

Participant Waiver

PARTICIPANT ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT

52 Peaks Challenge

PARTICIPANTS: READ THIS DOCUMENT CAREFULLY BEFORE SIGNING. THIS DOCUMENT HAS LEGAL CONSEQUENCES AND WILL AFFECT YOUR LEGAL RIGHTS AND WILL LIMIT YOUR ABILITY TO BRING FUTURE LEGAL ACTIONS.

NOTE TO MINORS: IF YOU ARE UNDER THE AGE OF 18, YOU MAY ONLY PARTICIPATE IN THE 52 PEAKS CHALLENGE IF ACCOMPANIED BY AN ADULT. YOUR PARENT OR GUARDIAN MUST REVIEW AND AGREE TO THE TERMS BELOW IN ORDER FOR YOU TO PARTICIPATE.

NOTE TO PARENTS/GUARDIANS OF MINORS: YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED, AND AGREED TO THE TERMS BELOW (SUCH TERMS BEING INTERPRETED AS IF THEY APPLIED TO BOTH YOU AND YOUR MINOR CHILD/WARD) AND HAVE THE LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR MINOR CHILD/WARD.

Released Parties include: Marketing Foundations Pty Ltd (ABN 24 642 664 873) ("**Marketing Foundations**"), **52 PEAKS CHALLENGE** and their affiliates, directors, officers, employees, agents, contractors, insurers, spectators, co-participants, suppliers, and volunteers; VENUE and its directors, officers, employees, agents, contractors, insurers, suppliers, and volunteers; all event sponsors, organizers, promoters, directors, officials, property owners, and advertisers; governmental bodies and/or municipal agencies whose property and/or personnel are used; and any or all parent, subsidiary or affiliate companies, licensees, officers, directors, partners, board members, supervisors, insurers, agents, equipment suppliers, and representatives of any of the foregoing including but not limited to Marketing Foundations.

Releasing Parties include: the participant (referred to in this document as "I"), as well as participant's spouse, children, parents, guardians, heirs, next of kin, and any legal or personal representatives, executors, administrators, successors and assigns, or anyone else who might claim or sue on participant's behalf.

Warning of Assumption of Inherent Risks

The **52 Peaks Challenge** is meant to be a personal challenge only that takes place over the space of a year and at a pace determined by each individual participant. It is not a race against other participants, but a challenge within oneself. Hiking and climbing mountains are part of the challenge and are usually considered hostile environments that might include the risk of minor, serious, or catastrophic injury and death. In summation, the 52 Peaks Challenge is a hazardous activity presenting a physical and mental challenge to participants.

I acknowledge that the 52 Peaks Challenge is an extreme test of my (and/or my participating minor child/ward's) physical and mental limits that carries with it inherent risks of injury (physical and/or mental). **Inherent risks** are risks that cannot be eliminated completely (without changing the challenging nature of the 52 Peaks Challenge) regardless of the care and precautions taken by **Marketing Foundations and the other Released Parties**. I understand that the 52 Peaks Challenge is extremely strenuous and the accompanying risks and dangers are generally present. I understand that these hazards may be magnified with the 52 Peaks Challenge and are often conducted under what may be extreme or stressful conditions and circumstances.

I understand and acknowledge that the **inherent risks include**, but are not limited to: 1) falls, tripping, uncontrolled landings, contact or collision with persons or objects (e.g., collision or contact with other participants, natural or man-made fixed objects or obstacles); 2) encounter with natural and man-made obstacles with water, road, track and surface hazards, close proximity and/or contact with barbed wire, fences, and posts; 3) weather-related hazards (e.g., extreme heat, extreme cold, humidity, ice, rain, fog); 4) inadequate first aid and/or emergency facilities in close proximity; 5) judgment- and/or behavior-related problems (e.g., erratic or inappropriate co-participant behavior, and errors in judgment); and 6) natural hazards (e.g., uneven terrain, rock falls, lightning strikes, earthquakes, wildlife attacks, contact with poisonous plants, snakes, spiders, marine life and/or ticks). Some water obstacles may contain water that has not been tested for chemicals, disease or other contamination.

