTER AND KAYAKABLE DO NOT WARRANT THAT THE BOAT OR ANY RENTAL WILL MEET RENTER'S REQUIREMENTS.

5.2 Limitation of Liability.

(a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LISTER OR KAYAKABLE, THEIR AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM ANY RENTAL OR THE USE OF, OR INABILITY TO USE, THE BOAT.

(b) IF LISTER OR KAYAKABLE, OR THEIR AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, OR SUPPLIERS BE LIABLE ARE FOUND TO BE LIABLE, SUCH LIABILITY TO RENTER OR TO ANY THIRD PARTY IS LIMITED TO THE GREATER OF (A) THE TOTAL FEES PAID HEREUNDER AND (B) AUD\$100.

(c) THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF KAYAKABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

5.3 Assignment. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by either Lister or Renter.

5.4 Third Party Beneficiary. Kayakable shall be an intended third party beneficiary of this Agreement with the full rights to enforce the provisions relating to Kayakable herein.

5.5 Governing Law. This Agreement shall be governed by the internal substantive laws of Australia, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any claim or dispute between Renter and Lister that arises in whole or in part from the rental of the Boat shall be decided exclusively by a court of competent jurisdiction closest to Lister's residence.

5.6 No Waiver. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

5.7 Entire Agreement/Severability. This Agreement shall constitute the entire agreement between Renter and Lister concerning the rental of the Boat. If a court of competent jurisdiction deems any provision of this Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

Exhibit A. Kayakable Cancellation Policy

The following Cancellation Policy applies to all Rentals through Kayakable.

(a) In the event a Rental is cancelled by Renter within three (3) hours after booking (other than for same day Rentals, which are subject to Section (d) below), then all funds shall be returned to Renter.

(b) In the event a Rental is cancelled by Renter at least five (5) days prior to commencement of the Rental Period and Section (a) above does not apply, then all funds shall be returned to Renter, *less* the applicable Kayakable fee.

(c) In the event a Rental is cancelled by Renter at least two (2) days but less than five (5) days prior to commencement of the Rental Period and Section (a) above does not apply, then 50% of the Rental Fee shall be returned to Renter. Renter shall not receive any refund of the applicable Kayakable fee.

(d) In the event a Rental is cancelled by Renter less than 48 hours before commencement of the Rental, the Renter shall not be eligible for any refunds.

(e) If upon delivery of the Boat or, within the first twenty-four (24) hours of the Rental Period, Renter reasonably determines that the Boat does not materially conform to the Lister's description of the Boat, then Renter may notify Kayakable of the deficiency and request a refund. Further, if Lister does not deliver the Boat at the place and time agreed, then Renter shall be entitled to a full refund (including Kayakable fees), but Lister will be charged a AUD\$20 administrative fee.

(f) If a Rental must be cancelled during the Rental Period due to a mechanical failure, the Renter will be eligible for a full refund, if the cancellation takes place on the first day of the Rental Period. Otherwise, any refunds shall be calculated on a pro rata basis based on the number of days elapsed compared to the total number of days in the Rental Period.

(g) Refunds shall only be granted after commencement of the Rental Period in extraordinary circumstances. Renter and Lister may mutually agree to shorten a Rental Period after commencement, in which case Renter would receive a partial refund; however the Kayakable Fee charged to Lister and Renter shall be calculated using the entire booked Rental Period.

(h) **Lister Cancellation Policy:** Cancellations can have serious implications on a Renter's trip, therefore there are penalties that will be applied for a Lister's cancellation. If a Lister cancels any reservation within 48 hours prior to pick up, Lister will be charged a fee of AUD\$20. In addition, if Lister cancels more than one reservation within a six-month period, Lister may be charged up to AUD\$10 per cancellation. Any cancellation fees will be automatically deducted from a Lister's future payouts; if future payouts are insufficient to cover cancellation fees, then Kayakable is authorised to charge Lister's credit card on file, or take such other actions to collect from Lister as Kayakable deems necessary or reasonable in its sole discretion.

(i) Kayakable shall determine all refunds in its reasonable discretion. In the event either Lister or Renter is not satisfied with Kayakable's determination, their sole recourse shall be to seek payment or refund of fees from the Renter or Lister, as applicable.

(j) In the event of the failure of Lister or Renter to appear for scheduled delivery of the Boat, the parties may choose to reschedule the Rental Period rather than accept the penalties or refunds set forth above. In such event the parties must arrange such rescheduled delivery through the Site, or otherwise notify Kayakable as soon as practicable.

(k) Each party should be aware that Renters and Listers are entitled to post reviews on the Site with respect to cancelled Rentals.

(l) Kayakable may refuse to allow any person to hold an account and to use the Site at any time in its total discretion, including cancelling accounts of existing Listers and Renters. Cancellation of such accounts does not void the obligations of the Lister and/or Renter that accrued prior to termination.