

## Island Aqua Park WAIVER AGREEMENT -

### WARNING, RELEASE OF LIABILITY & INDEMNIFICATION

PLEASE READ CAREFULLY BEFORE SIGNING. THIS IS A RELEASE OF LIABILITY & WAIVER OF LEGAL RIGHTS

#### 1. Definitions.

“**Activity**” means using the obstacles at Island Aqua Park and using its facilities, equipment or area for any purpose, or any occurrence on the wider Island Aqua Park premises.

“**Waiver**” means this Waiver document.

“**Participant**” means the person who is using or entering the aqua park.

“**Released Parties**” means **Aqua Island (WA) Pty Ltd. (ABN 92629956716) (Island Aqua Park)** or any of its respective successors in interest, associated companies or entities, insurance providers, agents, employees, contractors, representatives, assignees, officers, directors, members, or shareholders.

“**You**” means only the Participant when the Participant is age 18 or older OR it means both the Participant and the Participant’s parent or legal guardian when the Participant is under the age of 18 or any spouse, children, parents, guardians, heirs, next of kin, and any legal or personal representatives, executors, administrators, successors and assigns, or anyone else who might claim or sue on the Participant’s behalf.

**2. Risks of Activity Disclosure** You agree and understand that taking part in the Activity, despite being fun, can be HAZARDOUS AND INVOLVES THE REAL RISK OF SERIOUS PHYSICAL INJURY AND/OR DEATH. You acknowledge that the Activity is inherently dangerous and fully realise the dangers of participating in the Activity and the impact of the types of potential injuries that could result. The risks and dangers of the activity include, but are not limited to: water flow; tides; currents; water; drowning; entanglement; impacts; collisions with other participants and debris, obstacles, devices, shoreline or other objects; watercraft and other manmade and natural objects; weather conditions; exposure to elements; slips and falls; equipment failure and/or defects; marine and other wildlife; operator error; acts omissions or negligence of the Released Parties; consumption of any fluid or substance whether provided by the Released Parties or others; provision of first aid, medical treatment or other assistance or services by the Released Parties or others; mental distress from exposure to any of the above; and negligence of others. YOU ACKNOWLEDGE AND UNDERSTAND THAT THE DESCRIPTION OF THE RISKS LISTED ABOVE IS NOT COMPLETE AND THAT PARTICIPATING IN THE ACTIVITY IS DANGEROUS AND INCLUDES OTHER RISKS.

This notice is given as a risk warning pursuant to section 51 of the Civil Liability Act 2002. Having given this risk warning, the Released Parties will not be held liable for any liability, personal injury or death, however it may occur as set out below.

**3. Release, Indemnification, and Waiver.** In consideration of the Participant being permitted to participate in the Activity, You agree as follows:

(a) Release. YOU HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, FOREVER DISCHARGE, AND AGREE NOT TO SUE OR BRING ANY OTHER LEGAL ACTION AGAINST THE RELEASED PARTIES with respect to any and all claims and causes of action of any nature whether currently known or unknown, which You or the Participant, have or which could be asserted on behalf of You or the Participant in connection with the Participant's participation in the Activity, including, but not limited to claims of negligence, breach of warranty, and/or breach of contract.

(b) Indemnification. You hereby agree to indemnify, defend and hold harmless the Released Parties from and against any and all liability, cost, expense or damage of any kind or nature whatsoever and from any suits, claims or demands, including legal fees on a lawyer client basis and expenses whether or not in litigation, arising out of, or in any way related to, Your or the Participant's participation in the Activity or presence on Island Aqua Park's premises. Such obligation on the part of You shall survive the period of the Participant's participation in the Activity.

(c) Equipment. You understand and agree that it is Your responsibility to inspect the facilities, equipment, and areas to be used, and if You believe or become aware that any are unsafe or pose unreasonable risks, You agree to immediately notify appropriate Island Aqua Park Staff. By participating in the Activity, You are acknowledging that You have found the premises, body of water, facilities, equipment, and areas to be used or entered to be safe and acceptable for participation. You accept full and sole responsibility for the condition and adequacy of Your equipment as well as any equipment hired or provided by Island Aqua Park.

(d) Insurance and Physical Condition. You agree and understand that no medical or accident insurance will be provided to you by the Released Parties or any third party during Your participation in the Activity or while on the Island Aqua Park premises. You certify that you have sufficient health, accident, and personal liability insurance to cover any injury to You or another person or damage to any property that You may incur during the Activity. You acknowledge that the Activity requires significant physical exertion and that you are in good physical and mental health and not suffering from any past injury, condition, disease or disablement that could in any way affect your participation in the Activity.

