



WILD GULLY TERMS AND CONDITIONS

1 Definitions

- (a) **Agreement** means this Agreement, including, Terms and Conditions, the Activity Waiver and Release attached herein and any recitals, schedules, policies and procedures, and annexures issued from time to time;
- (b) **Activities** means any activities provided by the Provider from time to time;
- (c) **Activity Period** means the period in time that the Participant engages the Provider to provide such Activities, whether that be on a day by day basis or term by term basis
- (d) **Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person or company, however arising and whether ascertained or unascertained or immediate, future or contingent;
- (e) **Fees** means any fees payable by you to participate in the Activities for the Activity Period;
- (f) **Location** means Queens Park (off Hope Street), West Bundaberg QLD 4670, Gorman Park, Kelly Street, Burnett Heads QLD 4670, Mary Kinross Park, Woongarra Scenic Drive Bargara QLD 4670 or as otherwise amended from time to time;
- (g) **Parent and Guardian** means the lawful parent, guardian or carer of the Participant who is authorised to enter into this Agreement on the Participant's behalf;
- (h) **Participant/ you/ your** means the person entering into this Agreement and participating in the Activities provided by the Provider; and
- (i) **Provider/ Wild Gully/ our/ us** means Leanne Jennifer Webster trading as Wild Gully ABN 58 104 703 650 and any of her related entities, servants, agents, successors, and assignors;

2 Interpretation

- 2.1 Words in this Agreement have the same meaning as their corresponding meaning in the Act.
- 2.2 This Agreement is governed by and construed in accordance with the laws of Queensland.
- 2.3 References to any acts or statutes or any by-laws, orders or regulations made thereunder shall include all acts and statutes amending or consolidating them.
- 2.4 Words importing the singular or plural number or masculine gender shall be read as also importing the plural or singular number or the feminine or neuter gender as the case may require.
- 2.5 Where more than one person constitutes the Participant's Representative all covenants, agreements and stipulations on the part of the Participant herein contained or implied will be deemed to have been entered into by such persons jointly and severally.

3 Purpose of this Agreement

- 3.1 You acknowledge and agree that by signing this Agreement, you have entered into a legally binding agreement with the Provider;



- 3.2 As such, you should seek independent legal advice and/or let us know if you have any queries relating to this Agreement prior to signing should you have any questions or concerns.

4 Term

This Agreement will remain in force until terminated by either Party.

5 Supply of Activities

- 5.1 In consideration of payment of the Fees, we agree to provide you with access to the Activities during the Activity Period;
- 5.2 Your safety is important to us, and as such, we will use our best endeavours to ensure that the Activities are safe, hygienic and secure.
- 5.3 If at any time you become aware of an issue with the Activities, please notify us immediately.
- 5.4 The Activities offered by us are subject to change from time to time without notice to you.
- 5.5 Activities will be provided as and when agreed in writing by the parties from time to time.
- 5.6 The Participant may contact the Provider to book Activities.
- 5.7 The Provider will not provide Activities or support to any Participant who is under the influence of alcohol, unprescribed or illicit drugs.

6 Booking and Payments

- 6.1 The Participant is required to pre-book the Activities and pay the Fees in advance, as determined by the Provider before attending the Activities.
- 6.2 The Participant's booking to attend the Activities will not be secured, until full payment of the Fees for the Activity Period has been received by the Provider.
- 6.3 If the Participant cannot attend the pre-booked Activities on a particular day, the Participant will give at least 48 hours notice before cancelling any booked appointments. Failing such notice, the Provider may issue a refund to the Participant for the pre-booked and pre-paid Activities, at the Provider's sole discretion.

7 Age and Disability Requirement

- 7.1 If the Participant is under 18 and/ or has a diagnosed/recognised disability, a Parent or Guardian must enter into this Agreement on the Participant's behalf and agree to be bound by this Agreement and comply with these Terms and Conditions;
- 7.2 The Provider will not administer any prescribed medication to the Participant. If the Participant requires medication to be provided during the Activity Period, then the Participant's Parent or Guardian must administer such medication to the Participant; and
- 7.3 All Participants are required to treat others with care and consideration and no abuse to the Provider or other Participants will be tolerated.

