

## Liability Waivers, Warning Signage, Hold Harmless Agreements

To understand the need for liability waivers, warning signage and hold harmless agreements you need to understand the importance of **Risk Management** in your business. "Risk management reduces the likelihood of an unwanted and unplanned event. Reduces the consequences of the event and enhances your ability to access comprehensive and cost-effective insurance." (<http://www.wtay.com/RiskManagement.pdf>)

Risks in the tourism industry are significant and are recognized by the public. Relying exclusively on insurance is no longer viable. Businesses that manage high standards for care, health, and safety of their clients as well as the environment enhance their ability to meet today's traveller's expectations. Managing risk is an important business decision that can give you the competitive edge.

The **transfer of risk** refers to an attempt to transfer all or part of the risk through indemnity and "hold harmless" clauses in written agreements or waivers on tickets or signage.

These should be developed or reviewed with a lawyer, insurance broker or risk management consultant *during the process*. These should be reassessed on an annual basis to ensure that they continue to meet the industry changes and legal requirements. If you are expanding your season and offering new experiences or products, you need to ensure that these new activities are also included in your risk management plan.

### Waivers

In the travel industry, a legal contract, form or statement that absolves a supplier of financial and legal responsibility for a variety of eventualities that might befall a traveler. Although such waivers *are seldom absolutely effective in deterring legal action*, by signing such a form, the traveler acknowledges that he has been made aware of risks inherent in the trip or activity being undertaken.<sup>1</sup>

Anyone participating in a dangerous activity, sport or procedure should be asked to read and sign a liability waiver before they start the activity. If a signed waiver form is not practical a waiver clearly printed on a ticket issued in conjunction with visible signage on the property can assist in the successful defence of claims. (ie ski lift tickets, hockey tickets, swim pool pass, etc). In the case of a claim, you are the defendant and it is up to you to prove that your waiver could be easily understood, was adequate and is applicable to the claim.

In some instances waiver forms are ineffective or not permitted. The *Marine Liability Act* disallows for the use of liability waivers for operators of commercial watercraft carrying passengers.

## **Signage**

Having the right signage in the right places can reduce the risk of accidents. Generally the public will note the warning sign and obey the rules. Although this isn't always the case, by posting proper signs you are showing that you have done your due diligence to control the risk and inform the public of danger.

The greater the risk and hazard, the greater the onus is on you to inform those likely to be exposed to the risk. If you place a sign where it is impossible to miss, this can assist you in defending claims made by the public where they ignored the warning.

Signage should be used in various places for various reasons. Here are some examples:

### Obvious dangers

- Not responsible for items left unattended in this area
- No lifeguard on duty – children should not swim unattended
- Guard dog on duty – no entry

### Unusual dangers

- Rip tides – dangerous undertow
- Avalanche area – do not stop
- Animals are not contained – keep windows closed at all times

### Dangers specific to abilities or ages

- Children under 12 years must be supervised by an adult
- This river should be travelled by experienced paddlers only
- This trail requires full mobility – uneven terrain and climbing required

## **Hold Harmless Agreements and Indemnity Agreements**

A hold harmless agreement is a contractual arrangement whereby one party assumes the liability inherent in the situation, thereby relieving the other party of responsibility. For example, a lease of premises may provide that the lessee must "hold harmless" the leaser for any liability from accidents arising out of the premises.<sup>2</sup>

Indemnity agreements are generally worded in such a way that they protect one party against future lawsuits, losses and claims for something another party did, or neglected to do.<sup>3</sup>

Keep in mind that your contracts are only effective if each party is insured and able to carry out the agreement. Ask for proof of insurance before venturing into a contractual agreement.

## EXAMPLE ONLY – NOT TO BE COPIED

You must create your own contract based on your own specific needs. Consult a lawyer, insurance company or risk management consultant.

**RELEASE OF LIABILITY AGREEMENT, WAIVER OF CLAIMS, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT**  
**BY SIGNING THIS DOCUMENT YOU WILL WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE**  
**PLEASE READ CAREFULLY**

Last Name		First Name		Initial
Address: street ( Inc. apt#)				
City		Province		Postal code
Birthdate	Day	Month	Year	Phone #

**TO: 555555 ONTARIO LIMITED, carrying on business as **ADVENTURE COMPANY ABC** (the "OPERATORS"), AND ALL TOUR OPERATORS AND ORGANIZERS WHO PROVIDE OR MAKE AVAILABLE FACILITIES, PREMISES OR SERVICES FOR THE OPERATORS, and their respective directors, officers, employees, agents, guides, volunteers, independent contractors, representatives, successors and assigns (collectively hereinafter referred to as the "RELEASEES").**

### DEFINITIONS

1. In this agreement, the term "**Adventure Activities**" shall include all activities, events or services provided, arranged, organized, conducted, sponsored or authorized by the Operators and shall include, but is not limited to use of ziplines and suspension bridges; tours; hiking; sightseeing; travel to and from the trail head, marshalling, outfitting areas; backcountry travel; orientation and instructional courses, seminars and sessions; and other such activities, events and services in any way connected with or related to the Operators.

