

# Montana Whitewater, Inc., Participant Release of Liability, Waiver of Claims, Assumption Of Risk and Indemnity Agreement

Please read and understand the following section before signing. This document affects your legal rights.

In consideration of the services of Montana Whitewater, Inc., Yellowstone Zipline, their agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on their behalf (hereinafter collectively referred to as "MWW"), I hereby agree to release and discharge MWW, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

**1. Inherent Risks** I acknowledge that my participation in a river trip, fishing trip or a zipline/challenge course entails known and unanticipated risks that could result in physical or emotional injury, paralysis, death, or damage to myself, to property, or to third parties. I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity.

**The inherent rafting risks include, among other things:** that physical and **water related activities (such as tubing or rafting)** can be strenuous and should not be participated in by persons with heart or cardiovascular ailments; whitewater rapids will be encountered; encountering rapids, changing water flows, dam discharges, increased flows and the possibility that I will be jolted, jarred, bounced, thrown to and fro, separated from my tube or boat, etc. during rides through some of these changing water flows; the tube/raft may break down or be faulty; it is possible that loss of control of the tube/raft could occur resulting in collision or capsizing or sinking and that if a tube/raft turns over or flips I could be "washed" overboard; tubes/rafts are slippery when wet and are naturally unstable so that I could slip and fall or be knocked out of the tube/raft even in flat or non-moving water; while in the water I may become disoriented, panicked and/or experience trauma from rocks, boulders, etc.; I can slip or fall during hiking or portaging or getting to and from the tube/raft or tubing/rafting areas and I understand that the areas in which I might hike sometimes hide dangerous obstacles such as tree wells, tree stumps, creeks, rocks and boulders, forest dead fall, etc.; the tube/raft or any portion of it may collide with or encounter other boats, man-made or natural objects including submerged or semi-submerged trees, rocks, branches, boulders, bridges, etc.; again your boat could turn over and/or you could have to swim rapids risking collision with rocks and entanglement in trees; also prolonged exposure to cold water can result in "cold water immersion" syndrome or "cold shock," hypothermia and/or death.

**The inherent zipline/challenge risks include, among other things:** that **zipline/challenge** activities risks are use of fabricated structures, surfaces, cables or ropes and include, but are not limited to: falling off of structures, being hit by swinging apparatus, falling on or being impacted by other participants, hanging from a cable, the possibility that I will be jolted, jarred, bounced, thrown to and fro or shaken about while on the zipline/challenge course, lose my balance or grip, slippery or wet equipment, becoming entangled in ropes/harnesses, impacting the ground and/or zipline apparatus, equipment failure, displaced safety equipment, belay or anchor or harness failure, general slips/trips/falls or painful crashes while using any of the equipment or zipline/challenge structures or landing platforms or rope bridges or the premises at large, operating out of control or beyond my or another participants' limits, the negligence of other visitors who may be present, participants giving or following inappropriate zipline/challenge advice or move sequences, and my own negligence or inexperience. Changing weather conditions are possible; exposure to the natural elements can be uncomfortable and/or harmful; I understand that prolonged exposure to cold water can result in "cold water immersion" syndrome or "cold shock," hypothermia and in extreme cases death; communication in the terrain in which this activity occurs is always difficult and in the event of an accident, rescue and medical treatment may not be immediately available.

**The inherent fishing risks include, among other things:** that the **fishing activity** includes the risk of prolonged exposure to cold water can result in hypothermia and in extreme cases death. It is possible that I could be injured if I come in contact with and be injured by fishing equipment/gear (waders, hooks, knives, poles, etc.) for either spin or fly fishing, food boxes, storage containers, etc. The fishing equipment may break down or be faulty; streams and river banks are slippery and are naturally unstable so that I could slip and fall or land in the river where I would be required to swim or self-rescue. I can slip or fall during hiking, fishing, portaging, wading in the creeks or rivers or getting to and from the fishing areas; I understand that the areas in which I might hike sometimes hide dangerous obstacles such as tree wells, tree stumps, creeks, rocks and boulders, slippery streams, poisonous or noxious plants, etc.