8 Responsibilities of the Participant

- 8.1 The Participant agrees to:
- (1) comply with any policies of the Provider, as updated from time to time;
 - (2) Treat the Provider with courtesy and respect;
 - (3) Pay the Fees required for the Activities to the provide prior to attending the Activities;



- (4) Keep the Provider informed of any changes in personal circumstances that may affect the delivery of Activities;
- (5) Communicate with the Provider in a timely manner if the Participant has any concerns about the Activities being provided; and
- (6) Give the Provider the required notice if the Participant seeks to end this Agreement.

9 Responsibilities of the Provider

9.1 The Provider agrees:

- (1) Communicate clearly, openly and honestly;
- (2) Treat the Participant and any of the Participants representatives with courtesy and respect;
- (3) Provide a high level of care for the Participant;
- (4) Consult the Participant on decisions regarding how Activities are provided;
- (5) Protect the Participant's privacy and confidential information as required by the Act, the *Privacy Act 1988*;
- (6) Advise the Participant of any delays in the delivery of Activities; and
- (7) Keep accurate records on the Activities provided to the Participant.

10 Confidentiality

- 10.1 The terms of this Agreement are confidential and not to be disclosed to any third party, except legal advisors and relevant representatives for the parties, or as required by law.

11 Indemnity

- 11.1 The Participant hereby unconditionally and irrevocably indemnifies the Provider against any loss, damage, claim or injury in connection with this Agreement or the obligations contained herein except when such damage is due to negligence of the Provider.
- 11.2 The indemnity in Clause 11.1, includes but is not limited to, any Activities not being available to the Participant.

12 Emergencies

- 12.1 In the case of an emergency, the Participant consents to the Provider taking reasonable steps to engage medical personnel to carry out diagnostic and therapeutic processes as required.
- 12.2 The Provider is entitled to terminate Activities immediately and without notice if, in the absolute discretion of the Provider, continuing such Activities would compromise anyone's safety or the reputation of the Provider. Such termination does not, without written notice under Clause 14.1, terminate this Agreement.
- 12.3 If the Provider terminates Activities under Clause 12.2, the Provider may contact the Participant or the Participant's Parent or Guardian to arrange alternative Activities or assistance, if possible.

13 Disputes

- 13.1 If the Participant or any other person (the **Complainant**) is unhappy with a situation or service, they can lodge a complaint with the Provider by contacting the Provider directly.
- 13.2 The Provider will then deal with the complaint in the necessary way and offer a resolution (if appropriate) at its sole discretion.

14 Termination and assignment

- 14.1 Either Party may end this Agreement by providing 7 days written notice to the other party unless a party seriously breaches this Agreement, whereby no notice will be required.
- 14.2 This Agreement is not to be assigned by the Participant, but it may be assigned by the Provider, without providing notice to the Participant.

15 Notices

15.1 Means of giving Notice

Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing and delivered or sent by post to the party to which such notice is intended to be given to such address or email as may from time to time be notified in writing by one party to the other for the purposes of this clause.

15.2 Hand Delivery

Any notice or other communication delivered by hand shall be deemed delivered on the handing of the notice to other party or, where that party is not an individual, to a person working at the address specified if delivered on a Business Day within ordinary business hours in that place, but if not, then at 8.30 am on the following Business Day.

15.3 Receipt after Posting

Any notice or other communication sent by post shall be taken to have been received at the expiration of 5 Business Days after the date of posting.

15.4 Receipt after email

Any notice or other communication sent by post shall be taken to have been received at the expiration of 5 Business Days after the date of posting.

16 Entire Agreement

- 16.1 This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter.
- 16.2 The Parties acknowledge they have had an opportunity to seek independent legal advice and negotiate the terms of this Agreement, prior to entering this Agreement.
- 16.3 The Parties agree that any changes to this Agreement will be in writing, signed and dated by the Parties.
- 16.4 Your use of our website, Activities, this Agreement and an dispute arising from such use is subject to the laws of Queensland, Australia.



