

# Participation Agreement / Terms and Conditions / Indemnity Waiver

'Big Duck Tours' means Big Duck Tours Pty Ltd (ABN: 13 611 711 392) of Granite Island Causeway, Victor Harbor South Australia 5211 and St. Vincent Marina, Wirrina Cove South Australia 5204.

"Activities" means the preparation for and participation in recreational activities associated or connected with any and all tours operated by Big Duck Tours.

"I" means you.

"Participating child" means your child participating in the Activities.

"Other legally incapacitated person" means any person lacking legal capacity for whom you are the parent or legal guardian and who is participating in the Activities.

## 1. PARTICIPATION AGREEMENT AND WAIVER

Big Duck Tours are a tour boat owner and operator. I accept that that all persons undertaking the Activities must:

- a) be a minimum of 2 years of age for Southern Ocean Adventure and Seal Island Tours; and be a minimum of 12 years of age for Sea the Fleurieu Tour. No age limitations apply for Sea Wirrina Tours;
- b) not be pregnant for the Southern Ocean Adventure, Seal Island Tours and Sea the Fleurieu Tour – the Activities can be bumpy and are not suitable for pregnant women. No pregnancy limitation applies to the Sea Wirrina tours;
- c) have an adult guardian on-site if they are under 15 years;
- d) demonstrate a clear understanding of the safety system and procedures;
- e) complete the safety briefing;
- f) always behave in a manner which promotes safety for them and others;
- g) not show any signs of being under the influence of alcohol or drugs;
- h) be free of any medical conditions which could worsen by participation in the Activities;
- i) wear flat, enclosed and well-fastened footwear;
- j) ensure personal items are always safe and secure; and
- k) have signed a Participation Agreement (this document) if 18 years or above;
- l) have their Parent or Guardian sign the Participation Agreement (this document) if he/she/they are under 18 years or lacks legal capacity.

## 2. EXCLUSION OF LIABILITY – WAIVER OF RIGHT TO SUE – YOUR ASSUMPTION OF RISK

By purchasing a ticket and participating in the Activities, I agree to the following:

### 2.1 Risk Warning

- a) I accept that by purchasing a ticket at Big Duck Tours, I agree to all of Big Duck Tours' terms and conditions:
  - i. Big Duck - Victor Harbor: tours currently depart from the Granite Island Causeway, (Off Flinders Parade/Esplanade), Victor Harbor/Encounter Bay, South Australia. Our vessel boards from a landing approximately 200m out along the Causeway: Southern Ocean Adventure, Seal Island Tour, and Sea the Fleurieu;
  - ii. Big Duck - Wirrina: tours depart from the Marina Saint Vincent, Paradise Drive, Wirrina Cove. South Australia: Sea Wirrina Tour;
  - iii. Booking name required at time of boarding as proof of purchase, our crew have a digital manifest to check customers in on booking;
  - iv. Passengers must be at the departure point at least 15-minutes before departure time.
  - v. Vessel will depart at departure time shown, no refunds will be given for missed bookings or/late arrivals;
  - vi. Allow ample time to travel to the tour departure location, find parking & get to the boarding point;
  - vii. Refunds will not be given if customer cancels less than 24 hours prior to the departure time;
  - viii. Full refund or/ credit is offered for cancellations made more than 24 hours prior to tour departure.
  - ix. The Big Duck Boat Tours will offer an alternate date or/ full refund if the tour is cancelled by us (i.e weather).
  - x. All bookings must be paid in full to confirm booking unless stated or agreed otherwise.
  - xi. We require a minimum of 2 passengers per tour & 6 passengers in any given day to operate tours. In the rare event that we must cancel a day due to lack of numbers, passengers will be offered full refund or opportunity to re-scheduled tour.
  - xii. Minimum age on 'Southern Ocean Adventure' & 'Seal Island Tours' from Victor Harbor is 2-years (due to safety). Children 2-15 years must be accompanied by at least 1 adult.
  - xiii. Minimum age on 'Sea the Fleurieu' tour is 12-years.
  - xiv. No minimum age requirement for Wirrina Ocean tours. Child ticket = 0-15 years on Sea Wirrina tours.
  - xv. The Big Duck is suitable to run in most weather conditions, however in extreme cases we will either postpone the tour or/ offer a full refund. Sometimes when our Southern Ocean (Victor Harbor) Tours are unable to operate due to ocean conditions, 'Sea Wirrina' can still run, due to the protected nature of this coastline.
  - xvi. During whale season (June-September), where possible, the Southern Ocean Adventure Tour will include Whale watching. If there are no whales present, we will endeavour to include other wildlife sightings, such as seals and dolphins.
  - xvii. Wildlife sightings are not guaranteed on any tour departure.
  - xviii. Marine Mammal watching regulations require a minimum distance of 300m from whales in the Encounter Marine Park.
  - xix. Participation entirely at own risk, with full indemnity to The Big Duck Boat Tours.
- b) I accept that outdoor recreational activities operated by Big Duck Tours involve a risk to the participants suffering personal injury including the possibility of serious injuries, permanent disability, or death. By engaging in such activities, I do so at my own risk.

