

208 Boat Rentals LLC

RELEASE OF LIABILITY, HOLD HARMLESS, USAGE AGREEMENT, AND LESSOR REPRESENTATIONS

The undersigned hereby agrees that this Release of Liability, Hold Harmless, and Usage Agreement (“**Agreement**”) shall apply to the undersigned for each and every instance, present and in the future, where the undersigned leases, operates, rides, or participates in activity related to a watercraft or equipment which is owned by, leased, borrowed, or rented from **208 Boat Rentals LLC** without regard to whether or not such watercraft or equipment is being leased, borrowed, or rented by the undersigned or any other person. Without limitation of the foregoing, if the undersigned executes this Agreement, unless amended in writing, this Agreement will apply in perpetuity for any other future occasions where the undersigned leases, operates, rides, or participates in activity related to a watercraft which is owned by, leased, borrowed, or rented from **208 Boat Rentals LLC**.

NO INDIVIDUAL MAY OPERATE A LEASED WATERCRAFT/EQUIPMENT WITHOUT APPROVAL FROM LESSOR.

RELEASE OF LIABILITY, HOLD HARMLESS, & ACKNOWLEDGEMENT OF RISKS

Party Definitions: “**Lessee**” is any person or persons leasing or paying (in part or in whole) for the leased watercraft. “**Participant**” is any person or persons leasing, operating, riding, or participating in activity related to the watercraft owned, leased, or associated with 208 Boat Rentals LLC, which term includes Lessee. “**Lessor**” means 208 Boat Rentals LLC, its members, agents, employees, representatives, affiliate companies, and owners (whether known or unknown) of equipment leased by 208 Boat Rentals LLC.

WARNINGS: There are significant elements of risk in any adventure, sport, or activity associated with the outdoors, the presence or use of motorized watercraft, including, but not limited to watercraft and activities incidental thereto (referred to herein as an “**activity**”). Although we have taken reasonable steps to provide you with appropriate equipment and/or skilled staff so that you can enjoy an activity for which you may or may not be skilled. This activity is not without risk. Certain risks cannot be eliminated without destroying the unique character of the activity. The same elements that contribute to the unique character of the activity can be the cause of loss and damage to the equipment, or cause accidental injury, illness or in extreme cases, permanent trauma or death. For your safety and that of others, prior to engaging in the activity, it is important that you understand applicable boating laws and rights of way. **THE UNDERSIGNED** on behalf of himself/herself, his/her heirs, executors, and administrators, all members of his/her family and all other legal representatives or assigns, in consideration of the present and future use of the service and equipment provided by 208 Boat Rentals LLC, and its employees, representatives, agents and assigns agrees to all the provisions of this Agreement.

Acknowledgment of Risks: Participant acknowledges that these activities entail known and unanticipated risks, which could result in physical and emotional injury, paralysis, death, or damage to Participant, to property, or to third parties. Participant understands that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. The risks include but are not limited to: open water; cold water; wind; waves; currents; unpredictable weather and environmental conditions; obstacles on the ground, air, and in or on the water (natural and/or man-made); wildlife (animals, birds, fish); plants; negligence caused by third parties; Lessor’s negligence; collisions with other participants, the watercraft, or other watercraft; capsizing, sinking or other hazards which results in wetness; equipment failure; heat or sun related injuries or illness such as sunburn or heat stroke; dehydration; and injury or death from contact with parts of the watercraft (or pressures and jet streams caused by the watercraft).

