

TERMS AND CONDITIONS OF LICENCE

1. Defined terms

- (a) **Property** means the Esperance Island View Apartments apartment or unit designated and booked by You on the Booking Form (or such other apartment or unit as may from time to time be designated for You by the Owner in accordance with these terms and conditions) and includes any common areas as are designated from time to time by the Owner.
- (b) **You** means the person described in the Booking Form and includes the other guests specified or referred to on the Booking Form.
- (c) **Owner** means the owner from time to time of the business known as Esperance Island View Apartments and includes staff and managers.
- (d) **Tariff** means the daily hire rate charged by the Owner in respect of the Property as may be varied from time to time.
- (e) **Peak Season** means the period between December and April.
- (f) **Public Holiday** means any day which is a bank holiday in Western Australia.
- (g) **Arrival** means Your commencement of occupancy of the Property pursuant to this agreement, being the check in date stated in the Booking Form or as otherwise agreed with the Owner.
- (h) **Booking Form** means the online booking system on the Esperance Island View Apartments or such other booking form or communication completed by You or on your behalf in respect of the booking of a Property from Esperance Island View Apartments.

2. Licence to occupy Property

- (a) The Owner licences to You and You accept the licence from the Owner of the Property and any common areas designated by the Owner to be common areas for use as holiday occupation to be occupied by not more than the number of guests specified in the Booking Form, upon the terms and conditions set out herein.
- (b) Your completion of the Booking Form and payment of the Deposit constitutes acceptance by You of these terms and conditions.

3. Payment arrangements

- (a) You agree to pay or cause to be paid all monies referred to in the Booking Form and/or these terms and conditions.
- (b) A deposit equal to one night's Tariff is payable at the time of making a booking to confirm a booking ("Deposit") and no booking shall be confirmed by the Owner until such time as the Deposit is paid in full by You.
- (c) Subject to clause (f), the balance of the total Tariff (less the Deposit) must be paid to the Owner on or before Arrival. Payment can be made by the following means:
 - (i) EFTPOS/credit card (all credit cards except Diners are accepted)
 - (ii) Electronic Funds Transfer

Bank: CBA
A/C Name: Esperance Island View Apartments
BSB: 066511
A/C: 10255871

Please put your name as a reference on any payment made.

- (d) Upon your Arrival, You will be required to:
 - (i) complete a guest registration form;
 - (ii) provide a copy of photographic identification; and
 - (iii) provide a credit card for pre-authorisation by the Owner for an amount not less than 50% of the total Tariff.
- (e) Your credit card will be pre-authorised as a security for any damage to the Property, incidental charges, applicable smoking or cleaning charges and/or any other charges relating to your stay at the Property. You hereby irrevocably authorise and direct the Owner to apply the pre-authorised credit card funds against any such charges that may from time to time be incurred by You or as a result of Your occupation of the Property.
- (f) If You are staying over the Christmas holiday period, You must pay the total Tariff in full by no later than 1 December. Failure to do so will result in your booking being cancelled or re-booked with no further notice or liability to You.

4. Cancellation policy

- (a) If You cancel your booking more than two weeks prior to Arrival your Deposit is refundable (less a \$40 administration fee).
- (b) If You cancel your booking within two weeks of Arrival your Deposit will be forfeited.
- (c) If You cancel within 48 hours of the Arrival date, you will be charged a cancellation fee equal to 50% of the total cost of your booking and the Deposit will be forfeited by you in part-payment of the same.
- (d) During Peak Season and Public Holiday Cancellation Conditions: After full payment has been received by the Owner, refunds for cancelled bookings will only be provided where the Owner is able to rebook the vacant days, and in any event a cancellation fee equal to the Tariff will be forfeited by You.
- (e) Once the rental period has commenced there are no refunds for early termination by You.

5. Keys and access devices

- (a) The Owner will provide You with one set of keys to enable you to access the Property and at all times the Owner shall retain a further set of keys to the Property.
- (b) In the event that You lose possession of the keys, You must immediately notify the Owner of that loss and You will be responsible for all costs and expenses associated with replacement of the keys and/or gaining access to the Property.

6. Your personal effects

All personal property (including personal effects, luggage and motor vehicles) will be at your sole risk (or the risk of your guests) at all times and the Owner takes no responsibility for any loss, damage or destruction to any personal property brought onto the Property.

