

# HAMILTON ISLAND BEACH SPORTS

## SEA KAYAKING TOURS AGREEMENT

### General waiver, indemnity and limitation of liability

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 Hamilton Island Enterprises Limited ACN 009 946 909 ('Provider') allowing ..... (name of participant) to take part in the activity known as the Hamilton Island Sea Kayaking Tours, the participant acknowledges and agrees that they are bound by the following terms:

#### The participant agrees to the use of the Hamilton Island Sea Kayaking Tour (HISKT) facility on the following terms:

1. The participant understands that these activities may be dangerous and the participant voluntarily accepts the risk of injury and/or damage consequent upon or arising from the participant's use of HISKT.
2. The participant authorises HISKT to take, use and copy photographs and films of the participant on the HISKT without objection or charge including commercial use thereof. The participant may notify the Provider if this authorisation is not provided.
3. The participant acknowledges that the right to use HISKT is personal to the participant and is not capable of transfer or assignment to any other person or company.
4. The participant will abide by the directions of the Provider and its Associates.
5. The participant does not suffer from any illness, mental or physical, which would place the participant at risk when on the HISKT.
7. The participant agrees to the below terms and conditions applying to this activity and the Hamilton Island Privacy Policy.
8. The participant accepts that they will be liable for any damage caused by the participant to their assigned equipment or any other equipment (including for other participants).
9. The activity is subject to weather conditions and minimum numbers, and availability and schedules may vary.
10. Any unsafe activity will terminate the HISKT with no refund.
11. The participant agrees to the cancellation policy available at: <https://www.hamiltonisland.com.au/things-to-do/all-tours-and-activities>.
12. The participant enters the water at their own risk and stinger suits should be worn when entering the water as marine stingers are present. The participant acknowledges that use of the equipment can be a health risk to pregnant women. Medical advice should be sought by the participant before use of the equipment.
13. The above information is true and correct and the participant has read and understood all of the clauses of this agreement before signing the same and before the participant's use of HISKT.

#### Rules of the Tour:

1. The participant acknowledges this activity travels within sensitive areas of the Great Barrier Reef Marine Park and they agree to be bound by all rules and regulations related entry into the Great Barrier Marine Park.
2. The participant agrees to wear a personal floatation device as provided by the Provider.
3. The participant agrees to follow all reasonable directions and instructions provided by the Provider at all times.
4. The participant will participate in the safety and operations briefing.

#### Safety:

TICK

- All participants must stay within 25 metres of the tour guide at all times
- QLD Responsible Service of Alcohol must be followed at all times
- All participants will listen to and obey the tour guide's instructions at all times
- Tour guide is made aware of all existing medical conditions that will affect participation

The participant understands the following risks involved with Sea Kayaking:

TICK

- Strong tides and currents
- Wind and waves
- Animals and marine life
- Sun exposure and dehydrations
- Swimming and snorkelling dangers
- Changes in weather conditions

### Declaration and signature

By signing this agreement the participant acknowledges that:

1. They are bound by the terms and the Hamilton Island Privacy Policy;
2. Participation in the activity may cause them to suffer personal injury or death;

Signature of participant:

Date:

Name of participant:

Address of participant:

If participant is under 18 years of age or under a legal disability:

Signature of legal guardian

Date:

Name of legal guardian:

Address of legal guardian:

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### Tour Guide

I delivered a safety briefing as required, gave a demonstration and will observe all the participants in accordance with the terms in the safety management plan.

Tour guide:

Staff ID number:

Signature:

Date:

### General Terms and Conditions

- The participant acknowledges and agrees that:
  - they participate in the activity entirely at their own risk;
  - 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;
  - 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;
  - 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;
  - they fully understand the risks and requirements for the activity;
  - in the event they or any person in their care or control find themselves in difficulty, they are to stop the activity or request that the activity be stopped (as the case may be), and seek assistance;
  - they do not have any pre-existing medical conditions or injuries which might affect their ability to participate safely in the activity;
  - if they develop any medical conditions or injuries during the activity or preparing for the activity they must inform the Provider immediately;
  - at the time of signing this agreement and during participation in the activity, the participant will not be under the influence of or affected by, alcohol, medications or drugs (whether legal or illegal) that may adversely impact the participant's participation in the activity;
  - if they are asked to observe any signs or directions relating to the activity that they will do so;
  - 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.
- To the extent permitted by the law, the participant agrees to release, indemnify and hold harmless, the Provider and its current and former officers, Associates, employees, contractors, sub-contractors/consultants (including their respective employees and contractors) and agents against, from and in respect of all expenses, costs, liabilities, claims, actions, proceedings, damages, judgments and losses of any kind whatsoever (including but not limited to consequential and economic losses, property loss/damage and damages for injury, including personal injury and death) arising out of, caused by, attributable to or resulting from the participant's participation in the activity except to the extent such expense, cost, liability, claim, action, proceeding, damage, judgement or loss arose out of, was caused by, attributable to or resulted from the Provider's negligence or wrongful act/omission.
- To the extent permitted by law the aggregate of the Provider's liability to the participant is limited to an amount not exceeding the amount paid by the participant for the activity.
- Each indemnity in these terms and conditions is a continuing and independent obligation and survives the termination or expiry of these terms and conditions.
- 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.
- Where the participant is under the age of 18 years of age or otherwise under a legal disability, the legal guardian signs and 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.
- 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.
- The terms and conditions may be executed in any number of counterparts and where the parties sign by electronic means, the parties agree that they have each consented to the agreed method of execution and may not subsequently challenge this method.

At various times the Provider may collect personal information about you and/or persons accompanying you during your stay at Hamilton Island. The Provider handles all personal information in accordance with its privacy policy and applicable privacy laws. The Hamilton Island Privacy Policy is available at <https://www.hamiltonisland.com.au/privacy-policy> for your review.