Express Assumption of Risks and Responsibility: Participant agrees to assume responsibility for the risks identified herein and those risks not specifically identified. Participant verifies that he/she is physically fit, not under the influence of alcohol or drugs at this time, and sufficiently qualified, trained and capable to participate in the activities. Therefore, Participant assumes full responsibility for Participant, including any minor children or adult dependents for which Participant is responsible, for bodily injury, accident, illness, death, loss of personal property, and expenses thereof as a result of any accident that may occur. Participant and all of Participant’s minor children or adult dependents elect to participate in spite of the risks. Participant is responsible for protection of skin and eyes from the elements. Participant agrees to wear a U.S. Coast Guard approved personal floatation device (PFD or Life Jacket) while participating in the activity and to ensure that all adult dependents and minor children do so as well. **I EXPRESSLY AGREE AND PROMISE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY FOR MYSELF AND MY MINOR CHILDREN AND/OR ADULT DEPENDENTS. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS.**

Release: In consideration of services or property provided, Participant and any minor children or adult dependents for which Participant is a parent, legal guardian or otherwise responsible, any heirs, personal representatives or assigns, agree that: 208 Boat Rentals LLC, its principals, directors, officers, owners, members, agents, employees and volunteers, their insurers and each and every land owner, municipal and/or governmental agency, upon whose property and activity is conducted and their insurers, if any, shall have no liability of any nature for any **and all damage to Participant and other persons or properties as a result of any acts, omissions or negligence of 208 Boat Rentals LLC**, or any person (including Participant), and Participant hereby releases and discharges 208 Boat Rentals LLC, and its insurers, if any, for any such damage or loss.

Hold Harmless: Participant will pay, indemnify and hold 208 Boat Rentals LLC, its principals, directors, owners, members, officers, agents, employees, and volunteers, their insurers and each, if any, harmless from any and all liability, causes of action, claims, judgments, executions, debts, litigation costs and attorney’s fees, in any way arising out of or resulting from the use, operation of, or any activity connected with the leased watercraft/equipment, whether caused by Participant or any other person.

Waiver: Participant waives any claim for bodily injury, death, or property damage which he, or his minor children, or his adult dependents may have against Lessor wherein such person(s), including Participant, engages, boards, or disembarks the watercraft for the following activities: snorkeling, swimming, scuba diving, skin diving, or helmet diving, including any aggravation of any prior injury. Furthermore, Participant waives any claim for bodily injury, death, or property damage occurring while the watercraft is being used for water-skiing, aquaplaning, or any similar activity in which a person(s) and/or object(s) are being towed, and until such operations have ended and the person(s) and/or object(s) engaged in such activity have been safely taken aboard the watercraft or landed safely elsewhere.

USAGE AGREEMENT & GENERAL TERMS

Deposit: For any watercraft rental Lessee must deposit \$ _____ . Lessor shall return to Lessee the deposit less any sums deducted for damages for which Lessee is liable in a reasonable time *after* Lessor has had adequate opportunity to assess the condition of the leased watercraft and/or equipment.

Taxes and Fees: Lessor’s booking software charges a 6% convenience fee. The state of Idaho charges a 6% sales tax. Both amounts are due in addition to the rental charge and any other fee, cost, or charge.

Pet Fee: Pets are welcome aboard our watercraft upon payment of a \$25.00 pet fee. If pets are discovered to be aboard our watercraft at any time, this fee will be charged and may be deducted from any deposit.

Cleaning Fee: In order to keep our watercraft in good condition, we also charge a minimum \$25.00 cleaning fee. In the event there is excessive filth or soiling, cleaning will be charged to Lessee in the amount of the actual cost to clean plus 15%.

Delivery: Free delivery of the watercraft and/or equipment is available to select locations (inquire further for specific free delivery locations available). Otherwise, delivery to all other locations may be arranged (at Lessor’s sole discretion) for a minimum delivery charge of \$150.00.

Cancellations: Reservations must be cancelled at least 14 days prior to the rental date. Any untimely cancellations will be subject to a \$250 late cancellation charge. Reservations for federal holidays and weekend days or times cannot be

cancelled at any time. Lessee will be liable for all costs and fees for such reservations. However, in the event that Lessor believes that hazardous weather is predicted (lightning, high winds, etc.) Lessor may, but is not required to, either refund the reservation or move the reservation to another day (at Lessor's election).

