



RISK WAIVER

TERMS AND CONDITIONS OF ENTRY & PARTICIPATION (incl. Recreational Activity Waiver)

ATTENDANCE ON BOARD 'ANDEE' – UVI 463445 ("the Vessel") INCLUDING SWIMMING OFF THE VESSEL, STAND UP PADDLE BOARDING, SNORKELLING AND LAND BASED ACTIVITIES ACCESSED FROM THE VESSEL

NORTHERN BEACHES BOATING PTY LTD

This document is known as the 'Risk Waiver' provided by Northern Beaches Boating Pty Ltd.

These terms and conditions (the "Form") apply to the above activities (the "Activity") and associated activities conducted by Northern Beaches Boating Pty Ltd ACN 664 766 750 (the "Operator").

Please read this entire Form carefully before signing (or, in the case of online acceptance, by electronically checking the box below). Each participant, or if the participant is not over 18 years of age, a parent/natural guardian/legal guardian of the minor participant (the 'Minor'), must sign this Form. By completing this Form, I acknowledge my acceptance (and my acceptance on behalf of the Minor, if applicable) of the terms and conditions set out in this Form. "I" or "me" refers to either myself as the participant or on behalf of the Minor if applicable. Where accepting on behalf of the Minor, I agree to explain the terms and conditions set out in this Form to the Minor.

CONDITIONS THAT APPLY TO YOU:

- In consideration of and as a condition of undertaking the Activity, I have read and agree to be bound by:
 - the rules and conditions detailed on the Operator website www.northernbeachesboating.com.au from time to time and all information provided by the Operator to you in relation to the Activity.
 - The terms of this document.

YOUR RIGHTS AND RESPONSIBILITIES:

- Before the Activity, I may inspect the Vessel, equipment and areas to be used. I will immediately advise the Operator if I believe that the Vessel and/or such equipment or areas are unsafe. I accept that activities may take place on premises or at facilities not owned or controlled by the Operator.
- It is my responsibility to ensure that I am sufficiently fit, of good physical and mental health and capable of participating in the Activity (without causing harm to myself or others) and it is my responsibility to seek any and all required medical advice, recommendations and clearances prior to arriving at and participating in the Activity (if and as applicable). I confirm that: (a) I am (and, at the time of the Activity, will be) in good health and proper physical and mental condition to participate in the Activity; (b) I have not been advised by a qualified medical person that I should not participate in the Activity; and (c) I am otherwise not aware of any medical or other matter which would render it unsafe for me to take part in the Activity.
- I am not, and at the time of the Activity, will not be, under the influence of alcohol or drugs. I agree that if I am under the influence of drugs or alcohol I may be refused entry onto the Vessel or participation in the Activities.
- It is my responsibility to ensure that I am a competent and capable swimmer and will only enter the water if I am comfortable with the water conditions. In executing this waiver I acknowledge that I am a competent and capable swimmer and will not engage in water based activities including swimming snorkelling or stand up paddle boarding unless I am comfortable with the water conditions.
- If I am pregnant, it is my responsibility to obtain written confirmation from a qualified medical doctor that it is safe for me to participate in the specific Activity dated no earlier than 10 days prior to the Activity, and to have that confirmation with me at commencement of the Activity. I agree that I will not participate (and may be denied by the Operator or an Activity official the opportunity to participate) in the Activity without this confirmation.
- I am responsible for the security of my possessions (including, phones and other personal possessions) at the Activity and the Operator and its Associates (as defined below) will not be liable for damage to or replacement of these possessions
- I agree to follow all directions and take any and all precautions set forth or recommended by the Operator or Activity officials.

YOUR RISKS:

In consideration of and as a condition of acceptance to participate in the Activity, and by subsequently participating in the Activity, I acknowledge that:

- Participation in the Activity involves a significant risk of injury, death, permanent disability or damage to my property and other risks outlined below, which list of risks is not exhaustive.. Any such injury or loss may result not only from my actions but from the action, omission or negligence of others.