7. Your obligations (and obligations of your guests)

- (a) You may only allow the Property to be occupied by the number of guests stated in the Booking Form and in the event that you have visitors to the Property such visitors must only be permitted at the Property between 10am – 4pm unless with the prior consent of the Owners.
- (b) You must use the Property only for the purpose of private accommodation and residence.
- (c) You and your guests must comply with all directions, rules and by-laws governing the use of the Property and any common areas as are issued from time to time by the Owner.
- (d) Smoking is not permitted inside the Property.
- (e) You are responsible for the Property and all utensils, chattels, furnishings, fixtures, fittings and equipment in, on or about the Property during your stay and must take good care of the same.
- (f) You are responsible for the conduct of any guest or visitor occupying or attending the Property and shall be liable for any damage, repairs or replacement of any utensil, chattel, furnishing, fixture, fitting or equipment in, on or about the Property and/or the Property generally that is caused by or otherwise is attributed to an act or omission by You or your guest(s) or visitors.
- (g) You must not and must not permit any other person to, do anything or bring onto or keep on the Premises anything which:
 - (i) is illegal or offensive;
 - (ii) may invalidate or prejudice the conditions of any insurance policy or policies relating to the Premises or cause increased insurance premiums to be payable; or
 - (iii) may cause nuisance, noise or disturbance to the Owner or any other guests of Esperance Island View Apartments.
- (h) You must not hang or display any laundry, beach towels, bather or other articles on the balcony or decking of the Property.
- (i) You must ensure that all rubbish and recyclable materials are disposed of in the appropriate bins located at the Property. The Owner will arrange for the bins to be taken to the curb and returned to the Property on the relevant rubbish collection dates.
- (j) You must not park your motor vehicle(s) on the Property except in specific designated areas.
- (k) In the event that You utilise the Owner's complimentary DVD and board game hire facilities, You will comply any rules or requirements in respect of the same and will return the DVD(s) and/or board game(s) to the Owner in the same condition as at the commencement of your use of the same.

8. Pets and assistance animals

- (a) Subject to the remaining sub-clauses in this clause 8, You will not allow any animal in or about the Property without the prior written permission of the Owner.
- (b) If You or a guest staying with you requires a assistance animal to stay at the Property, you must:
 - (i) notify the Owner of the same at the time of completing the Booking Form;
 - (ii) provide all information reasonably requested by the Owner in respect of the assistance animal including without limitation evidence to the satisfaction of the Owner that the animal is an assistance animal and/or evidence that the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place

and to the extent that it will not cause unjustifiable hardship to the Owner, the Owner will use best endeavours to accommodate the assistance animal in accordance with the following clauses.

- (c) The Owner makes no representation or warranty that the Property is fit or safe for an animal (assistance animal or otherwise) and any animal (assistance animal or otherwise) brought to the Property in accordance with this clause 8 is at your sole risk at all times.
- (d) The assistance animal must remain under the control of You or your guest at all times.

9. Damages and breakages

- (a) In the event of there being any breakage or damage or destruction of any utensil, chattel, furnishing, fixture, fitting or equipment in, on or about the Property, and/or breakage or damage to the Property generally, you must:
 - (i) report the same to the Owner as soon as possible;
 - (ii) take all steps necessary to prevent the utensil, chattel, furnishing, fixture, fitting or equipment or Property from sustaining further damage;
 - (iii) take all steps necessary to prevent injuries occurring to any person or property as a result of the condition of the utensil, chattel, furnishing, fixture, fitting or equipment or Property; and
 - (iv) complete any incident reports or other documentation that the Owner may reasonably require in relation to the same.
- (b) You will be liable for the cost of repair or replacement (as may be necessary as determined by the Owner in its absolute discretion) of any broken or damaged utensil, chattel, furnishing, fixture, fitting or equipment in, on or about the Property, and/or breakage or damage to the Property generally that may occur during your stay at the Property and which is not caused by fair wear and tear.
- (c) All costs of repair or replacement will be deducted from the credit card pre-authorisation or other security provided by you and/or charged to you at the Owner's discretion.

- (d) You must not undertake or authorise any repairs to any utensil, chattel, furnishing, fixture, fitting or equipment in, on or about the Property and/or the Property generally without the prior written consent of the Owner.
- (e) If the Owner elects to claim on the Owner's insurance for any breakage, damage, destruction, repair or replacement that arises or is attributable to an act or omission by You or any of your guests or any other person associated with you, and the Owner is required by the insurer to pay an excess in respect of such a claim or claims, then in its absolute discretion, the Owner may require You to pay such an excess (and the Owner may in its discretion deduct such amount from your credit card pre-authorisation and/or charge such amount to You).