I further understand and acknowledge that any of these risks and others, not specifically named, may cause injuries that may be categorized as minor, serious, or catastrophic. **Minor injuries** are common and include, but are not limited to: scrapes, bruises, sprains, nausea, and cuts. **Serious injuries** include, but are not limited to: property loss or damage, broken bones, fractures, torn or strained ligaments and tendons, concussions, exposure, dehydration, heat exhaustion and other heat-related illnesses, mental stress or exhaustion, infection, vomiting, dislocations, hyperthermia, hypothermia, anemia, electrolyte imbalance, loss of consciousness, syncope, dizziness, fainting, seizures, eye irritations and/or injury, electric shock and/or injury, and neurological disorders/pain. **Catastrophic injuries** are very rare; but are a possibility. These injuries can include but are not limited to, permanent disabilities, stroke, single or multiple organ failure or dysfunction, physical damage to organs, spinal injuries, paralysis, heart attack, blood cell disorder, brain swelling, and even death.

I understand that my safety is my personal responsibility and if I believe or become aware that any trails, tracks or paths are unsafe or pose unreasonable risks I will adjust my course appropriately and I will immediately return to safety. I acknowledge that Marketing Foundations and the 52 Peaks Challenge make no warranty, express or implied, as to the safety or suitability of any mountain, track, trail, path or obstacle at the beginning or throughout the 52 Peaks Challenge.

I fully understand the risks involved in the 52 Peaks Challenge and assert that I (and/or my participating minor child/ward) am/are willingly and voluntarily participating in the event. I have read the preceding paragraphs and acknowledge that: 1) I know the nature of the 52 Peaks Challenge; 2) I understand the demands of this activity relative to my physical condition; and 3) I appreciate the potential impact of the types of injuries that may result from participating in the 52 Peaks Challenge. I assert that I (and/or my minor child/ward to whom I have explained the inherent risks) knowingly assume all of the risks of the activity and take full responsibility for any and all damages, liabilities, losses, or expenses that I/we incur as a result of participating in the 52 Peaks Challenge. In short, I (and/or my participating minor child/ward) am/are participating in the 52 Peaks Challenge entirely at my/our own risk.

Waiver of Liability for Ordinary Negligence: To the extent permitted by law, I agree that under this agreement Marketing Foundations and the other Released Parties shall be excluded from liability for ordinary negligence in the conduct of the 52 Peaks Challenge and the application of any of the provisions of Subdivision B, Division 1, Part 3-2 of the Australian Consumer Law and further Marketing Foundations and the Released Parties shall be excluded from liability under any civil liability or consumer law applicable to the State in which this event is held subject to the exception that this exclusion of liability will not apply in circumstances where the conduct of Marketing Foundations or its officers, servants or agents is reckless. In consideration of being permitted to participate in the 52 Peaks Challenge, to the extent permitted by law, **I (on behalf of the Releasing Parties) hereby forever waive, release, covenant not to sue, and discharge Marketing Foundations and the other Released Parties from any and all claims, actions, suits, demands, losses and other liabilities in relation to any of death, physical or mental injury (including the aggravation, acceleration or occurrence of such an injury), the contraction, aggravation or acceleration of a disease or the coming into existence, aggravation, acceleration or occurrence of any other condition, circumstance, activity, form of behavior, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to me (and/or my participating minor child/ward) or the community or that may result in harm or disadvantage to me (and/or my participating minor child/ward) or the community resulting from the INHERENT RISKS of the 52 Peaks Challenge or the ORDINARY NEGLIGENCE of Marketing Foundations (or other Released Parties) that I (and/or my participating minor child/ward) may have arising out of my/our participation in the 52 Peaks Challenge.** This waiver does not apply if the exclusion, restriction or modification would apply to significant personal injury suffered by a person that is caused by the reckless conduct of Marketing Foundations.

Indemnification Agreement: To the extent permitted by law, **I hereby agree to hold harmless, defend, and indemnify** (which for the avoidance of doubt includes defending and paying any judgment, court costs, investigation costs, attorney's fees, and any other expenses incurred that relate to a breach of this contract) **Marketing Foundations (and the other Released Parties) from any and all claims made by me (and/or my participating minor child/ward or any Releasing Party) arising from death, physical or mental injury (including the aggravation, acceleration or occurrence of such an injury), the contraction, aggravation or acceleration of a disease or the coming into existence, the aggravation, acceleration or occurrence of any other condition, circumstance, occurrence, activity, form of behavior, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to me or the community or that may result in harm or disadvantage to me/us or the community due to my/our participation in the 52 Peaks Challenge.** This applies both to claims arising from the inherent risks of the 52 Peaks Challenge or the ordinary negligence of Marketing Foundations (or any Released Parties).