- Prior to participating in the Activity, I will do all things within my control to make myself aware of all risks or potential risks involved, including risks associated with any health condition I have;
 - While the Operator's representatives are available should I have further questions about the Activity or the associated risks, my participation in the Activity is voluntary and undertaken at my own risk
 - I have received sufficient warning or otherwise satisfied myself of all risks associated in participating in the Activity, I participate in the Activity at my own risk and I acknowledge that the assumption of risk and warnings contained in this section constitutes a 'risk warning' in accordance with relevant legislation, including the Australian Consumer Law and *Civil Liability Act 2002* (NSW).
- The following describes some, but not all, of the inherent risks to participation in the Activity
- **Risks in any physical activity.** Accidents, minor and/or serious physical bodily or mental injury (including the aggravation, acceleration or recurrence of such an injury), permanent disability, paralysis or death; participants of varying skill levels; and/or the inherent risk of contracting illness(es).
 - **Equipment risks.** The risk that equipment used may be misused, or may break or malfunction.
 - **Risks present in an outdoor environment.** You may be subject to: inclement weather (including wind, rain, heat or sun); water hazards such as currents; extremely hot or cold weather; stinging, venomous and/or disease carrying animals (including marine life) or insects; and other natural or man-made hazards. Hazards (both on land and above and below water level) may not be marked or visible and weather can be unpredictable.
 - **Risks connected with location.** Activity location (due to remoteness, congestion or any other geographic attribute) may cause or contribute to delays or difficulties in communication, transportation, evacuation or medical care.
 - **Swimming risks.** The risk of losing control; contacting or colliding with objects or people) or other natural or manmade objects, on land or in water; tripping or falling; encountering other water/road hazards; or being submerged underwater, hitting bottom, or drowning.
 - **Supervision and activities risks (as applicable).** I understand that the Operator (including staff, volunteers and contractors) will not be specifically supervising the Minor during the Activity. I agree to take sole responsibility for the Minor's supervision before, during and after the Activity, and I agree that I and the Minor share in the responsibility for the Minor's well-being.

RECREATIONAL ACTIVITY WAIVER & EXCLUSION OF LIABILITY (ADULT PARTICIPANTS ONLY):

I acknowledge and agree that where I am a consumer of recreational services (as that term is defined in the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law or any relevant State or Territory law) ("recreational services"), certain terms and rights usually implied into a contract for the supply of goods or services may be excluded. I acknowledge that these implied terms and rights and any liability of the Operator and its Associates flowing from them, are expressly excluded, restricted or modified as set out below.

By signing this Form, you agree that the liability of the Operator in relation to the supply of recreational services [and recreational activities (as that term is defined in the *Civil Liability Act 2002* (NSW) for any:

- a. death;
- b. illness;
- c. physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- d. the contraction, aggravation or acceleration of a disease;
- e. 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 you or the community; or
 - ii. that may result in harm or disadvantage to you or the community,

that may be suffered by you resulting from the Activity **is excluded**. The application of any express or implied term that any recreational services or recreational activities: (a) will be provided with due care and skill; (b) are reasonably fit for any purpose which you, either expressly or by implication, make known to the Operator; and (c) might reasonably be expected to achieve any result you have made known to the Operator, **is hereby excluded**.

By signing this Form, you acknowledge that where you are a consumer of recreational services, as defined by any relevant law, certain terms and rights usually implied into a contract for the supply of goods or services may be excluded. You acknowledge that these implied terms and rights and any liability of the Operator and its Associates flowing from them, are expressly excluded to the extent possible by law, by this Form. For the avoidance of doubt, this exclusion does not exclude liability for recklessness as defined by any relevant law.

Notwithstanding the above, nothing in this Form excludes or limits any right, remedy, guarantee, warranty or any other term or condition implied or imposed by the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law (including any consumer guarantee) or any relevant State or Territory law which cannot be lawfully excluded or limited. For any liability which cannot lawfully be excluded but can be limited under the Australian Consumer Law, the Operator's liability is limited to the maximum extent permitted by law to the price of the Operator's entry fee for the Activity, re-supplying your opportunity to participate in the same Activity at a later time, or supplying a substitute entry for another Operator event that is satisfactory to you.



RELEASE

- Without limiting the above, and to the extent allowed by applicable law, I accept all risks flowing from my participation in the Activity that could result in my (or my Minor's) injury and/or death.
- I acknowledge that participation in the Activity will be undertaken with others at the same time and the Operator, and all of their Associates are not liable for the actions of others participating in the Activity.
- Any dispute or claim/s I may have in connection with this Form or participation in the Activity, or any other aspect of my relationship with Operator will be governed by the law of New South Wales. I agree that, unless settled by direct discussions or where such claim value is under the small claims threshold in the relevant state or territory jurisdiction, any dispute or claim will be determined by binding arbitration conducted in New South Wales only.
- I agree that this Form will take precedence over any other forms or contracts I may sign in connection with the Activity.