**The inherent risks related to all the activities include:** Exposure to the natural elements can be uncomfortable and/or harmful; I understand that this exposure could cause sunburn, dehydration, heat exhaustion, heat stroke and heat cramps; also prolonged exposure to cold water can result in "cold water immersion" syndrome or "cold shock," hypothermia and/or death; exposure to potentially dangerous wildlife, insects, plants; accidental drowning is also a possibility and, rescue and medical treatment may not be immediately available. Furthermore, MWW employees have difficult jobs to perform. They seek safety, but they are not infallible. They might be unaware of a participant's fitness or abilities. They might misjudge the weather or other environmental conditions. They may give incomplete warnings or instructions, and the equipment being used might malfunction. Communication in the river terrain in which this activity occurs is always difficult and in the event of an accident, rescue and medical treatment may not be immediately available.

I expressly acknowledge that the use of drugs or alcohol during my participation in any or all of the activities associated with or provided by MWW is done at my own peril and is not condoned, encouraged or excused by MWW in any way. I understand that MWW reserves the right to deny me or any other person participation before or during an activity if it finds that person to be mentally or physically impaired or unprepared.

**By signing this Participant Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement, I acknowledge that I AM ULTIMATELY RESPONSIBLE for my own safety during these MWW activities.**

**2. Express Assumption of Risk** I expressly agree and promise to accept and assume all the risks existing in the activities in which I choose to participate. My participation in these activities is purely voluntary, and I elect to participate in spite of the risks. I expressly agree and acknowledge that the terms and conditions of this Participant Agreement, Acknowledgement and Assumption of Risk Agreement is valid evidence that I intend to assume all risks associated with this activity and is intended to be contractual in nature. I expressly agree that I am signing this Agreement of my own free will and there are no reasons why I lack the capacity to enter into this Agreement.

In accordance with laws and regulations governing the National Park Service ("NPS"), the paragraph below shall not apply with respect to negligence, injuries or other losses occurring on NPS property. Otherwise this paragraph shall apply and should be read carefully because this Release and Indemnity Agreement contains a surrender of certain legal rights.

**3. Release and Waiver of Rights Including for Claims of NEGLIGENCE** On behalf of myself and any of the children for which I am responsible I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless MWW from any and all claims, demands, or causes of action, which are in any way connected with my participation in this activity or my/our use of MWW equipment or facilities, including any such Claims which allege negligent acts or omissions of MWW.

In accordance with laws and regulations governing the National Park Service ("NPS"), the paragraph below shall not apply with respect to negligence, injuries or other losses occurring on NPS property. Otherwise this paragraph shall apply and should be read carefully because this Release and Indemnity Agreement contains a surrender of certain legal rights.

**4. Indemnity.** As liquidated damages, I agree that, should MWW or anyone acting on their behalf, be required to incur attorney's fees and/or costs to enforce this agreement, I agree to indemnify and hold them harmless (in other words, I agree to pay for...) for all such fees and costs.

In accordance with laws and regulations governing the National Park Service ("NPS"), the paragraph below shall not apply with respect to negligence, injuries or other losses occurring on NPS property. Otherwise this paragraph shall apply and should be read carefully because this Release and Indemnity Agreement contains a surrender of certain legal rights.

**5. Personal Skill & Insurance** I certify that I have sufficient skill and fitness to participate in the activities offered by MWW. I further certify that I have no medical, mental or physical conditions which could interfere with my safety or ability to participate in these activities, or else I am willing to assume and bear the cost of all risks that may be created, directly or indirectly, by any such condition. I further certify that I have adequate insurance to cover any injury, damage or emergency transportation costs I may cause or suffer while participating, or else agree to bear the costs of such injury, damage or emergency transportation costs myself.

In accordance with laws and regulations governing the National Park Service ("NPS"), the paragraph below shall not apply with respect to negligence, injuries or other losses occurring on NPS property. Otherwise this paragraph shall apply and should be read carefully because this Release and Indemnity Agreement contains a surrender of certain legal rights.

**6. Medical Issues.** I further agree that, in the event that MWW deems it necessary to administer emergency first aid or CPR or to remove me from its activities or to extricate me from the field or from the remote venue in which the tour operates for ANY type of health related reason that, by signing this document, I am giving MWW permission to: administer emergency first aid or CPR, secure emergency transport or medical care and/or disclose any medical information it may have about me to any health care provider which may become involved in my care, treatment or removal from the field. By signing this document I am waiving any right to object to or bring any type of action or claim against MWW for its administration of emergency first aid or CPR or for securing emergency transport or medical care and/or for the disclosure of personal medical information it may have about me to any health related person who becomes involved in my care or removal from MWW activities or the field.

