

NAMOTU ISLAND RESORT

VOLUNTARY AGREEMENT TO RELEASE RIGHTS AND WAIVE LIABILITY

Name : _____
Date of Birth : _____
Address : _____

Telephone : _____
E-Mail : _____
In case of emergency notify: _____
Address: _____
Telephone: _____
Medevac Insurance #: _____

**IMPORTANT - YOU ARE GIVING UP IMPORTANT LEGAL RIGHTS.
READ THIS AGREEMENT BEFORE YOU SIGN IT.**

I, _____ (“Participant”) hereby agree as follows:

1. ACTIVITIES COVERED:

This Voluntary Agreement to Release Rights and Waive Liability (“Agreement”) is made in contemplation of any and all activities pursued while on the Island of Namotu or in the ocean waters surrounding the Island of Namotu, including but not limited to, surfing, body surfing, swimming, diving, scuba diving, snorkeling, kayaking, boating, riding wave runners or jet skis, beach combing, kite boarding, paddle boarding, stand up paddle boarding, tow-in surfing, long boarding, skim boarding, body boarding, water skiing, wake boarding, hydro foil boarding, wake surfing, wind surfing, canoe paddling, rafting, sailing, rowing, tennis, basketball, golf, bocci ball, frisbee, baseball, football/rugby, cricket, ping pong, volleyball, billiards, soccer, net ball, racquet ball, dodge ball, parasailing, hang gliding, paragliding, jet boarding, bungee jumping, go carting, golf cart riding, helicopter riding, submarine riding, sail plane riding, sea plane riding, airplane riding, hot air ballooning, taxi tours, island hopping, skateboarding, hot tubing, swimming pool games, running and jogging, snubba diving, kite flying, fishing, massage, bicycling, weight lifting, yoga, spear fishing, exercising, tree climbing, hiking and wild life viewing, and other related activities on and off shore of the Island of Namotu (hereinafter the “Released Activities”). I further understand that from time to time, I may be offered the opportunity to participate in other activities not listed above. I understand and agree that such activities are also included within the meaning of the term Released Activities.

2. PARTIES BOUND BY THIS AGREEMENT:

It is my understanding and intent that this Agreement shall be binding on myself and all other persons or entities who may initiate any suit, action, claim, demand, or other proceedings arising out of the Released Activities, including but not limited to my estate, executors, heirs, legal representatives, administrators, successors and assigns.

3. CONTINUING AGREEMENT:

I agree and acknowledge that the terms and conditions of this Agreement shall continue in full force and effect now and in the future at all times during which I participate, either direct or indirectly in the Released Activities.

4. RELEASE OF CLAIMS:

I waive and release Namotu Island Resort (“Namotu”), its officers, directors, agents, representatives, servants, employees, and shareholders, and the government of Fiji, the Island of Namotu and their respective officials, employees, and residents (hereinafter the “Released Parties”) from any and all liability, claims, demands, actions, or causes of action arising out of any damages, loss, or injury to me or my property while participating in the Released Activities and/or using any equipment provided by the Released Parties, whether such damages, loss, or injury results from the active, passive, or gross negligence of any person or entity, or from any other cause.

5. ASSUMPTION OF RISK:

I know, understand, and acknowledge the scope, nature, and extent of the risks involved in the Released Activities and all other related activities contemplated by this Agreement. I acknowledge and understand that the Released Activities, in particular engaging in water sports and other adventure sports and activities on or near the remote Island of Namotu, are inherently dangerous activities in which there is a risk of serious, permanent bodily injury or death and that no amount of care, caution, instruction, experience, or expertise can eliminate the dangers associated with the Released Activities. I further understand, and acknowledge that the uniqueness of the Island of Namotu and its remote location further increases the risks inherent in the Released Activities. I acknowledge that I have been advised to wear a helmet and to take all available precautions while engaging in the Released Activities. I understand and acknowledge that even if I am a strong swimmer, an experienced participant in the Released Activities, and do everything reasonably prudent to avoid injury, that serious permanent injury or death may still result from my participation in the Released Activities. I expressly, voluntarily, and irrevocably assume all risk of death, personal injury, and/or damage to my person or property sustained while participating in the Release Activities, whether or not such death, personal injury and/or damage is caused by the active, passive, or gross negligence of any person or entity, including the Released Parties, or from any other cause, to the fullest extent allowed by law.

6. COVENANT NOT TO SUE:

I agree, on behalf of myself, my estate, executors, heirs, legal representatives, administrators, successors and assigns, never to commence, or assist in the initiation or prosecution of, any lawsuit, claim, demand, action, proceeding, or cause of action, against the Released Parties related to the Released Activities or any other activities contemplated by this Agreement.

7. DEFENSE AND INDEMNITY:

I hereby agree, on behalf of myself, my estate, executors, heirs, legal representatives, administrators, successors and assigns, to defend, indemnify, save, and hold harmless the Released Parties from any and all losses, claims, actions, demands, proceedings, or causes of action of any kind and character which may arise directly or indirectly out of the Released Activities.

8. LIMITATION OF WARRANTIES:

All equipment provided by Released Parties has been previously used by other individuals engaging in the Released Activities. Released Parties do not expressly or impliedly warrant that any equipment sold, rented, or provided by the Released Parties is fit for a particular purpose or is of merchantable quality. I understand and agree that the implied warranties of merchantability and fitness for a particular purpose and all other warranties, express or implied, are excluded from any sale, rental or provision of equipment and that all such equipment is purchased, rented, or provided “As Is” and “Where Is.”