(e) Waiver. You agree and understand that there are dangers and risks associated with the participation in the Activity and the use of any part of the Island Aqua Park premises and that INJURIES AND/OR DEATH may result from participating in the Activity or using any part of the Island Aqua Park premises, including, but not

limited to the acts, omissions, representations, carelessness, and negligence of the Released Parties. By signing this document or participating in the Activity, You recognise and accept that injury and death are all possible while or at any time following participation in the Activity. **RECOGNISING THE RISKS AND DANGERS, YOU UNDERSTAND THE NATURE OF THE ACTIVITY AND VOLUNTARILY CHOOSE FOR PARTICIPANT TO PARTICIPATE IN AND EXPRESSLY ASSUME ALL RISKS AND DANGERS OF THE PARTICIPATION IN THE ACTIVITY, WHETHER OR NOT DESCRIBED ABOVE, KNOWN OR UNKNOWN, INHERENT, OR OTHERWISE.**

**4. Minor Acknowledgment.** In the case of a minor Participant, You as a parent or legal guardian acknowledge that he/she is not only signing this Agreement on his/her behalf, but that he/she is also signing on behalf of the minor and that the minor shall be bound by all the terms of this Agreement. Additionally, by signing this Agreement as the parent or legal guardian of a minor, the parent or legal guardian understands that he/she is also waiving rights on behalf of the minor that the minor otherwise may have. You as a parent or legal guardian agree that, but for the foregoing, the minor would not be permitted to participate in the Activity. By signing this Agreement without a parent or legal guardian's signature, Participant, under penalty of fraud, represents that he/she is at least 16 years of age. If signing as the parent or guardian of a minor Participant, signing adults represent that they are a legal parent or guardian of the minor Participant.

**5. Medical Care.** You authorise the Released Parties and/or their authorised personnel to call for or administer medical care for Participant or to transport Participant to a medical facility or hospital if, in the opinion of such personnel, medical attention is needed. You agree to immediately pay all costs associated with such medical care and related transportation.

**6. Images, Videos and Recordings.** You irrevocably authorise the Released Parties to capture and record any image, video or sound of You whilst on the Island Aqua Park premises and to use such image, video or sound in any way they may choose at their sole discretion.

**7. Miscellaneous.** You further agree and understand: (a) the Participant will not engage in any activities prohibited by any applicable laws, statutes, regulations and ordinances; (b) this Agreement shall be governed by the laws of Western Australia and any dispute or claim shall be subject to this jurisdiction; (c) this Agreement constitutes the entire agreement between the parties hereto and supersedes any and all prior contracts, arrangements, communications, or representations, whether oral or written, between the parties relating to the subject matter hereof; (d) You understand and acknowledge that this Agreement is a contract intended to be as broad and inclusive as Western Australian law will allow and shall be binding to the fullest extent permitted by law. If any part of this Agreement is deemed to be unenforceable, the remaining terms shall be an enforceable contract between the parties. It is Your intent that this agreement shall be binding upon Your assignees, heirs, next of kin, executors and personal representatives.

## General Conditions of Entry

- You must abide by the instructions of the Island Aqua Park staff at all times or you may be removed from the premises and refused entry in future. This is to ensure the safety and enjoyment for all participants.
- On occasion, promotional video or photographs may be used by the Service Provider which may include your image whilst being engaged in Recreational Activities. By signing this document you consent to this use unless you specifically request in writing that your image not be used for this purpose.
- You acknowledge that security video is used on the public areas of premises of the Service Provider and consent to this use for security and safety purposes.

I, the undersigned, understand that I am only permitted to use the Aqua Park on the following conditions:

- It is mandatory for ALL users of the Park to wear a BUOYANCY VEST at all times. It is your responsibility to ensure your vest fits securely and the straps are tightened.
- All participants MUST be able to swim
- Minimum age is 6 years old. A paying adult MUST accompany children 6-9 years old onto the obstacles (maximum 4 children per 1 adult). Children aged 10 – 14 can use the obstacles by themselves but must have a supervising adult on site at all times. Children 14+ can use the Park by themselves providing anyone under 18 has a waiver signed by a parent or legal guardian.
- NEVER, UNDER ANY CIRCUMSTANCES, SWIM UNDER ANY OF THE OBSTACLES. ALWAYS go over the top surface.
- NEVER DIVE HEAD FIRST into the water from any obstacle. You must always enter the water feet first.
- ALWAYS look up whilst climbing. Do not climb underneath someone climbing above you. People can slip and fall whilst climbing.
- Make sure the water and landing area is clear of all people before jumping or sliding into the water.
- Correct sliding position on the slides is to have arms crossed across your chest with feet and legs together.
- If sliding with a friend DO NOT hold hands. Slide separately.
- Do not slide down any area that has climbing handles attached.
- No pushing or excessively rough play. Smaller children must always be given right of way.
- Tread carefully and show caution, as the park is slippery and unstable.
- NO items of jewellery can be worn when using the Aqua Park. This includes all rings, bracelets, necklaces, earrings and anklets.
- The park must NEVER be used under the influence of alcohol, medication or drugs. Any customers who are suspected of being under the influence will not be allowed to participate.
- Sun protection is recommended and is the sole responsibility of the customer.
- Always follow the directions of the STAFF on duty.

- Staff are entitled to cancel tickets for non compliance with the rules or for any other reason.
- Tickets will not be refunded for any reason.
- You authorise the Released Parties and/or their authorised personnel to call for or administer medical care for Participant or to transport Participant to a medical facility or hospital if, in the opinion of such personnel, medical attention is needed. You agree to immediately pay all costs associated with such medical care and related transportation.