Late Arrival: Lessee should contact Lessor in advance of their rental time if Lessee will be more than 15 minutes late. Lessee and all Participants should arrive 30 minutes before their start time to receive safety orientation and boat training.

Late Return: Failure to return the watercraft and/or equipment at the stated return time will incur a \$250.00 fee as well as the prorated amount for the extra time the watercraft and/or equipment was overdue (rounded up).

Fuel: All watercraft must be returned to Lessor with a full fuel tank. If the watercraft is not returned with a full fuel tank, Lessee is liable for Lessor's actual cost to fuel the watercraft plus a refueling fee of \$50.00 (which may be charged to the card on file or against the deposit).

Hours of Operation/Overnight Rentals & Use: Watercraft may be operated between the hours of 8:00am and 7:00 pm. Under no circumstance should the watercraft be operated after dusk or before dawn. All overnight rentals must provide safe and secure moorage and notify Lessor of the location of the watercraft.

No Smoking: No one is permitted to smoke on, about, or around the watercraft.

No Beaching: The watercraft may not be "beached" at any time.

Assignment: Lessee shall not assign or sublet the watercraft/equipment. Any assignment of this Agreement by Lessee is hereby null and void.

No Warranty: Lessor makes no representations, warranties, expressed or implied, except as otherwise contained in this agreement, including any warranty about the fitness of the watercraft for any activity.

Equipment Damage: Lessee agrees to return the leased watercraft/equipment in the same condition as when received. Lessee agrees to pay for any damages which occurs to all leased watercraft per rental period prior to said return whether caused by Lessee or any other person. Lessee is responsible for all damage caused to the watercraft/equipment during the rental period, regardless of who or how the damage was caused. In addition to using and/or withholding any deposits collected by Lessor, Lessor is hereby authorized to charge the credit card on file for any amount up to the amount of damage to equipment owned by 208 Boat Rentals LLC (and other damages lawfully recoverable pursuant to Idaho Code and this Agreement). Lessor is not required to first use the deposit before charging any payment account (i.e. credit cards) on file, but may charge any payment account the full amount and then, after such payment is processed, return the deposit.

LESSEE/PARTICIPANT REPRESENTATIONS

Equipment Operation: Lessee certifies that he/she is at least 25 years of age, has a valid driver's license (which must be presented to Lessor for verification), and that Lessee fully understands and is experienced in the navigation of the watercraft/equipment rented. Lessee agrees he/she will not permit any other person to use the leased watercraft/equipment without prior authorization from Lessor and not without having each Participant sign a copy of this agreement. Participant further certifies, represents and warrants that he/she will at all times operate the watercraft/equipment in a reasonable and prudent manner, having due regard for other watercraft, wakes, and all other attendant circumstances so as to not endanger the life, limb or property of any person. Participant further warrants that at all times while operating the watercraft/equipment, Participant will follow and comply with all safety and navigation markers, signs and/or buoys as well as all marked and posted operation restrictions regarding speed, wakes, area access and hazard, and all applicable laws and regulations. Failure to follow the rules and regulations and/or lessee's demonstrated incompetency piloting watercraft (as determined by Lessor in Lessor's sole discretion) will result in revocation of participation and/or operation privileges and forfeiture of deposit. Lessor and its staff members may revoke Participant's participation or operation privileges upon observing a violation of any applicable law or regulation. Such revocation will not result in refund to Lessee or any other person any sums of money paid by Lessee to 208 Boat Rentals LLC. Participant agrees to never operate watercraft at night. Any person who operates and/or drives the watercraft/equipment leased must be approved by Lessor prior to him/her operating and/or driving the watercraft/equipment leased.