ANNEXURE A – ACTIVITY WAIVER & RELEASE

The Participant agrees that by accepting an offer to participate in some or all of the recreational activities provided by the Provider, the Participant has read, understood, approved and agrees to the following provisions:

In this Activity Waiver & Release, the expression 'recreational Activities' may include, but are not limited to, and are not required to, include activities such as: -

- Rock Balancing
- Rope activities
- Sand play
- Gross Motor skills (climbing on rocks, ball skills, scooter boards, animal walks, wheelbarrow races, rolling down hill, tree climbing, swinging)
- Scavenger hunts
- Rock climbing
- And any other recreational Activities, including but not limited to, **dangerous recreational activity**, offered by the Provider from time to time.

References to the **Provider** include the officers, employees, agents, representatives and contractors of the Provider.

References to the **Participant** include the participant and the participant's representative/parent/caregiver.

References to "**dangerous recreational activity**" have the same meaning as that provided in the *Civil Liability Act 2003 (Qld) s.18* which is "an activity engaged in for enjoyment, relaxation or leisure that involves a significant degree of risk of physical harm to a person."

This Activity Waiver & Release applies to all recreational Activities the Participant has participated in, is participating in and will be participating in, at any time of being a Participant of the Providers.

At all times, the Participant: -

1. Accepts that all recreational Activities contain a degree of risk, and dangerous recreational activities contain a high degree of risk, and acknowledges that under the *Civil Liability Act 2003 (Qld) s19(1)*: "a person is not liable in negligence for harm suffered by another person as a result of the materialisation on an obvious risk of a dangerous recreational activity engaged in by the person suffering harm".
2. Expressly agrees to assume the risk of personal injury to their own person and to a person for whom they are responsible for supervision and care while participating in recreational Activities offered by the Provider.
3. Agrees to follow the directions of the Provider at all times to ensure the safety of not only the Participant, but also other participants and/or the Provider, and agrees to listen to instructions and briefings and to seek advice or clarification if any instruction or brief is not understood.
4. Confirms that the Participant has no condition or injury that could be worsened or affected by the recreational Activities in a detrimental way to the Participant's health.
5. Confirms that the Provider is not responsible for aggravation to any existing condition or injury whether disclosed to the Provider or not.
6. Agrees, acknowledges and understands that some or all of the recreational Activities are physically strenuous activities, and that physical exertion is to be expected.
7. Agrees, acknowledges and understands that if the Participant is injured in any way, no matter how severely, including but not limited to death, the Participant expressly accepts the risk of participating in the recreational Activities and will not hold the Provider responsible for any such injury or death.
8. Confirms that the Participant is either: -
 - a. Over the age of 18 years of age and capable of giving consent; or
 - b. Is permitted to participate in the recreational Activities by the Participant's representative who has signed this Activity Waiver & Release.
9. Agrees, acknowledges and understands that pursuant to *Competition and Consumer Act 2010 (Cth) s139A*, the guarantee given (under *Competition and Consumer Act 2010 (Cth) s64*) is excluded with respect to the supply of recreational Activities, but the exclusion, restriction or modification is limited to liability for: -
 - a. Death; or
 - b. A physical or mental injury of an individual (including the aggravation, acceleration or recurrence of such an injury of the individual); or
 - c. The contraction, aggravation or acceleration of a disease of an individual; or
 - d. The coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in



relation to an individual:

- i. That is or may be harmful or disadvantageous to the individual or community; or
 - ii. That may result in harm or disadvantage to the individual or community.
10. Indemnifies the Provider against all Claims, losses or expenses that may be made by any person by, or on or behalf of, the Participant.
11. Consents to any medical treatment which may be considered necessary by the Provider in the event of injury or illness during the recreational Activities and indemnifies the Provider in respect of the cost of any such medical aid or treatment.
12. Agrees, acknowledges and understands that the Provider may cancel or re-schedule any recreational service/s at any time due to weather, participant numbers and/or any other unforeseen reason or event at its absolute discretion.
13. Agrees, acknowledges and understands that this Activity Waiver & Release is a Deed governed by the laws of Queensland and the Commonwealth of Australia.