

# SUGARBAG SAFARIS

## RECREATIONAL ACTIVITIES

### LIABILITY WAIVER AGREEMENT

This is an important document which affects your legal rights and obligations. Please read it carefully, and do not sign it unless you are satisfied that you understand it. If you are unsure about anything, you should obtain legal advice.

#### **Definitions**

**Business** means Hamish Clark trading as Sugarbag Safaris ABN 20 334 435 582 and employees and contractors.

**Recreational Activities** include but are not limited to the following activities:

- Camping in managed and unmanaged campgrounds and campsites
- Bushwalking on marked and unmarked tracks
- Walking on even and uneven surfaces in hot and remote areas
- Swimming in designated swimming areas and in crocodile management areas
- Bird and wildlife watching
- Aboriginal rock art viewing
- Driving on paved and unpaved roads, maintained and unmaintained roads, and 4x4 tracks
- Activities provided by third-party tour operators, including:
  - Wildlife and scenic cruises
  - Cultural Activities
  - Scenic flights (fixed wing and or helicopter)
  - Canoeing

and activities ancillary to the Recreational Activities including transit to or from the Recreational Activities, or instruction prior to the Recreational Activities.

In consideration for the Business permitting me to participate in the Recreational Activities, I agree as follows:

#### **Acceptance of risk**

1. The information I have provided in this agreement is true and correct, and I understand that the Business is relying on that information in allowing me to participate in the Recreational Activities.
2. I have read the materials provided by the Business that describe the Recreational Activities, my responsibilities while participating in the Recreational Activities and the potential health, safety, and other risks associated with participating in those Recreational Activities. I have been given the opportunity to ask any questions I have about the Recreational Activities and the responsibilities and risks involved.
3. I acknowledge that the Recreational Activities may be dangerous, may involve a significant degree of physical exertion and that I could be exposed to physical and/or mental harm.
4. Some of those risks include, but are not limited to:

- 4.1. attack from wild animals, which may cause physical or mental harm or death.
  - 4.2. vehicle movement associated with travelling in the vehicle and including alighting in or out of the vehicle and also including falling or slipping.
  - 4.3. exposure to natural elements which can be unpredictable and potentially harmful or fatal, including storms, lightning, wind, tides, currents, heat, wet conditions, and including exposure to flora and fauna.
  - 4.4. participation in Recreational Activities conducted at locations that are remote in distance and/or accessibility from any medical treatment facility.
5. I voluntarily choose to participate in the Recreational Activities, fully accepting that the materialisation of such risks may cause personal injury, death, property damage or economic loss.

#### **Waiver, release and discharge**

6. I unconditionally waive my right to sue the Business for any cause of action, howsoever arising, including from any act, omission, default, failure or error on the part of the Business (including, to the full extent permitted by law, any negligent act, omission default, failure or error), connected with my participation in the Recreational Activities.
7. I unconditionally release and discharge the Business from any and all liability, claims and cause of action howsoever arising, including from any act, omission, default, failure or error on the part of the Business (including, to the full extent permitted by law, any negligent act, omission default, failure or error), connected with my participation in the Recreational Activities.

#### **Indemnity**

8. To the full extent permitted by law, I indemnify, will keep indemnified and hold harmless the Business from any and all liabilities or claims made by any person connected with my participation in the Recreational Activities, whether caused by negligence or otherwise.
9. In the event my death or incapacity was connected with my participation in the Recreational Activities, I direct my personal representatives, executors or administrators to indemnify, keep indemnified and hold harmless the Business from any liability, claim or cause of action that may be brought against the Business by any person entitled to claim damages in respect of my death.

#### **Exclusion of warranty**

10. I acknowledge and agree that to the full extent permitted by law, the Business expressly excludes and disclaims all warranties that may be expressed or implied. I further acknowledge and agree that if despite this clause, the law prevents exclusion and implies any warranty, then the liability of the Business for breach of any warranty will be limited to a refund of the money for supplying the services or the Business supplying the services again within a reasonable period of time.

#### **Governing law**

11. The terms of this agreement are governed by the laws of the Northern Territory of Australia.

#### **Choice of jurisdiction**

12. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Northern Territory of Australia, including for the avoidance of doubt, the Federal Court of Australia sitting in the Northern Territory of Australia.

#### **Parent/Guardian undertaking**

13. Where this agreement includes any child under the age of 18 years, then the parent/guardian signing it warrants that the information provided is true and correct and personally covenants in terms of clauses 6 to 9 in respect of any claim, liability or cause of action that arises out of or is incidental to the child's participation in the Recreational Activities.

### **Enforceability of agreement**

14. I acknowledge and agree that to the extent that any clause in this agreement is void or unenforceable, it is severable and does not affect the remaining provisions of the agreement.

### **Statement of understanding**

15. I acknowledge that I have read and understood the matters set out in this agreement and affirm I am of lawful age and legally competent to give this waiver, release and indemnity. I am not under the influence of alcohol or any drug.

16. I will take care of my safety and for the safety of any child under my care under the age of 18 years. I will follow and ensure any child in my care under the age of 18 years follows the safety directions of the Business.

17. I acknowledge that in the event that the terms set out in this agreement are breached by me, the Business may reduce or refuse liability to the extent the liability suffered by the Business is in connection with the breach by me.

18. I understand that this agreement is contractual in nature and has legal effect, and is not merely a warning or provided for information. I have had the opportunity to seek legal advice regarding the terms of this agreement prior to signing it, and I fully understand the terms. I have signed this agreement of my own free will and without any representation or inducement by the Business, its agents or employees.