



## EXCLUSION OF LIABILITY, RELEASE AND INDEMNITY

This document affects your legal rights. If you do not understand this document, please obtain legal advice before signing it.

**To:** Sea Sherpa Pty Ltd ABN 28 612 889 291, its directors, employees, volunteers, agents, and person or entity acting for or on its behalf (**Sea Sherpa**).

<b>Activity:</b>			
<b>Full name of participant:</b>		<b>Date of birth:</b>	
<b>Address:</b>			
<b>Telephone number:</b>		<b>Email address:</b>	
<b>Known medical conditions or disabilities:</b>			
<b>Do you get sea sickness or motion sickness?</b>			
<b>Emergency contact name:</b>		<b>Emergency contact number:</b>	

In consideration of Sea Sherpa allowing me to participate in the Activity:

1. I acknowledge that the Activity rules, my application, and this document comprise a contract between Sea Sherpa and myself. I accept that the requirements of Sea Sherpa and in particular, this document, are necessary and reasonable for promoting and conducting the Activity.
2. I acknowledge and agree that Sea Sherpa may place such restrictions on the conduct of the Activity, including its postponement or cancellation, if they consider it necessary for the safety of participants in the Activity.
3. I acknowledge that participation in the Activity can be dangerous. Risks include, but are not limited to serious injury, death and/or property damage and possible liability to others for harm, loss or damage, caused by my acts or omissions. Serious injury or death may be related to pre-existing disabilities or medical conditions. I participate in the Activity voluntarily and accept all risks of injury, loss, damage or liability arising out of or in any way relating to my participation in the Activity, including but not limited to risks associated with the effects of weather, contact with other participants and the failure of non-participants to observe applicable laws such as the marine rules for navigation.

### Release and indemnity

4. In consideration of Sea Sherpa allowing my participation in the Activity and subject to clause 5 below, I:
  - (a) release and forever discharge Sea Sherpa from all Claims that I may have or may have had but for this document arising from or in connection with my participation in the Activity; and
  - (b) indemnify and hold harmless Sea Sherpa to the extent permitted by law in respect of any Claims by any person including another participant or spectator in the Activity arising as a result of or in connection with my participation in the Activity.

In this clause 4, "Claims" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense howsoever arising, whether arising in negligence, breach of statute, at common law, pursuant to any statute or in any other manner whatsoever, for any death, personal injury, mental harm, property loss, property damage or liability to any other third party for such relief, for or in respect of my participation in the Activity.

### Exclusion of liability

5. I acknowledge, agree and understand that, to the full extent permitted by law and provided that Sea Sherpa has not acted with reckless disregard, my right to sue Sea Sherpa, and the liability of Sea Sherpa, in the event that the services provided as part of the Activity are not rendered in accordance with the consumer guarantees set out in Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law are excluded for any:
  - (a) death;
  - (b) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
  - (c) the contraction, aggravation or acceleration of a disease;
  - (d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs:
    - i. that is or may be harmful or disadvantageous to me or the community; or
    - ii. that may be suffered by me resulting from the supply of recreational services or recreational activities.



**WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012**

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this document is required to ensure that the recreational services it supplies to you:

- (a) are rendered with due care and skill; and
- (b) are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- (c) might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

**NOTE:** The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

**Acknowledgments and declarations**

- 6. I declare that I am medically, physically and mentally fit and able to participate in the Activity. I am not and must not be a danger to myself or to the health or safety of others. I have disclosed on this document, all pre-existing medical conditions or disabilities which may be relevant to my participation in the Activity. I will immediately notify Sea Sherpa of any change in my fitness and ability to participate. I understand that before participating in any physical activity, I should obtain the approval of a qualified medical practitioner, particularly if I am over 35 or have a pre-existing medical condition or disability.
- 7. I shall pay any costs or fees of any ambulance, medical treatment or the attendance of any doctor or health care professional which or who provides assistance or attention to me in the course of my participation in the Activity.
- 8. I understand that any insurance cover affected for participants on the Activity may not cover me for all injury, loss or damage sustained by me.
- 9. I acknowledge that the safety precautions undertaken by Sea Sherpa are a service to me and other participants in the Activity but are not a guarantee of safety.
- 10. If I damage any of Sea Sherpa's equipment in the course of the Activity, I will pay for replacement or repair to equipment damaged by me.
- 11. The safe keeping of my property during my participation in the Activity or associated activities is my sole and absolute responsibility and Sea Sherpa has no liability for or responsibility to me for the loss of such property.
- 12. I agree to wear a personal flotation device at all times whilst participating in the Activity.
- 13. If the Activity involves recreational fishing, I declare that I hold a valid Victorian Recreational Fishers Licence.
- 14. I consent to Sea Sherpa using my name, image and likeness and also my performance in the Activity at any time, to promote the Activity by any form of media.

**Miscellaneous**

- 15. The laws of Victoria and the Commonwealth of Australia govern this document.
- 16. Any provision of this document which is held to be unenforceable is where possible, severed to the extent necessary to make this document enforceable.

**I declare that I am 18 years or older, have read this document and fully understand it and agree to abide by the terms of this document.**

**Unless superseded by a further document which I have signed, I acknowledge and agree that the terms of this document will apply to any future activities or events organised and/or conducted by Sea Sherpa which I choose to participate in voluntarily.**

<b>Full name of the participant:</b>	
<b>Signature of the participant:</b>	
<b>Date:</b>	



**Declaration by parent or guardian for participants under 18 years of age**

I, the parent or guardian of the participant who is aged under 18 years:

1. consent to the participant participating in the Activity;
2. in consideration of Sea Sherpa allowing the participation of the participant, on behalf of myself and the participant, I:
  - (a) acknowledge the risks of the participant participating in the Activity;
  - (b) absolve Sea Sherpa from all liability however arising out of the participant's participation in the Activity;
  - (c) release and forever discharge Sea Sherpa from all claims arising from or in connection with the participant's participation in the Activity;
  - (d) indemnify and will keep indemnified Sea Sherpa on the terms of this document; and
  - (e) acknowledge that I have read this document and fully understand it and agree to abide by the terms of this Exclusion of Liability, Release and Indemnity document.

<b>Full name of the participant:</b>	
<b>Full name of parent or guardian:</b>	
<b>Signature of parent or guardian:</b>	
<b>Date:</b>	