

WAIVER, INDEMNITY AND LIMITATION OF LIABILITY
SYDNEY SEA CHARTERS PTY LIMITED

PLEASE READ THIS AGREEMENT CAREFULLY. IT IS A LEGALLY BINDING DOCUMENT. IT AFFECTS YOUR LEGAL RIGHTS AND CONTAINS RELEASES OF LIABILITY AND A WAIVER OF YOUR LEGAL RIGHTS.

In consideration of **SYDNEY SEA CHARTERS PTY LIMITED** allowing

.....
(Name of **Participant**)

to take part in the activity known as

DEEP SEA FISHING ON THE MV SEA EAGLE

.....
(Name of **Activity**)

the Participant is bound by the following terms:

1. The Participant hereby acknowledges and agrees that:
 - (a) they have read and agreed to be bound by the Terms and Conditions.
 - (b) they participate in the Activity entirely of their own free will and at their own risk;
 - (c) the Activity is being undertaken for the purposes of recreation, enjoyment, or leisure, which involves obvious and inherent risks to the Participant or people in their care or control, as well as a significant degree of physical risk, including the risk of personal injury or death;
 - (d) they are undertaking the Activity freely, voluntarily and at their own risk with full appreciation of the nature and the extent of all risks and requirements involved with the Activity;
 - (e) if they are not a strong swimmer or on any medication which may affect their ability to swim, they must wear a life vest at all times while on the Vessel;
 - (f) prior to participating in the Activity, the risks and requirements have either been explained to them orally or they have been provided to them in writing and the Participant has had the opportunity to clarify the risks and requirements in discharging Sydney Sea Charters Pty Limited's duty of care;
 - (g) they fully understand the risks and requirements for the Activity;
 - (h) in the event they or any person in their care or control find themselves in difficulty, they are to immediately notify and seek assistance from an authorised person of Sydney Sea Charters Pty Limited on board the Vessel;
 - (i) the Provider has the absolute discretion to cease an Activity in the event the Participant or any person in their care or control find themselves in difficulty.
 - (j) prior to signing this Agreement they informed the Provider of any pre-existing medical conditions or injuries which might affect their ability to participate safely in the Activity, and have produced evidence from a qualified medical professional authorising their participation in the Activity;
 - (k) if they develop any medical conditions or injuries during the Activity they must inform an authorised person of Sydney Sea Charters Pty Limited on board the Vessel immediately;
 - (l) at the time of signing this Agreement and during participation in the Activity, the Participant will not be under the influence of or affected to any extent by alcohol, medications or drugs (whether legal or illegal);
 - (m) they must only consume alcohol in accordance with the Terms and Conditions while participating in the Activity;
 - (n) they must not consume any medications while participating in the Activity without the prior consent of the Provider.
 - (o) if they are asked to observe any signs or directions relating to the Activity that they will do so;
 - (p) the Provider has an unfettered right to end the Participant's involvement in the Activity or to refuse to allow the Participant to participate in the Activity if the Provider considers in its absolute discretion that the Participant has or may act in a way which is unsafe or reckless.
2. The Participant acknowledges and understands:
 - (a) The Participant will be entering an area where water, animals, marine life, whales, dolphins, seals, otters, sharks, stingrays and other dangerous and deadly marine animals will be present, and the Participant does so at their own risk;

- (b) The Participant agrees that encountering these marine life referred to in 2(a) above is a recreational activity that involves obvious and inherent risks; and
 - (c) The Participant will act in a safe manner at all times and be considerate of the staff, other guests and third parties.
3. The Participant hereby indemnifies and will keep the Provider and its Associates indemnified from and against all actions, suits, proceedings, claims, liabilities, demands, costs, losses, damages and expenses of whatsoever nature and howsoever occurring, brought against or made upon the Provider or its Associates by the Participant or by any other person or which the Provider or its Associates may themselves pay, suffer, or sustain, arising directly, indirectly or in any other way connected with the Participant participating in the Activity, whether in contract, tort (including negligence), breach of statutory duty or otherwise. This indemnity applies irrespective of any negligence on the part of the Provider, its Associates or any other person.
 4. The Participant hereby releases, discharges and holds harmless the Provider and its Associates from all actions, suits, proceedings, claims, liabilities, demands, costs, losses, damages and expenses of whatsoever nature and howsoever occurring, brought against or made upon the Provider or its Associates by the Participant or by any other person or which the Provider or its Associates may themselves pay, suffer, or sustain, arising directly, indirectly or in any other way connected with the Participant participating in the Activity, whether in contract, tort (including negligence), breach of statutory duty or otherwise. This indemnity applies irrespective of any negligence on the part of the Provider, its Associates or any other person.
 5. This Agreement may be pleaded as a bar by the Provider and its Associates to any action, suit, proceeding, claim, liability, demand, costs, losses, damages and expenses made by the Participant or anyone claiming by, through or under the Participant howsoever arising out of or in connection with the Participant participating in the Activity.
 6. Certain legislation, including the *Competition and Consumer Act 2010* (Cth) may imply or impose warranties or terms into any agreement between the Provider and the Participant which cannot be excluded restricted or modified except to a limited extent. To the extent allowed under any such legislation or otherwise at law, the Provider and its Associates limit their liability to, at the Provider's sole discretion, supplying the services again, or the payment of the cost of having the services supplied again.
 7. All of the clauses in this Agreement are to be construed individually and should any one of these clauses or parts thereof become invalid or unenforceable or be otherwise severed from this Agreement, the remaining clauses shall remain valid and enforceable and such clauses will be determinative of the liability of the Participant, the Provider and its Associates (except to the extent any statute may provide otherwise) relating to the Participant's participation in the Activity.
 8. Where the Participant is under the age of 18 years of age or otherwise under a legal disability, the below-signed Legal Guardian enters into this Agreement on behalf of the Participant. All references to "Participant" in this Agreement will be taken to be reference not only to the Participant but also to the Legal Guardian on behalf of the Participant.
 9. In this Agreement:
 'Associates' means any associated or related entity of the Provider, or any employee, servant, agent, director, volunteer, or officer of the Provider or an associated or related entity of the Provider as well as any third party or other participant connected with the Activity.

Declaration and signature

By signing this Agreement the Participant hereby acknowledges that:

- (a) they are bound by the above terms;
- (b) participation in the Activity may cause them to suffer personal injury or death;
- (c) they understand that they waive their right to sue the Provider for losses relating to their personal injury or death that result from participation in the Activity including from the Provider's negligence.

.....
 (Signature of **Participant**)

.....
 (Date)