I further agree to hold harmless, defend, and indemnify Marketing Foundations (and the other Released Parties) against any and all claims of co-participants, rescuers, and others arising from my (and/or my participating minor child/ward's) conduct in the course of my participation in the 52 Peaks Challenge.

Other Agreements

Venue and Jurisdiction: I understand that if Mediation and Arbitration prove unsuccessful and legal action is brought, the appropriate state or federal trial court for the country of Australia in the State or Territory where the 52 Peaks Challenge is held has the **sole and exclusive jurisdiction** and that **only the substantive laws of the State or Territory in which the 52 Peaks Challenge is held shall apply.**

Severability: I understand and agree that this Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be **as broad and inclusive as is permitted** by the State or Territory in which the 52 Peaks Challenge is held and that if any provision shall be found to be unlawful, void, or for any reason unenforceable, then **that provision shall be severed from this Agreement and does not affect the validity** and enforceability of any remaining provisions. Furthermore, notwithstanding anything to the contrary contained within this Agreement, this Agreement will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any services pursuant to this Agreement

of any provision of any Act of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia or New Zealand which by law cannot be excluded, restricted or modified.

Entire Agreement: I affirm that this agreement supersedes any and all previous oral or written promises or agreements. I understand that **this is the entire Agreement** between me and Marketing Foundations and **cannot be modified or changed** in any way by representations or statements by any agent or employee of Marketing Foundations. This Agreement may only be amended by a written document duly executed by all parties.

Mediation and Arbitration: In the event of a legal issue, **I agree to engage in good faith efforts to mediate** any dispute that might arise. Any agreement reached will be formalized by a written contractual agreement at that time. Should the issue not be resolved by mediation within sixty (60) days of Marketing Foundations being notified by you of such issue, I agree that all disputes, controversies, or claims arising out of my participation in the 52 Peaks Challenge **shall be submitted to binding arbitration** in accordance with the applicable rules of the Australian Centre for International Commercial Arbitration then in effect. The seat of arbitration shall be Queensland, Australia. The language of the arbitration shall be English and the number of arbitrators shall be one (1). The cost of such action shall be shared equally by the parties.

Class Actions: I agree that any arbitration, mediation or legal action shall proceed solely on an individual basis without the right for any claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. Claims may not be joined or consolidated unless agreed to in writing by all parties.

Agreements for the Protection of Participants:

- I (and/or my participating minor child/ward) am/are **in good health** and in proper physical condition to safely participate in the 52 Peaks Challenge. I certify that I (and/or my participating minor child/ward) have **no known or knowable physical or mental conditions** that would affect my/our ability to safely participate in the 52 Peaks Challenge, or that would result in my/our participation creating a risk of danger to myself or to others.
- I acknowledge that Marketing Foundations recommends and **encourages each participant to get medical clearance** from his/her personal physician prior to participation.
- I (and/or my participating minor child/ward) **have not been advised or cautioned against participating** by a medical practitioner.
- I understand that it is my responsibility to continuously **monitor my own (and/or my participating minor child/ward's) physical and mental condition during the 52 Peaks Challenge**, and I agree to withdraw immediately if at any point my/our continued participation would create a risk of danger to myself or to others.
- In the event of an injury to me that renders me (and/or my participating minor child/ward) unconscious or incapable of making a medical decision, **I authorise and give my consent to any emergency or medical personnel to make emergency medical decisions** (including providing emergency medical treatment) on my (and/or my participating minor child/ward's) behalf (including but not limited to CPR).
- I authorize emergency or medical personnel to **secure emergency medical care or transportation** when reasonably necessary (at my cost and expense).
- I acknowledge that Marketing Foundations has instituted its **rules for the protection** of the participant and co-participants. I (and/or my participating minor child/ward) agree to familiarize myself/ourselves with those rules and follow them at all relevant times. I also recognize the authority of Marketing Foundations to halt my/our participation (and, if necessary, have me removed from the 52 Peaks Challenge) if my/our participation, conduct, or presence endangers myself or my co-participants.

