

# DEED OF WAIVER, DISCHARGE, RELEASE & INDEMNITY



DATED: \_\_\_\_\_ (insert date)

## THE PARTICIPANT COVENANTS AND AGREES WITH THE FOLLOWING RULES, TERMS AND CONDITIONS:

**PARTICIPANT:** (please complete) Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Emergency Contact Name: \_\_\_\_\_  
 Emergency Contact Phone and Address: \_\_\_\_\_

**RAFTING TOUR:** (please circle)

**Barron River Rafting Tour** involving guided white water rafting in 8 person crafts (can be conducted on Mulgrave River)

**Russell River Rafting Tour** involving guided white water rafting in 8 person crafts and/or 2 person inflatable kayaks (also available on Mulgrave River)

**River Tubing Tour** involving guided small rapid tubing on 1 person tubes

**Family Rafting Tour** involving guided white water rafting in 8 person crafts and/or 2 person inflatable kayaks (also available on Mulgrave River)

**Barron River Sports Rafting Tour** involving guided white water rafting in 2 person inflatable kayaks

**LOCATION:** (please circle)      **Barron River**      **Mulgrave River**      **Russell River**      **Behana Gorge**

**RAFTING TOUR RULES:**

- 1.1 The Participant agrees to abide by the rules of Foaming Fury at all times when participating in the Rafting Tour including, without limitation, the following:
- (a) The Participant must not engage in any behaviour whether skylarking, reckless, foolish or otherwise, likely to cause injury to themselves, others, employees or agents of Foaming Fury or any other person whatsoever.
  - (b) No projectiles are to be thrown, kicked or otherwise made airborne by the Participant.
  - (c) The Participant must not engage in any other behaviour which Foaming Fury deems in its absolute discretion is to be unacceptable.
  - (d) The Participant must remain within the designated boundaries of the Tour Venue at all times.
  - (e) The Participant will be required to wear the following:
    - i) Appropriate attire including swimwear;
    - ii) Enclosed shoes or river shoes to be provided by Foaming Fury at the Participant's cost;
    - iii) All other floatation and safety devices that Foaming Fury may require the Participant to wear.
    - iv) Helmets provided by Foaming Fury;
  - (f) The Participant will be required to assist Foaming Fury by carrying equipment.
  - (g) The Participant must follow the directives of Foaming Fury at all times.
  - (h) Foaming Fury reserves the right to direct any Participant engaging in unacceptable behaviour to leave the Rafting Tour at its absolute discretion.
  - (i) Without limiting (h) above, Foaming Fury reserves the right to remove or exclude any Participant who engages in unacceptable conduct, or is unable or refuses to comply with these rules of Rafting Tour, or is under the influence of alcohol or drugs, or is unable or unwilling to comply with instructions given by Foaming Fury, or lacking suitable equipment or having an inadequate level of fitness, physical ability or experience, or in any way causing concern for the safety of others, or for any other reason.
  - (j) Any Participant injured, or observing another participant of the Rafting Tour to be injured, must immediately notify Foaming Fury of the incident.

**DISCLOSURE OF MEDICAL CONDITIONS**

- 1.2 The Participant acknowledges that it is a condition of participation in a Rafting Tour that full and frank disclosure of any medical condition and/or disability is given by the Participant prior to the commencement of the Rafting Tour.

Do you suffer from the following:	NO	YES
1. Are you pregnant?		
2. Any disability that may affect your safety or the safety of others during the tour?		
3. Epilepsy/Blackouts/Fainting /Dizziness ?		
4. Allergies to any Food/Medicine / Environment (for example bee stings)?		
5. Conditions affecting balance?		
6. Diabetes / Asthma / Heart or Blood conditions?		
7. Hearing or Sight Impairments?		
8. Recent or long-standing injuries?		
9. Brain, spinal cord or nervous disorders?		
10. Currently under the influence of alcohol or drugs?		
11. Chest or heart pains or recent chest surgery?		
12. Other illness, operations or physical injury or physical or mental impairments?		
13. Other?		
14. Rate your Swimming Ability (Circle) Cannot swim      Poor      Average      Good      Excellent		
15. Rate your Fitness Ability (Circle) Poor      Average      Good      Excellent		
<b>If you have answered yes to any of the above,</b>		
a) Give details: _____		
b) Give details of any required medications: _____		
c) Have you received medical advice to confirm you are medically fit to partake in this specific activity? Yes <input type="checkbox"/> No <input type="checkbox"/>		
d) Have you spoken to an employee of Foaming Fury prior to commencing the Rafting Tour regarding your condition/s? Yes <input type="checkbox"/> No <input type="checkbox"/>		
e) Have you spoken to an employee of Foaming Fury prior to commencing the Rafting Tour and been offered the opportunity not to participate in the Rafting Tour? Yes <input type="checkbox"/> No <input type="checkbox"/>		

1.3 The Participant understands and acknowledges that concealment of any condition and/or disability may place the Participant at increased risk to his or her life or health.

1.4 The Participant consents to medical treatment or assistance being sought or given if considered necessary by Foaming Fury.