FORCE MAJEURE; Activity CANCELLATION

- "**Force Majeure**" includes acts of God or the elements (including without limitation, wind, rough water, rain, hail, hurricane, tornado, earthquake), acts of terrorism, communicable disease, public health risks (including pandemic), fire, smoke, threatened or actual strike, labour difficulty, work stoppage, insurrection, war, public disaster, flood, government order, change of law, unavoidable casualty, race course conditions, or any other cause beyond the control of the Operator.
- **Modification/Delay/Postponement:** I acknowledge and agree that the Operator may, for safety reasons, or at the direction of police or local authorities, or due to a Force Majeure event:
 - a) change or modify the Activity; or
 - b) delay, modify, postpone or cancel the Activity, including if it believes the conditions are unsafe or otherwise unsuitable for the Activity and the Operator may (acting reasonably) delay the Activity for so long as such unsafe or unsuitable conditions apply.If the Activity is delayed, modified or postponed for any safety reasons, or at the direction of police or local authorities, or due to a Force Majeure event, but the Activity still takes place, there will be no refund of the Operator's fee (or any portion of) or any other costs incurred in connection with the Activity
- **Cancellation:** If the Activity is cancelled in its entirety (including where due to a Force Majeure event) by the Operator, all paid entrants will be contacted regarding their options, which will include the option to receive a refund of the Operator's fee.

CONSENTS AND PRIVACY:

- By signing this Form and participating in the Activity, I grant to the Operator, the permission to photograph, film, record and/or otherwise capture in any media the name, image, voice, written statement, photograph and/or visual likeness of me and/or my family members (collectively "**images**"). I acknowledge and agree that images are owned by the Operator, and that the Operator may use such images for promotional or any other purposes, without compensation or my further consent
- I authorise the Operator, or other medical personnel to obtain or provide medical care, aid or treatment, to transport me to a medical facility, and to provide care, aid or treatment (including evacuation, hospitalisation, blood transfusions, surgery, and medications) they consider necessary for my health in connection with the Activity. I agree to pay all costs associated with that care and transportation and agree to the release (to or by Operator, and its Associates, insurance carriers, other health care providers and their staff, representatives, or contractors, and my emergency contact) of any medical information or records necessary for treatment, referral, billing, or other purposes in connection with the Activity.
- As a condition of entry to the Event and by signing this Form, I consent to the collection, storage and exchange of my personal information (as that term is defined in the *Privacy Act 1988* (Cth) between the Operator, or its Associates.
- Where express consent has been given during registration for this Event, the Operator will provide the following entities with my personal information (as that term is defined in the *Privacy Act 1988* (Cth) I acknowledge that I am able to opt-out of these services at any time:
 - **Operator** for the purpose of subscription to selected Operator related marketing and promotional materials. I agree that if I choose not to receive Operator Activity marketing communications that I will still receive operational emails (and, where required for my safe participation in the Event, SMS texts) that relate to the Activity in which I have registered; and/or
 - **Other third parties** for marketing related matters where specifically selected by me.
- The Operator may assign this Form to other entity/s or individual/s ("**assignees**"), which will grant assignees the full rights and protections in this Form.
- If I sign this Form online and on-site, the on-site version will be binding
- Where this Form is signed by a parent, natural guardian or legal guardian of the Minor, the parent, natural guardian or legal guardian consents to the Minor's participation in the Activity and provides the acknowledgements, indemnities and releases in this Form in its own right and on the Minor's behalf. If I am signing as the Minor's legal guardian, I have the legal authority to accept the terms and conditions set out in this Form for an on behalf of the Minor, and that this provision may be pleaded as a bar to any claim. If this authority is challenged or found invalid, I will release, agree to defend and indemnify the Operator and WTC and their Associates from all claims.
- This Form is effective in regard to registration and participation in the Activity from the date signed until completion of all activities.



- This Form is intended to be interpreted and enforced to the fullest extent allowed by law. If any portion of this Form is deemed void, illegal, unlawful or unenforceable in any jurisdiction, it will not affect the validity, legality or enforceability of the remaining provisions or the Form in any other jurisdiction.

I have carefully read, understand and agree to voluntarily participate in the Activity and sign this Form.
I acknowledge that this Form is legally binding upon me (and, if I am Minor's legal guardian, the Minor) and my executors, administrators and other personal representatives and I will be bound by the terms and conditions of this Form.

_____ ADULT PARTICIPANT SIGNATURE	_____ DATE	_____ PRINTED NAME OF PARTICIPANT	_____ PARTICIPANT'S AGE
_____ SIGNATURE OF PARENT/GUARDIAN OF MINOR PARTICIPANT	_____ DATE	_____ PRINTED NAME OF PARENT/GUARDIAN	