



## Akura Ltd - Spearfishing Charters

### WAIVER AND RELEASE FROM LIABILITY

Divers Email \_\_\_\_\_

Divers phone number \_\_\_\_\_

This **WAIVER AND RELEASE FROM LIABILITY** (“Waiver”) is executed by \_\_\_\_\_ (“Releasor”), an adult individual, for the purpose (print name) of acknowledging the risk accompanying my participation in activities offered by Akura Charters Ltd (“Akura Charters”), and to expressly release and waive all claims against Akura charters and its directors, officers, employees, agents and shareholders for any personal injury I may sustain while engaged in such activities.

**1. Voluntary Participation.** I, Releasor, have voluntarily contracted with Akura Charters to participate in activities (the “Adventure”) both on and off the island of Rarotonga, in Cook Islands territorial waters on (date) \_\_\_\_\_. I acknowledge that during the Adventure, I will, or may, participate in activities both on and off Rarotonga, including but not limited to snorkelling, scuba diving, free diving, fishing, spearfishing and swimming. I am aware that all of the activities I will participate in, and the equipment I will use or borrow can and at times will cause injury and/or death.

**2. Assumption of Risk. I AM AWARE THAT ACTIVITIES I MAY ENGAGE IN WHILE ON THE ADVENTURE ARE HAZARDOUS ACTIVITIES, AND HEREBY STATE AND ACKNOWLEDGE THAT I AM VOLUNTARILY PARTICIPATING IN THE ADVENTURE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE DANGER INVOLVED, AND AGREE TO ACCEPT ANY AND ALL RISKS OF INJURY, DAMAGE OR DEATH, WHILE I AM ENGAGED IN THE ADVENTURE. I VERIFY THIS STATEMENT BY PLACING MY INITIALS HERE:**

\_\_\_\_\_

**3. Release.** As consideration for being permitted by Akura Charters, to participate in the Adventure and use the facilities, equipment, vessel and all provided gear. I hereby agree that I, my assignees, heirs, distributees, guardians and legal representatives shall not, and are irrevocably barred from, bringing any suit against, making any claim against, or attaching the property of Akura Charters, for injury, death or damage while engaged in the Adventure, whether resulting from negligence or other acts, however caused, including but not limited to, any act or omission of an employee, agent, officer or shareholder of Akura, or any of its affiliated organizations or other participants in the Adventure. Accordingly, I hereby release Akura Charters, its shareholders, officers, directors, attorney(s) and any of its affiliated organizations from all actions, claims, or demands that I, my assignees, heirs, distributees, guardians, and legal representatives now have or may hereafter have for injury, death or damage resulting from my participation in activities during the Adventure.

**4. Advice of Attorney.** I hereby warrant and represent that prior to executing this Waiver I have relied upon legal advice from an attorney of my choice, or had ample opportunity to seek and obtain legal advice (even if I did not avail myself of the opportunity to obtain legal advice), and agree that the terms of this Waiver, and its consequences, have been completely read and explained to me, and/or that I fully understand the terms and consequences of executing this Waiver.

**5. Severability and Broad Interpretation.** This Waiver shall, where possible, be interpreted so as to sustain its legality and enforceability, and for that purpose the provisions of this Waiver shall be read or interpreted broadly in the specific situation to which they are being applied The invalidity or unenforceability of any provision of this Waiver in a specific situation shall not affect the validity or enforceability of that provision in any other situation or of other provisions of this Waiver.

6. **Succession and Binding Effect.** This Waiver shall be binding upon myself and my successors in interest of any kind whatsoever, including but not limited to, assignees, heirs distributees, guardians and legal representatives.

7. **Survival of Representations and Warranties.** All representations and warranties contained herein, if any, shall survive the execution and delivery of this Waiver and the consummation of the transactions contemplated hereby;

8. **Entire Agreement.** This Waiver constitutes the entire agreement and understanding between the Releasor and Akura Charters with respect to Akura Charters' liability for any and all personal injuries I may sustain while engaged in the Adventure, and any other transaction( s) contemplated by this Waiver. All prior representations, understandings, and agreements between the respect to personal injuries while engaged in the Adventure and any other transaction(s) contemplated by this Waiver are superseded by the terms of this Waiver;

9. **Waiver.** Any provision of this Waiver may be amended or waived only by a writing signed by the Akura Charters and the Releasor;

10. **Applicable Law and Venue.** This Waiver shall be construed and interpreted in accordance with the laws of The Cook Islands & New Zealand. If any proceeding is initiated to interpret or enforce the terms of this Waiver, venue is only proper in The Cook Islands;

11. **Attorney's Fees.** In the event that any suit or proceeding is brought to enforce, construe interpret, rescind, or cancel this Waiver or any of its provisions, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including the cost of enforcing any judgment;

12. **Mistake of Fact.** Releasor hereby warrants, represents, and agrees that execution of this Waiver is done with full knowledge of any and all rights which Releasor may have with respect to the Adventure and that there is no reliance upon any representation or statement made by Akura Charters or counsel for any Akura Charters, with respect to any of the facts hereto relevant and Releasor hereby assumes the risk of any mistake of fact in connection with the true fact( s) involved in the Adventure or in connection with any fact(s), known or unknown;

13. **Rule of Construction.** Releasor hereby confirms that Releasor has read and understands this Waiver, been fully advised and represented by counsel with respect to it (or had ample opportunity to seek and obtain legal advice), and all negotiations giving rise to it, and that Releasor has fully discussed this Waiver with all of its terms, consequences, and ramifications with independent counsel, or had the opportunity to do so. Accordingly, Releasor, and/or their counsel have reviewed this Waiver, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applied in the interpretation of this Waiver.

14. **I have read this waiver and Release of Liability, Assumption of risk and Indemnity Agreement, fully understand its terms, understand that I have given up substantial rights by signing it, am aware of its legal consequences, and have signed it freely and voluntarily without any inducement, assurance, or guarantee being made to me and intend my signature to be complete and unconditional release from all liability to the greatest extent allowed by law. I have had the opportunity to personally discuss with the dive leader and the captain the potential dangers incidental to these charters.**

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**Signature of Participant  
Participant**

**Date**

**Print Name of**