- c) I accept that such risks and harm may result from my actions and/or omissions or those of others. These risks include, but are not limited to:
- i. slipping over/falling while boarding or alighting from the vessel;
  - ii. slipping over/falling during the tour or moving around the vessel;
  - iii. jarring when the tour boat vessel is being operating in the Southern Ocean;
  - iv. seasickness;
  - v. damage to personal belongings due to waves/spray; and
  - vi. unexpected changes in weather and sea conditions.

## 2.2 WARRANT, WAIVER AND RELEASE

In consideration for, and as a condition of me and/or my participating child and/or other legal incapacitated person participating in the Big Duck Tour, I hereby

- a) warrant that I am over 18 years of age and am the parent or guardian of my participating child and/or other legal incapacitated person (if any);
- b) warrant that I, and my participating child and/or other legal incapacitated person (if any), are medically fit (including physically and mentally) to participate in the Activities and that I have not been advised otherwise by a medical practitioner;
- c) acknowledge the risk warning set out above and I agree that I assume all risks in connection with my, and my participating child and/or other legal incapacitated person's, participation in the Activities and acknowledge that Big Duck Tours is not liable for the breach of any express or implied warranty that services it provides;
- d) acknowledge that I, and my participating child and/or other legal incapacitated person (if any), engage in the Activities at my own risk and except to the extent that the law, including the Consumer and Competition and Consumer Act 2010 (CCA), provides that liability cannot be excluded, waive, release and discharge all and any claim, right or cause of action however arising, whether or not presenting ascertained immediate, future or contingent, which I, or my participating child, and/or other legal incapacitated person, may otherwise have for arising out of loss of my life or injury, damage or loss of any description whatsoever and howsoever caused which I, and/or my participating child, may suffer or sustain in the course or consequent upon my, and/or my participating child's, and/or other legal incapacitated person, participation in the Activities;
- e) acknowledge that to the maximum extent permitted by Big Duck Tours, Big Duck Tours excludes liability to me, and my participating child and/or other legal incapacitated person (if any), participating in the Activities for:
  - i. death;
  - ii. personal injury;
  - iii. the contraction, aggravation or acceleration of a disease;
  - iv. the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstances, occurrence, activity, form or behaviour, course of conduct or state of affairs, arising out of any failure by Big Duck Tours, its employees or agents to comply with any consumer guarantees applying to the service.
- f) to the maximum extent permitted by law, indemnify Big Duck Tours against any claim, right or cause of action howsoever arising, whether or not presently ascertained, immediate, future or contingent which I, and/or my participating child and/or other legal incapacitated person (if any), may have for or arising out of loss to my, and/or my participating child and/or other legal incapacitated person's, life or injury, damage or loss of any description whatsoever and howsoever caused which I, and/or my participating child, and/or other legal incapacitated person may suffer in the course of or consequent upon my participation in the Activities;
- g) where Big Duck Tours' liability cannot be excluded, we limit our liability to the maximum extent that we are permitted to do so:
  - i. agree that the waiver, release and discharge contained in paragraph (f) above shall operate in favour of Big Duck Tours and its employees, assigns, agents, officers, directors and related bodies corporate (collectively referred to hereinafter as the **'the Released Persons'**), and shall so operate whether or not the loss, injury or damage is due or attributable to any act, neglect or omissions of any more of the Released Persons;
  - ii. agree that the waiver, release and discharge contained in paragraph (f) above may be pleaded as a complete bar to any claim, notice, demand, action, proceeding, litigation or judgement which has or may be brought or made or recovered against any or each of the Released Persons;
- h) acknowledge and agree that where any of the consumer guarantees under the CCA apply to the services supplied by the Big Duck Tours, and the CCA voids or prohibits a provision in a contract excluding, restricting or modifying such consumer guarantees, then, to the fullest extent permitted by law, Big Duck Tours' liability under or arising out of the supply of services for breach of, or failure to comply with, such consumer guarantees shall be limited at the option of Big Duck Tours to:
  - i. the re-supply of the relevant service by Big Duck Tours to you; or
  - ii. payment by Big Duck Tours to you of the cost of having the services supplied again.

## 3. LAW AND JURISDICTION

These terms and conditions are governed by the laws of the State of South Australia, the courts of which shall have exclusive jurisdiction. If any of these conditions should be determined to be void, invalid or otherwise unenforceable, such conditions shall be deleted, and the remaining Conditions of Sale remain and continue to be valid, binding, and enforceable.