Acknowledgment of Instruction: I, the undersigned, acknowledge that I have been instructed by Lessor on the laws, rules and safe operation of the watercraft/equipment which I am renting and watched the applicable videos. I understand that Idaho law may require that I carry on board the equipment/watercraft which I am renting an acknowledgment of instruction. I understand that it is unlawful for me to operate some watercraft in Idaho unless I have been instructed on the laws, rules and safe operation thereof. I acknowledge that I have been provided a Coast Guard approved Type I, II, III, or V personal flotation device and all other required safety equipment at no extra charge. Moreover, if I am leasing a personal watercraft, I acknowledge and attest that I have: 1) completely read "Personal Watercraft Laws and Safe Operations," and completely watched Idaho's "Play it Safe" (a.k.a. "Safety First") video created by the Personal Watercraft Industry Association. I understand that the representations in this section are material to this agreement and that I am only being leased and/or allowed to participate in activities related to the watercraft because of the foregoing acknowledgments and representations.

In addition to the foregoing, I, the undersigned, represent that I have received training and instruction about the following items:

As it relates to general boating safety:

1. Maintaining safe speed/monitor surroundings/drive defensively/no aggressive maneuvers
2. Maintaining a safe distance from other boats, objects and people
3. Do not enter the water without a lifejacket on, engine turned off and key removed
4. Conduct a head count before starting the engine
5. Always remain seated while the boat is in motion
6. Absolutely no sitting on the bow, sides or stern
7. Importance of attaching the engine shut-off cord/lanyard

Downtime: Lessee shall be liable for downtime if the leased watercraft/equipment is out of service for repair for damage caused by Lessee or any other person. The downtime rate shall be the amount of the daily rental fee for that watercraft/equipment and shall continue until the watercraft/equipment is repaired and returned to service. Lessor has sole discretion in repairing or replacing any damage or lost part/equipment. Lessee has no right to have the repairs done at the shop of his/her choice. If a breakdown occurs, do not attempt to repair. Call Lessor immediately.

Attorney's Fees: In the event of any suit or other action or proceeding to enforce any of the terms of this Agreement, without regard for any determination as to whether there is a prevailing party, and even if 208 Boat Rentals LLC is adjudged to be a non-prevailing party, 208 Boat Rentals LLC alone shall be entitled to recover from the other party its actual attorney's fees and costs, at trial or on appeal, in addition to all other sums provided by law. All other rights to recover attorney's fees or costs are hereby waived.

Venue & Choice of Law: Venue of any action instituted to enforce any term of this agreement or any portion thereof or any dispute between the parties, shall be exclusively in Kootenai County, Idaho. Without regard to where any events forming a dispute between the parties occurred, the parties agree that any and all disputes between the parties in any way related to this agreement or the leasing of watercraft shall be determined pursuant to Idaho law.

Waiver of Jury Trial: LESSEE HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. This waiver shall also apply to any and all causes of action or claims arising on behalf of children and/or adult dependents of the Lessee and any other Participants.

Entire Agreement: This Agreement contains the entire agreement between the parties hereto, and there are no verbal or other promises that modify or affect this Agreement except as referenced herein. There are no other representations or warranties which have been made to Participant other than those expressed herein in writing.

Continuing Effort: In the event the leased watercraft/equipment is not returned to Lessor prior to the expiration of the scheduled rental for any reason, the same terms and conditions and costs for use of the watercraft/rented equipment shall continue as stated herein until such time as the leased watercraft/equipment is returned to Lessor. The rates charged for failure to return to Lessor the leased watercraft/equipment shall be rounded up to the nearest full day and shall be charged at the daily rate.

Severability: If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect

8. Engine start and shut-off procedures
9. Dangers of CO2
10. Refueling procedures and engine blower use (if applicable)
11. Sound five blasts of the horn or whistle to signal danger or need for assistance
12. Boats do not have breaks – stopping the engine will not stop the boat
13. Proper boat anchoring procedures (if applicable)
14. Navigation rules – local laws, regulations, hazards and navigational markers
15. Towing sports safety, if allowed (i.e. water skiing, wake boarding, tubing)
16. Spotter requirements for water sports activities (i.e. there must be an observer with a flag watching water skiers, wake boarders, tubers, etc.)