**7. Photographic Assignment.** I understand that MWW reserves the right to take photographic or film (of whatsoever nature) records of any or all of the activities conducted on its trips and I hereby agree that MWW may use such records for promotional and/or commercial purposes without any remuneration to me. I hereby assign all right, title and interest I may have in or to any and all media in which my name or likeness might be used by MWW.

**8. Release as Contract and Personal Capacity.** I expressly agree and acknowledge that the terms of this Participant Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement is contractual in nature, supported by Montana law and that I am signing it of my own free will. I expressly acknowledge that I am not under the influence of drugs or alcohol at the time of my signing of this agreement and that there are no other impediments or reasons why I would lack the capacity to sign this document.

In accordance with laws and regulations governing the National Park Service ("NPS"), the paragraph below shall not apply with respect to negligence, injuries or other losses occurring on NPS property. Otherwise this paragraph shall apply and should be read carefully because this Release and Indemnity Agreement contains a surrender of certain legal rights.

**9. Forum Selection, Severability, Breach of Contract/Warranty Waiver, Etc.** In the event I file a lawsuit against MWW, I agree to do so solely in the State of Montana, and I further agree that the substantive law of that state shall apply in that action without regard to the conflict of law rules of that state and I hereby irrevocably waive any other jurisdiction or venue to which I or my estate or my children's estates might otherwise have be entitled. I agree to submit to the jurisdiction of the Montana courts. I agree that if any portion of this agreement/contract is found to be void or unenforceable, the remaining portion shall remain in full force and effect; this document is intended to be interpreted as broadly as possible. A copy or electronically stored version of this release contract can be used as if it was the original. I understand that this document constitutes the entire Agreement between myself and MWW and that it cannot be modified or changed in any way by representations or statements of any nature (be they vocal, advertising, etc.) outside of this document; in other words, I am also waiving any claims I might have for breach of contract or warranty for statements or representations made outside of this release contract.

**In accordance with laws and regulations governing the National Park Service (“NPS”), the paragraph below shall not apply with respect to negligence, injuries or other losses occurring on NPS property. Otherwise this paragraph shall apply and should be read carefully because this Release and Indemnity Agreement contains a surrender of certain legal rights.**

By signing this document, I acknowledge for myself and any of the children I am responsible for that I/we may be waiving our legal right to a jury trial to hold the provider legally responsible for any injuries or damages resulting from risks inherent in the activities or recreational opportunities or for any injuries or damages I/we may suffer due to the provider's ordinary negligence that are the result of the provider's failure to exercise reasonable care.

I HAVE HAD SUFFICIENT OPPORTUNITY TO READ THIS ENTIRE DOCUMENT (ALL 3 PAGES). I HAVE READ AND UNDERSTOOD IT, AND I AGREE TO BE BOUND BY ITS TERMS.

All participants must sign this section:

**Participant Signature:** \_\_\_\_\_

Printed Name: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Country: \_\_\_\_\_

E-mail address: \_\_\_\_\_ Phone #: \_\_\_\_\_ Date: \_\_\_\_\_

**Participants 17 years of age and younger must also have a parent sign this section:**

Parents or Guardians Additional Indemnification (Must be completed for participants under 18 years of age) I/we represent that I/we have complete and absolute authority to bind, contract for and legally act on behalf of the minor child listed above; I/we believe and represent that I/we have the legal authority to make the waivers and releases contained herein. I/we understand and acknowledge that MWW relies to its detriment on this representation and would not allow the minor child to participate in this trip without this representation. In consideration of \_\_\_\_\_ (print minor's name) (“Minor”) being permitted by MWW to participate in its activities and to use its equipment and facilities, I further agree to indemnify and hold harmless MWW from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use of participation by Minor.

**Parent Signature:** \_\_\_\_\_

Printed Name: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Country: \_\_\_\_\_

E-mail address: \_\_\_\_\_ Phone #: \_\_\_\_\_ Date: \_\_\_\_\_

**Emergency Contact (Name & Phone)**

Name: \_\_\_\_\_ Phone:

\_\_\_\_\_

MWW Release Contract Page 4 of 4

**Gardiner**