

# GENERAL WAIVER, INDEMNITY AND LIMITATION OF LIABILITY



## Otway Fly Treetop Adventures: ZIPLINE TOUR/ABSEILING

### 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 **Otway Fly Pty Ltd (Provider)** allowing.....  
**(Name of Participant)**

The Participant acknowledges and agrees that is bound by the following terms:

1. The Participant acknowledges and agrees that:
  - (a) they participate in the Activity entirely at their own risk;
  - (b) 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;
  - (c) 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;
  - (d) 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;
  - (e) they fully understand the risks and requirements for the Activity;
  - (f) 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;
  - (g) prior to signing this Agreement they informed the Provider of any pre-existing medical conditions or injuries which might affect their ability to participate safely in the Activity;
  - (h) if they develop any medical conditions or injuries during the Activity or preparing for the Activity they must inform the Provider immediately;
  - (i) at the time of signing this Agreement and during participation in the Activity, the Participant will not be under the influence of or affected to any extent by, alcohol, medications or drugs (whether legal or illegal);
  - (j) they must not consume any alcohol, medications or drugs (whether legal or illegal) while participating in the Activity;
  - (k) if they are asked to observe any signs or directions relating to the Activity that they will do so;
  - (l) 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.
2. The Participant hereby indemnifies and will keep the Provider and its Associates indemnified from and against all actions, suits, proceedings, claims, liabilities, demands, costs, losses, damages and expenses of whatsoever nature and howsoever occurring, brought against or made upon the Provider or its Associates by the Participant or by any other person or which the Provider or its Associates may themselves pay, suffer, or sustain, arising directly, indirectly or in any other way connected with the Participant participating in the Activity, whether in contract, tort (including negligence), breach of statutory duty or otherwise. This indemnity applies irrespective of any negligence on the part of the Provider, its Associates or any other person.
3. The Participant hereby releases, discharges and holds harmless the Provider and its Associates from all actions, suits, proceedings, claims, liabilities, demands, costs, losses, damages and expenses of whatsoever nature and howsoever occurring, brought against or made upon the Provider or its Associates by the Participant or by any other person or which the Provider or its Associates may themselves pay, suffer, or sustain, arising directly, indirectly or in any other way connected with the Participant participating in the Activity, whether in contract, tort (including negligence), breach of statutory duty or otherwise. This release applies irrespective of any negligence on the part of the Provider, its Associates or any other person.
4. Further and in addition to the other clauses of this Agreement, the Participant releases the Provider from, and agrees that the Provider has no liability to the Participant for:
  - (a) death; or
  - (b) a physical or mental injury of an individual (including the aggravation, acceleration or recurrence of such an injury of the individual); or
  - (c) the contraction, aggravation or acceleration of a disease of an individual; or
  - (d) 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 in relation to an individual:
    - (i) that is or may be harmful or disadvantageous to the individual or community; or

that may result in harm or disadvantage to the individual or community, arising howsoever in respect of the provision of the Activity, whether in contact, tort (including negligence), for breach of any consumer guarantee or pursuant to any other cause of action whatsoever. However, this clause 4 does not apply to significant personal injury suffered by a person that is caused by the reckless conduct of the Provider.

5. Further and in addition to the other clauses of this Agreement, the Participant releases the Provider from, and agrees that the Provider has no liability to the Participant for:
  - death; or
  - personal injury,
 arising howsoever in respect of the provision of the Activity, whether in contact, tort (including negligence), for breach of any consumer guarantee or pursuant to any other cause of action whatsoever.
6. This Agreement may be pleaded as a bar by the Provider and its Associates to any action, suit, proceeding, claim, liability, demand, costs, losses, damages and expenses made by the Participant or anyone claiming by, through or under the Participant howsoever arising out of or in connection with the Participant participating in the Activity.
7. Certain legislation, including the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Acts* of the States and Territories, may imply or impose warranties or terms into any agreement between the Provider and the Participant, which cannot be excluded restricted or modified except to a limited extent. To the extent allowed any such legislation or otherwise at law, the Provider and its Associates limit their liability to, at the Provider's sole discretion, supplying the services again, or the payment of the cost of having the services supplied again.
8. 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, it will be severed from this Agreement, and 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.
9. Where the Participant is under the age of 18 years or otherwise under a legal disability, the below-signed Legal Guardian, who must be over the age of 18 years, 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.
10. 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.

#### Declaration and signature

By signing this Agreement the Participant acknowledges that:

1. they have read and understand the above terms;
2. they are bound by the above terms;
3. participation in the Activity may cause them to suffer personal injury or death;
4. they understand that they waive their right to sue the Provider for losses relating to their personal injury or death that result from participation in the Activity including from the Provider's negligence;

Please Print Name		Signature	Date
Name of Participant: (Person Ziplining)		Participant Sign Here: (Adult Guests and Legal Guardian if under 18)	
Name of Guardian: (if participant is under 18)			
Provide:	Address **	Email **	Contact Number **

**\*\*This information will not be used for anything other than contact tracing for Covid-19.**



**Otway Fly Treetop Adventures**  
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