### ACKNOWLEDGEMENT – SAFETY

2. I acknowledge that I am required to wear an approved helmet and other safety equipment while participating in certain Adventure Activities. I am aware that there are guides or instructors available to answer any questions that I may have as to the proper use of the equipment. I am aware that the physical exertion required of Adventure Activities and the forces exerted on the body can activate or aggravate pre-existing physical injuries, conditions, or congenital defects. I acknowledge that I should seek medical advice if I know or suspect that my physical condition may be incompatible with Adventure Activities.

### ASSUMPTION OF RISKS

3. I am aware that participation in Adventure Activities involves many **risks, dangers and hazards** including, but not limited to: changing weather conditions; changes or variations in the surface or sub-surface; exposed rock, earth, and other natural objects; changes or variations in the terrain including holes, depressions, loose gravel, rocks, mud, creeks, etc., and those which may create blind spots or areas of reduced visibility; difficult terrain including streams, creeks, cliffs, crevasses, trees, tree wells, tree stumps and forest deadfall; roads, road-banks or cut-banks; collision with trees, fences, vehicles, equipment or other natural or man-made structures; collision with other participants, guide or spectators; the failure to remain within designated areas; encounters with wildlife; becoming lost or separated from the guides, instructors or other participants; negligence of other participants or guides; and **NEGLIGENCE ON THE PART OF THE RELEASEES, INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS OR ADVENTURE ACTIVITIES.** I am also aware that the risks, dangers and hazards referred to above exist throughout the terrain and may be uncontrolled, un-marked and not inspected.

4. **I AM AWARE OF THE RISKS, DANGERS AND HAZARDS ASSOCIATED WITH ADVENTURE ACTIVITIES, AND I FREELY ACCEPT AND FULLY ASSUME ALL SUCH RISKS, DANGERS AND HAZARDS AND THE POSSIBILITY OF PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR LOSS RESULTING THEREFROM. I ALSO ACCEPT RESPONSIBILITY FOR ANY PERSONAL OR PROPERTY**

**DAMAGE CAUSED BY OR AS A RESULT OF MY PARTICIPATION IN ADVENTURE ACTIVITIES.  
RELEASE OF LIABILITY, WAIVER OF CLAIMS AND INDEMNITY AGREEMENT**

5. In consideration of **THE RELEASEES** accepting my application to participate in Adventure Activities and permitting my use of their property, premises, parking and other facilities and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby agree as follows:

(a) TO WAIVE ANY AND ALL CLAIMS that I have or may in the future have against THE RELEASEES, and TO RELEASE THE RELEASEES from any and all liability for any loss, damage, expense or injury including death that I may suffer, or that my next of kin may suffer resulting, either directly or indirectly, from either my use of the facilities or my presence on the premises DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE OWED UNDER THE OCCUPIERS' LIABILITY ACT, R.S.O. 1990, c.O.2, ON THE PART OF THE RELEASEES, AND INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS DANGERS AND HAZARDS OF ADVENTURE ACTIVITIES;

(b) TO HOLD HARMLESS AND INDEMNIFY THE RELEASEES from any claims or demands resulting from any property damage or personal injury to any third party, which might be made against the Releasees resulting from my participation in Adventure Activities and my use of the premises and facilities;

(c) That this Agreement shall be effective and binding upon my heirs, next of kin, executors, administrators and assigns and representatives, in the event of my death or incapacity;

(d) That this Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario; and

(e) That any litigation involving the parties to this Agreement shall be brought within the Province of Ontario; and

(f) In entering into this Agreement I am not relying on any oral or written representations or statements made by the Releasees with respect to the safety of Adventure Activities, other than what is set forth in this Agreement.

**I HAVE READ AND UNDERSTAND THIS AGREEMENT. BY SIGNING THIS AGREEMENT, I ACKNOWLEDGE THAT I AM AGREEING TO THE FOLLOWING:**

**I. THAT I AM ASSUMING ALL RISK OF INJURY, LOSS OR DAMAGE WITH RESPECT TO THE EQUIPMENT, THE ACTIVITY I WILL BE PARTICIPATING IN AND THE USE OF THE PREMISES AND FACILITIES;**

**II. THAT I AM WAIVING ANY AND ALL CLAIMS ARISING FROM ANY CAUSE WHATSOEVER AGAINST THE RELEASEES, ON BEHALF OF MYSELF AND MY HEIRS, SUCCESSORS AND ASSIGNS; AND**

**III. THAT I WILL INDEMNIFY THE RELEASEES IF ANY SUCH CLAIMS ARE BROUGHT AGAINST THEM.**

Signature of Participant	Witness
Signature of Parent/Guardian ( if under 18 years)	Please print witness name clearly
Please print name of Parent/Guardian clearly	Pass number

**THIS AGREEMENT MUST BE COMPLETED IN FULL, INITIALLED, DATED, SIGNED AND WITNESSED BEFORE AN ADVENTURE PASS MAY BE ISSUED**

**PRIVACY NOTICE:** Information provided by you is used for the purpose of issuing an Adventure Pass and to provide you with Adventure information by Adventure Company ABC. Signing this Agreement conveys a right to Adventure Company ABC or its assignees to independently verify information provided by you and to retain the information provided to be used in the event of any litigation associated with the provisions of said services.