10. Departure arrangements

- (a) At the conclusion of the hire period, You must:
 - (i) remove all of your personal effects and belongings from the Property (please note the Owner takes no liability or responsibility for any personal effects or belongings left behind at the Property);
 - (ii) remove all rubbish, recycling and other waste from the Property and dispose of the same in garbage bins provided at the Property;
 - (iii) leave all utensils, chattels, furnishings, fixtures, equipment including the barbeque and fittings in or about the Property in a clean, tidy and undamaged condition and in the same location as they were in upon your Arrival;
 - (iv) restore the Property to the same neat and tidy condition as the Property was in at the time of your Arrival; and
 - (v) return the keys to the Property to the Owner.
- (b) If, without the prior consent of the Owner, You fail to vacate the Property by the departure time stipulated by the Owner upon your Arrival, You will continue to be charged the Tariff and these terms and conditions shall continue to apply to the relevant period of holding over.

11. The Owner's rights

- (a) The Owner shall make every effort to ensure the Property is available as booked, however the Owner reserves the right to make alterations to or cancel bookings due to unforeseen circumstances including without limitation circumstances outside the control of the Owner which render the Property uninhabitable.
- (b) The Owner reserves the right to, at any time, revoke or refuse to honour any booking of the Property which may in its absolute discretion and opinion be unsuitable for the Property.
- (c) The Owner reserves the right to refuse service to You and/or any other person invited to the Property by You.
- (d) In the event that upon your departure, You fail to leave the Property in a neat and tidy condition as is required by these terms and conditions, the Owner may charge an additional cleaning charge which shall be deducted by the Owner from the credit card pre-authorisation taken by the Owner upon your Arrival or otherwise charged to you.

- (e) The Owner shall be entitled to access to Property at any time during the hire period if in its absolute discretion such access is required to effect repairs or maintenance, inspect the condition of the Property (or any utensils, chattels, fittings, fixtures or equipment in or about the Property) or in the event of an emergency.

12. Indemnity and liability

- (a) Without limiting any other provision of these terms and conditions You are liable for, release the Owner from and indemnify and shall keep indemnified the Owner against all liability, loss, costs and expenses (including legal fees, costs and disbursements on a full indemnity basis) (“Losses”) including in relation to:

- (i) injury, death or loss to You, your guests or any third person;
- (ii) loss damage or destruction to any property of You, your guests or any third person;
- (iii) loss, damage or destruction to the Property and/or any utensils, chattels, furnishings, fixtures, equipment and fittings in or about the Property;

arising from or incurred in connection with Your use of the Property or the utensils, chattels, furnishings, fixtures, equipment and fittings in or about the Property, your breach of any provision of these terms and conditions, or your contravention of any law, however arising and whether or not arising from any negligence, failure or omission of You or any other persons.

- (b) The indemnity in the preceding sub-clause is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this agreement.
- (c) The Owner has no liability whatsoever to You whatsoever in respect of the Owner carrying out its rights or obligation under these terms and conditions.
- (d) The Owner’s liability for loss or damage incurred by You as a result of your occupation of the Property, the Owner exercising any rights or obligations under these terms and conditions, or any other matter pertaining to these terms and conditions is excluded as far as the law permits.

13. Consequences of breach of terms and conditions

- (a) In the event that during the hire period You or your guests breach or fail to comply with any of these terms and conditions or any rule, by-law or direction of the Owner then Owner may, in its absolute discretion, terminate this agreement without notice to you, in which case:
 - (i) You must immediately vacate the Property;
 - (ii) You forfeit all amounts paid by you pursuant to these terms and conditions; and
 - (iii) the Owner shall be entitled to apply any credit card pre-authorisation or other security amount provided by You, and/or charge You in respect of any cleaning or other costs incurred by the Owner as a result of Your breach or the early termination of these terms and conditions.

14. Complaint handling

If there is any element of the Property or the Owner's service that is dissatisfactory, You will advise the Owner as soon as possible and thereafter the Owner will endeavour to resolve the dissatisfaction in its discretion.

15. Representations

- (a) You acknowledge that the Owner has used its best endeavours to describe the Property within the limited extent of communications with You and the Owner will not be liable in any respect to You should You consider the Property to be unsuitable for any reason.
- (b) All information in respect of the Property contained in the Owner's website and/or other advertising material is believed by the Owner to be correct as at the time of publication however such details are subject to change from time to time in the sole discretion of the Owner without any liability to You.

16. Miscellaneous

- (a) Where You consist of two or more persons, the obligations of each of these persons under these terms and conditions shall be joint and several.
- (b) If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. Rather, if any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
- (c) This agreement is governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.
- (d) A waiver of any provision or breach of this agreement by the Owner must be made by an authorised officer of the Owner in writing. A waiver of any provision or breach of this agreement by You must be made by You in writing.
- (e) The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision.

17. Special conditions

Any special conditions referred to in the Booking Form shall form part of this licence agreement and if there is any conflict between the provisions of these terms and conditions and the special conditions, the special conditions shall prevail.