

WAIVER, RELEASE, DISCHARGE AND INDEMNITY

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

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

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

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

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

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

"Park Activities" means the use of the facilities at the Karijini National Park for the purpose of sport, enjoyment, relaxation or leisure of any description whatsoever and any incidental activities thereto but excludes Retreat Activities.

"Retreat Activities" means the use of the Accommodation, facilities and equipment at the Karijini Eco Retreat for the purpose of sport, enjoyment, relaxation, accommodation or leisure of any description whatsoever and any incidental activities thereto, but excluding Park Activities.

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

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

6. The Customer represents and warrants that the Customer:
 - 6.1. is over 18 years old (other than any minors accompanying the Customer);
 - 6.2. is medically fit to perform, or engage in the Retreat Activities;
 - 6.3. is competent to safely engage in the Retreat Activities;
 - 6.4. has not relied on any representations or warranties that may have been made by the Manager and or the Owner and or their Representatives in relation to the Karijini Eco Retreat, Karijini National Park, Park Activities or the Retreat Activities;
 - 6.5. has taken, or had the opportunity to take, independent medical, legal and other relevant advice as to the nature, effect, meaning and extent of this Waiver; and
 - 6.6. has authority to, and does hereby, enter into this Waiver on the Customer's own behalf and on behalf of all minors accompanying the Customer.
7. The Customer acknowledges the risks associated with participating in the Retreat Activities include, but are not limited to:
 - 7.1. loss or damage to property, injury, illness or death;
 - 7.2. slipping and falling, collisions with fixed objects and or other participants, falling off objects, over-exertion, drowning, attack or injury from wildlife, polluted or contaminated water, dangerous or inclement weather conditions, contracting illnesses from contact with objects and surfaces within the Karijini Eco Retreat and the Karijini National Park;
 - 7.3. the behaviour and acts or omissions of other participants;
 - 7.4. improper or inadequate instruction or supervision regarding the Retreat Activities or use of the Karijini Eco Retreat facilities and equipment;
 - 7.5. first aid, emergency treatment or services rendered or failed to be rendered by the Manager and or the Owner or their Representatives.

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

extends to all acts, omissions, defaults, failures or errors on the part of all or any of the Manager and or the Owner and or their Representatives.

17. The Customer agrees to indemnify, and keep indemnified, each of the Manager and or the Owner and or their Representatives from and against any Claims and Liabilities, whether direct or indirect, arising out of or in relation to:

17.1. the Customer being at the Karijini Eco Retreat;

17.2. the Customer observing or participating in the Retreat Activities (whether at the Karijini Eco Retreat or elsewhere); and

17.3. the Customer's acts or omissions while at the Karijini Eco Retreat or observing or participating in the Retreat Activities.

18. The Customer covenants not to sue or commence any proceedings against any of the Manager and or the Owner and or their Representatives in respect of any loss or damage arising out of or relating to any loss, damage, injury or illness the Customer may sustain (whether to the Customer personally or to any of the Customer's property) which occurs at the Karijini Eco Retreat or in any way relates to the Retreat Activities.

19. While at the Karijini Eco Retreat, the Customer will:

19.1. abide by all laws;

19.2. not introduce or create any hazards to persons, property, flora or fauna; and

19.3. not, by the Customer's acts or omissions, breach any terms of this Waiver.

20. The Customer acknowledges that the Karijini Eco Retreat is located within the Karijini National Park which:

20.1. is not operated, managed or controlled by the Manager or the Owner;

20.2. is subject to certain customs, weather conditions and physical challenges which may vary without warning; and

20.3. is subject to its own risks for which the Manager and the Owner and any Representatives have no control over.

21. The Customer has had the opportunity to consider the risks associated with attending the Karijini National Park and observing and participating in the Park Activities and freely and voluntarily accepts:

21.1. all of the risks (foreseeable and unforeseeable) that may result from the

Customer participating in the Park Activities;

21.2. any and all consequences which may result from those risks (whether foreseeable or unforeseeable); and

21.3. that all Implied Warranties are excluded to the full extent permitted by law.

22. To the fullest extent permitted at law, the Customer waives, releases and discharges each of the Owner and or the Manager and their Representatives from and against any and all Claims or Liabilities which the Customer has, or may at any time have, arising out of or in relation to the Park Activities. This waiver, release and discharge extends to all acts, omissions, defaults, failures or errors on the part of all or any of the Manager and or the Owner and or their Representatives.

23. The Customer agrees to indemnify, and keep indemnified, each of the Manager and or the Owner and or their Representatives from and against any Claims and Liabilities, whether direct or indirect, arising out of or in relation to:

23.1. the Customer being at the Karijini National Park;

23.2. the Customer observing or participating in the Park Activities; and

23.3. the Customer's acts or omissions while at the Karijini National Park or observing or participating in the Park Activities.

24. The Customer covenants not to sue or commence any proceedings against any of the Manager and or the Owner and or their Representatives in respect of any loss or damage arising out of or relating to any loss, damage, injury or illness the Customer may sustain (whether to the Customer personally or to any of the Customer's property) which occurs at the Karijini National Park or in any way relates to the Park Activities.

25. If anything in this Waiver is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction then it is severed for that jurisdiction and the rest of this document remains in full force and effect in all other jurisdictions.

26. This Waiver is governed by and shall be construed in accordance with the laws of the State of Western Australia, the parties submitting to the exclusive jurisdiction of the Courts of Western Australia for determination of any dispute claim or demand.