**CONSENT AND ACCEPTANCE OF RISK**

1.5 The Participant acknowledges and agrees that:

- (a) they have been fully briefed as to the risks of participating in the Rafting Tour which may cause injury or death, which include but are not limited to:
  - i) getting wet and/or submerged in water and/or drowning;
  - ii) falling from a craft including in the event that the craft flips over;
  - iii) foot entrapment, entanglement with snags;
  - iv) collision with other participants, equipment or submerged objects such as rocks;
  - v) sudden vessel movements, jarring and hard landings depending on the conditions or the River;
  - vi) injury while carrying equipment on the Rafting Tour;
  - vii) slipping on rocks, boulders, logs, trees, land or other substances;
  - viii) falling over and/or falling into any river, creek, stream or any other body of water;
  - ix) becoming lost or disorientated;
  - x) any damage or injury occasioned to the Participant, howsoever including without limitation, by any logs, trees and branches or any part thereof, any rocks, falling boulders or stones, any rivers, creek, streams or any body of water existing at the Tour Venue;
  - xi) any snakes, spiders, crocodiles or any other wildlife;
  - xii) any activities or equipment;
  - xiii) any equipment supplied to the Participant by Foaming Fury in connection with the Rafting Tour; or
- (b) the Rafting Tour involves greater than usual physical exertion placing the Participant at an increased risk of physical or non-physical personal injury, trauma or death;
- (c) the Rafting Tour is group guided and there may or may not be a guide in the Participant's craft;
- (d) the Rafting Tour is a dangerous recreational activity as defined in and for the purposes of the *Competition and Consumer Act 2010*;
- (e) the Rafting Tour is a recreational service supplied by Foaming Fury as defined in and for the purposes of the *Trade Practices Act 1974*;
- (f) they have read the Australian White Water Rafting Association Safety Handout.

1.6 The Participant voluntarily consents to participating in the Rafting Tour.

**WAIVER, RELEASE AND DISCHARGE**

1.7 The Participant releases, discharges, waives and forever holds harmless Foaming Fury from All Claims for Any Loss sustained by the Participant whether caused by Foaming Fury's negligent act or willful act or omission, breach of statutory duty or otherwise in connection with the Rafting Tour.

**INDEMNITY**

1.8 The Participant indemnifies Foaming Fury against All Claims for Any Loss sustained by the Participant whether caused by Foaming Fury's negligent act or willful act or omission, breach of contract, breach of statutory duty of otherwise in connection with the Rafting Tour

**AGE OF PARTICIPANT**

1.9 At the time of participating in the Rafting Tour, the Participant must be of the minimum age.

1.10 The minimum age for the Rafting Tours is as follows:

Family Tour:	six (6) years
Barron River Tour:	twelve (12) years
Sports Rafting Tour:	thirteen (13) years
River Tubing Tour:	five (5) years
Russell Tour:	thirteen (13) years

1.11 If the Participant is less than eighteen (18) years, then, the Participant must be accompanied by a parent or guardian.

1.12 By personally executing this Deed, the Participant warrants that he or she is at least eighteen (18) years of age.

1.13 Where this Deed is executed by a parent, guardian or other person for and on behalf of the Participant, the person so executing warrants that he or she has authority to do so and that such parent, guardian or other person agrees to indemnify Foaming Fury in terms of the indemnity contained in this Deed.

**BAR TO ACTION**

1.14 The Participant agrees that this Deed may be pleaded as a bar to any action, suit or proceedings taken at any time by the Participant against Foaming Fury arising out of or as a consequence of the Rafting Tour or any incidental activities.

**CONFIDENTIALITY**

1.15 The Participant must keep the terms of this Deed strictly confidential and no disclosure of the terms of this Deed is to be made by the Participant other than for the purpose of obtaining legal advice.

**BINDING ON SUCCESSORS**

1.16 This Deed binds the heirs, administrators, executors, personal representatives, dependants (if any) and the successors of the Participant and endures for the benefit of Foaming Fury and its successors and assigns.

**DEFINITIONS**

1.17 In this Deed unless inconsistent with the context or subject matter:

**"All Claims"** means all claims, actions, suits, demands, damages, negligence, interest and costs arising out of or as a consequence of the Rafting Tour, including any incidental activity;

**"Any Loss"** means any loss, damage or injury to a person (including the Participant) or property including but not limiting to any damage or injury occasioned to a Participant whatsoever or as a result of any of the risks associated with the Rafting Tour, whether caused by negligence, accident, another participant of the Rafting Tour, flora or fauna or however otherwise caused, and/or otherwise arising out of the Participant's involvement in the Rafting Tour;

**"Rafting Tour"** means the Rafting Tour circled and specified above involving white water rafting in craft types including but not limited to large 8 person crafts, 2 person crafts, 2 person inflatable kayaks and river tubes, group guided by river guides in or around the crafts operating on the Tour Venue by Foaming Fury;

**"Tour Venue"** means the office of Foaming Fury, any meeting points, any transport area and that part of the River circled and specified above as directed by Foaming Fury from time to time.

**"Foaming Fury"** means Sunmanor Pty Ltd ACN 061 191 517 trading as Foaming Fury and its agencies, suppliers, distributors, servants, employees, agents, representatives, directors, and officers;

**"Participant"** means the person specified above.

**Should you not agree to these terms and conditions, Foaming Fury will return you to your pick up point as soon as practicable.**

**EXECUTED AS A DEED.**

**SIGNED SEALED AND DELIVERED** by

⇒ (full name) \_\_\_\_\_  
(circle one) Participant / Parent or Guardian

⇒ \_\_\_\_\_  
*Participant / Parent or Guardian signs here*

In the presence of

⇒ \_\_\_\_\_  
*Witness signs here*

**If signing on behalf of the Participant, you warrant that you have authority to sign this Deed of Waiver, Discharge, Release and Indemnity on behalf of the Participant and agree to indemnify Foaming Fury in accordance with the indemnities contained in this document.**