As it relates to personal watercraft safety:

1. Dangers of water being forced into body cavities from the jet thrust nozzle – wetsuit or wetsuit bottoms are strongly recommended
2. Never apply throttle if any participants are in the water near the PWC
3. Dangers of loose items (i.e. clothing, hair, stones, etc.) being sucked into the jet drive intake
4. A life jacket must always be worn with kill switch lanyard attached
5. Horseplay is never allowed – no spraying or splashing others; no wake or wave jumping
6. Stopping the engine will not stop forward motion
7. Steering control is lost when the throttle is released, or when the engine is shut off
8. How to respond to a capsized PWC
9. Spotter requirements for water sports activities (i.e. there must be an observer with a flag watching water skiers, wake boarders, tubers, etc.)
10. No one under the age of 16 may operate a personal watercraft without an adult who has signed this document on board.

I agree and understand:

1. I have received sufficient instruction and training, including, but not limited to, the pertinent areas listed above. I am prepared to safely operate the rented watercraft.
2. All Participants must complete and sign all rental forms; there are to be no additional Participants after the checkout procedure is completed.
3. Operation of the boat is not allowed by anyone that is under the influence of any legal or illegal drugs or alcohol.
4. No watercraft operation from dusk to dawn.
5. In addition to the terms noted herein, I have been given an opportunity to ask any additional questions regarding the operation of the rented watercraft.
6. I have been provided emergency contact information.

Participant Representations: It is very important that Lessor be aware of all Participants. Therefore, I, the undersigned, represent that I will not allow any other person to board, use, ride, control, or otherwise participate in any activities related to the leased equipment/watercraft unless they have signed this Agreement and/or, in the case of minor children or adult dependents, been listed as participants by a parent or legal guardian. I agree that if any other person boards, uses, rides, controls, or otherwise participates in any activities related to my lease or use of the leased equipment/watercraft without being added and signing below, that it shall be assumed, which assumption may only be rebutted by clear and convincing evidence, that, at the time of execution of this agreement, I was aware and knew that such persons were going to use the leased equipment/watercraft and that I chose not to disclose that information to Lessor. **I understand that this means that I may be liable for fraud for allowing any other person not listed and not a signatory below to board, use, ride, control, or otherwise participate in any activities related to my lease of the leased equipment/watercraft.**

Should any persons not listed and not a signatory below desire to board, use, ride, (but not control or drive) or otherwise participate in any activities related to my lease of the leased equipment/watercraft, I understand that I may have them go online to _____ to fill out this Agreement and thereby be authorized to board, use, ride, (but not control or drive) or otherwise participate in any activities related to my lease of the leased equipment/watercraft.

This document may be executed electronically by me. I hereby consent to my electronic acceptance of this agreement to constitute my complete and unfettered acquiescence and agreement to each and every term herein.

I HAVE CAREFULLY READ AND UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. I UNDERSTAND THAT BY SIGNING THIS AGREEMENT I ASSUME LEGAL OBLIGATIONS AND GIVE UP VALUABLE RIGHTS. I WILL USE THE EQUIPMENT AT MY RISK AND UNDER THE CONDITION SET FORTH HEREIN. I UNDERSTAND THAT ALL PARTICIPANTS MUST SIGN THIS RELEASE OF LIABILITY AND HOLD HARMLESS AGREEMENT AND IT IS MY RESPONSIBILITY TO ENSURE ALL PARTICIPANTS HAVE SIGNED BEFORE PARTICIPATING IN WATERCRAFT ACTIVITIES OR BOARDING WATERCRAFT.

Lessee/Participant:

DATED this _____ day of _____, 20__.

Print Name: _____ Phone #: _____

Address: _____ D/L #: _____

X: _____ Location: _____

Print Name: _____ Phone #: _____

Address: _____ D/L #: _____

X: _____ Location: _____

Print Name: _____ Phone #: _____

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