

DIVER DAN'S SPECIALTY CHARTERS, INC., DBA KAAPALI OCEAN ADVENTURES

SNORKELING BOAT WARNING, ASSUMPTION OF RISK, RELEASE OF LIABILITY & INDEMNIFICATION AGREEMENT

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

In consideration of the risk of injury while participating in "Sanity" Snorkeling Vessel Tours (the "Activity"), and as consideration for the right to participate in the Activity.

1. Definitions. The person who is participating in snorkeling trips shall be referred to hereinafter as "Participant". The "Undersigned" 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. "Released and Forever Discharge Parties" means Diver Dan's Specialty Charters, Inc., dba Kaanapali Ocean Adventures, located at P. O. Box 11208, Lahaina, HI 96761, or any of their respective successors, in interest, affiliated organizations and companies, insurance carriers, employees, assignees, officers, directors, managers, members, agents, shareholders, administrators, attorneys, staff, volunteers, heirs, representatives, predecessors, successors and assigns, for any physical or psychological injury, including but not limited to illness, disfigurement, temporary or permanent disability (including paralysis), death, damages, economical or emotional loss, that I may result in pain and suffering as a direct result of my participation in the aforementioned Activity, including traveling to and from an event related to this Activity. The "Activity" means taking part in jet boating, and using the jet boating facilities and zodiac for any purpose.

2. Risks of Activity. The Undersigned agree and understand that taking part in the Activity can be HAZARDOUS AND INVOLVES THE RISK OF PHYSICAL INJURY AND/OR DEATH. The Undersigned acknowledge that the Activity is inherently dangerous and fully realize the dangers of participating in the Activity. The risks and danger of the activity include, but are not limited to: water flow, tides, currents, terrain, facilities, temperature, lack of hydration, condition of participants, wave action, wakes, collision with other participants, property loss, watercraft and other manmade and natural objects, wind shear, weather conditions, lightning, capsizing, sinking, exposure to elements, drowning, marine life, equipment failure and/or defects, slips, falls, operator error, mental distress from exposure to any of the above; and negligence of other including but not limited to, participants, volunteers, spectators, coaches, event officials and event monitors, and/or producers of the event.

THE UNDERSIGNED ACKNOWLEDGE AND UNDERSTAND THAT THE DESCRIPTION OF THE RISKS LISTED ABOVE IS **NOT** COMPLETE AND THE PARTICIPATING IN THE ACTIVITY MAY BE DANGEROUS AND MAY INCLUDE OTHER RISKS.

3. Release, Indemnification, and Assumption of Risk. In the consideration of the Participant being permitted to participate in the activity, the Undersigned agree as follows:

(a) Release. THE UNDERSIGNED 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 the Undersigned, or any of them, have or which could be asserted on behalf of the Undersigned 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. I am signing of my own free will.

(b) Indemnification. The Undersigned hereby agree to indemnify, defend and hold harmless the Released Parties from and against any and all liability, cost, expenses or damages of any kind or nature whatsoever and from any suits, claims or demands, including legal fees and expenses whether or not in litigation, arising out of, or related to, Participant's participation in the Activity. Such obligation on the part of the Undersigned shall survive the period of the Participant's participation in the Activity.

(c) Assumption of Risk. The Undersigned agree and understand that there are dangers and risks associated with the participation in the Activity and the INJURIES AND/OR DEATH may result from participating in the Activity, including, but not limited to the acts, omissions, representations, carelessness, and negligence of the Released Parties. By signing this document, the Undersigned recognize that property loss, injury and death are all the possible while participating in the Activity. RECOGNIZING THE RISKS AND DANGER. THE UNDERSIGNED UNDERSTANDS 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 AND UNKNOWN, INHERENT, OR OTHERWISE.

4. Minor Acknowledgment. In the case of a minor Participant, the Undersigned parent or legal guardian acknowledges 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 and legal guardian of a minor, the parent or legal guardian understands that he/she is also waiving rights on the behalf of the minor that the minor otherwise may

have. The Undersigned parent or legal guardian agrees 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 18 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.** Undersigned authorize the Release Parties and/or their authorized personnel to call for 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. Undersigned agrees to pay all costs associated with such medical care and related transportation. I am aware and understand that I should carry my own health insurance.
- 6. **Miscellaneous.** The Undersigned further agree and understand: (a) Participant will not engage in any activities prohibited by any applicable laws, statutes, regulations and ordinances; (b) this Agreement shall be governed by the law of the State of Hawaii, and the exclusive jurisdiction for any claim shall be the Maui County District and Circuit Court of Maui County, Hawaii, or the federal court of the State of Hawaii; (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) the Undersigned understand and acknowledge that this Agreement is a contract 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 the intent of the Undersigned's that this agreement shall be binding upon the assignees, subrogors, distributors, heirs, next of kin, executors and personal representative of the Undersigned.

I HAVE CAREFULLY READ THE FORGOING ASSUMPTION OF RISK, RELEASE OF LIABILITY & INDEMNIFICATION AGREEMENT AND UNDERSTAND ITS CONTENTS, I AM AWARE THAT I AM RELEASING LEGAL RIGHTS THAT OTHERWISE MAY EXIST.

In the event that any damage to equipment or facilities occurs as a result of my or my family's willful actions, neglect or recklessness I acknowledge and agree to be held liable for any and all costs associated with any action of neglect or recklessness.

_____ (initial) I certify that (1) I am in good physical health; (2) I am physically able to participate in the activity safely; and (3) I have received the necessary instruction to participate in the activity safely.

Participant's Name: _____

Participant's Address: _____

Signature: _____ **Date:** _____

PARENT / GUARDIAN WAIVER FOR MINORS

In the event that the participants is under the age of consent (18 years of age), then this release must be signed by the parent or guardian, as follows:

I hereby certify that I am the parent or guardian of _____, named above and do hereby give my consent without reservation to the foregoing on behalf of this individual.

Parent / Guardian Name: _____

Relationship to Minor: _____

Signature: _____ **Date:** _____