FOR EVENTS HELD IN VICTORIA: Warning under the ACL and Fair Trading Act 2012 (Vic): Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you: • are rendered with due care and skill; and • are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and • might reasonably be expected to achieve any result you have made known to the supplier. Under section 22 of the Australian Consumer Law and Fair Trading Act 2012, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form. NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012.

Entry and Participation Agreements

Rules: I agree to become familiar with and abide by all written, posted or communicated rules of Marketing Foundations, as well as all written, posted or communicated rules of the 52 Peaks Challenge. I shall comply with (and I will not challenge at any time or in any way) all directions, instructions and decisions of Marketing Foundations and 52 Peaks Challenge personnel. I understand that Marketing Foundations has the authority to issue instructions or directions relating to the manner of my safe participation in the 52 Peaks Challenge or Related Activities and the authority to halt my participation in the 52 Peaks Challenge or Related Activities at any time to protect the safety of participants and personnel; and/or promote fairness and the spirit of the 52 Peaks Challenge.

Emergency Delay or Cancellation: I acknowledge that Marketing Foundations at its sole discretion may delay, modify, or cancel the 52 Peaks Challenge if conditions or natural or man-made emergencies make administering the event unreasonably difficult or unsafe. I agree that "emergency" is defined to mean any event beyond the control of Marketing Foundations, including but not limited to: high wind, extreme rain or hail, hurricane, tornado, earthquake, flood, acts of terrorism, fire, smoke threatened or actual industrial action, insurrection, war, public disaster, public health state of emergencies and unavoidable casualty. In the event of a delay, modification, or cancellation of the 52 Peaks Challenge as described in this paragraph, I understand that I will not be entitled to a refund of my participation fee or any other costs incurred in connection with the 52 Peaks Challenge.

Removal from the 52 Peaks Challenge: I understand that Marketing Foundations and 52 Peaks Challenge personnel may immediately cause anyone who disobeys any rules, directions, instructions, decisions, or laws, or whose behavior endangers safety or negatively affects a person, facility, or property of any type or kind, **to be removed from the 52 Peaks Challenge.**

Fee Refunds: I understand all fees and associated costs (including optional product purchases, use of online services, and donations), paid in registration for this 52 Peaks Challenge are not refundable for any reason under any circumstances, including but not limited to injury, a scheduling conflict, and/or event cancellation.

Attitude and Behavior: I will behave appropriately at all times, demonstrate respect for all people and the environment, and facilities; and participate with a cooperative and positive attitude.

Alcohol & Drugs: I certify that I will not be, under the influence of alcohol or any drugs that would in any way impair my ability to safely participate in any of the 52 Peaks Challenge events. I understand that the consumption of any alcohol and any illicit or illegal drugs or substances during any of the 52 Peaks Challenge events is strictly prohibited.

Specific Rules: I agree that: 1) I shall not urinate or defecate outside of designated areas; 2) no clothing, props or equipment that pose an unnecessary risk to participants, or personnel are permitted; 3) I agree to obey civil and criminal laws including traffic laws. and 4) I agree to be respectful of the environment and conduct myself in a kind and courteous manner at all times.

Photography: I understand that any and all photographs, motion pictures, recordings, and/or likenesses of me (and any participating minor child/ward) captured during the 52 Peaks Challenge by Marketing Foundations, its affiliated entities or contractors, and/or the media become the sole property of Marketing Foundations. I grant the right, permission and authority to Marketing Foundations and its designees to use my name and any such photographs, motion pictures, recordings, and/or likenesses for any legitimate purpose, including but not limited to promoting, advertising, and marketing activities. I understand Marketing Foundations and its designees have the right to sell and/or profit from the commercial use of such photographs, motion pictures, recordings, and/or likenesses.

Acknowledgment of Understanding:

By purchasing a membership I acknowledge that I have read this Assumption of Risk, Waiver of Liability, and Indemnification Agreement and fully understand its terms. I am 18 years or over and I understand that I (and/or my participating minor child/ward) am/are giving up substantial rights, including my/our right to sue. I further acknowledge that I (and/or my participating minor child/ward) am/are signing the agreement freely and voluntarily, and intend my signature to be a complete and unconditionally release of all liability due to ORDINARY NEGLIGENCE of MARKETING FOUNDATIONS (and other Released Parties) or the INHERENT RISKS of the activity, to the greatest extent allowed by the laws in force of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia or New Zealand in which the 52 PEAKS CHALLENGE Event is held.