9. INSURANCE:

I understand and accept that the Released Parties do not provide medical, disability, completed operations, product liability, life, personal, accident, or general liability insurance for any accident, injury, loss, or death which may arise from the Released Activities. I hereby waive any and all claims, rights, or benefits I may have from any adjacent, accessory, component, or individual insurance policy pertaining to the Released Activities or the Released Parties.

I acknowledge that Namotu Island requires that I have Travel Insurance prior to arrival on Namotu Island. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating in the Released Activities or, if I do not purchase insurance, I agree to bear the cost of such injury or damage myself. I affirm that considering my lifestyle and the manner in which I am supporting myself, I have made adequate future provisions for myself, my spouse, and/or my children, if any, and any other heirs, dependants, successors, and family so that in the event of my injury, incapacity, disability, or death, they will suffer no financial, emotional, or recoverable loss.

10. UNAVAILABILITY OF MEDICAL TREATMENT:

I understand that the Island of Namotu is a remote, undeveloped island. Further, I understand that the Released Parties do not provide medical services and that medical facilities do not exist on the Island of Namotu. If I am injured, I understand that I will have to be transported to mainland Fiji to receive medical services and that the Released Parties do not provide such transportation. I further understand that private companies provide such transportation and that I will need to make prior arrangements, independent of the Released Parties, to obtain transportation to mainland Fiji.

I acknowledge that Namotu has provided me with information regarding the availability of private insurance for the provision of emergency life flight or other transportation to mainland Fiji (e.g., a helicopter which would/could fly non-stop to and from a hospital on mainland Fiji, to and from Namotu Island). I further acknowledge that my failure to make my own direct and personal arrangements to secure, in advance of my arrival at Namotu Island, private insurance that provides medical emergency air transportation from Namotu Island to mainland Fiji may significantly increase or exacerbate any injuries that I may suffer while engaging in the Released Activities. This information has been provided to me as an accommodation by Namotu. Namotu does not recommend, sanction, or approve of the companies identified to me or any other similar companies. It is my decision whether or not to purchase insurance for emergency transportation and medical care with such companies and to select, in advance, a company that suits my individual needs and requirements.

Notwithstanding the foregoing, I hereby expressly consent to receive first aid, medical treatment, or any other services rendered to me in the event of an injury, accident, or illness (hereinafter "Emergency Medical Services") I incur during my direct or indirect involvement with the Released Activities and I hereby agree, on behalf of myself, my estate, executors, heirs, legal representatives, administrators, successors and assigns, to hold harmless the Released Parties from any and all losses, claims, actions, demands, proceedings, or causes of action of any kind and character which may arise directly or indirectly out of Emergency Medical Services provided or sought.

INITIALS

11. STATEMENT OF PHYSICAL CONDITION:

I recognize that the Released Activities are strenuous, athletic endeavors requiring me to be in good physical condition, and that even if I am in good physical condition, I may suffer physical or mental injuries during my participation in the Released Activities. I hereby certify that I am not aware of and do not suffer from any physical infirmities or chronic illnesses which will affect my ability to engage in any Released Activities and that I am not under treatment for any physical and/or psychological conditions which will affect my ability to participate in the Released Activities. I hereby attest and verify that I am physically fit and that my physical condition has been verified by a licensed medical doctor. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

12. DRUG/ALCOHOL USE:

I certify that I am not on any regular medication and have not taken any alcoholic beverages or drugs, either prescription or non-prescription, and that I will not take such medication, alcoholic beverages or drugs within twelve (12) hours of my participation in the Released Activities.

13. ENFORCEMENT:

I understand and agree that if any portion of this document should be found to be unenforceable or against public policy, only that portion shall be invalid and the remainder of this Agreement shall continue to be binding and enforceable against me and all other parties or entities bound by this Agreement who may initiate any suit, action, claim, demand, cause of action or other proceedings arising out of my participation in the Released Activities.

14. JURISDICTION, VENUE, TRIAL:

I hereby agree that any and all claims, suits, disputes, demands, or actions of any kind whatsoever arising from or in connection with this Agreement and/or the Released Activities shall be commenced, filed, and litigated, if at all, before a court of proper jurisdiction located in Fiji. I further agree that in the event any claim, suit, dispute, demand, or action is filed in a location other than Fiji, it shall be moved to Fiji at the option of the Released Parties. I further agree that this Agreement shall be interpreted and construed under the laws of Fiji.

15. ENTIRE AGREEMENT:

I hereby acknowledge and understand that this written Agreement is the whole and entire agreement between myself and the Released Parties. I am not relying on any oral or written promises, terms, representations, assurances, or other material of any kind, including advertising material and brochures.

16. WAIVER OF LEGAL RIGHTS:

I have read this Agreement and understand its terms and conditions. I understand that I am waiving important legal rights by executing this Agreement and that if I institute any suit, action, claim, demand, or other proceedings as a result of any injury, damage, or loss arising out of or in connection with this Agreement and/or the Released Activities, this Agreement can and will be used against me and individuals or entities bound by this Agreement and that releases and waivers of this type have been upheld by Courts in similar circumstances.

17. MODIFICATIONS OF THE AGREEMENT:

I understand that this Agreement is a binding contract and that no oral representations or statements of any kind by any person can modify or amend the rights, duties, and obligations of the parties to this Agreement. I fully understand that any modification of this Agreement shall be enforceable only if it is in writing and separately signed by an officer of Namotu.

18. ADVICE OF COUNSEL:

I have been advised that I am free to seek independent advice or legal counsel of my own choosing before signing this Agreement.

19. FAILURE TO INITIAL:

I hereby agree that should I fail, for any reason, to initial any part of this Agreement, I shall be deemed to have initialed such portion of the Agreement.

BY SIGNING THIS AGREEMENT, I ACKNOWLEDGE THAT IF ANYONE IS HURT OR PROPERTY IS DAMAGED DURING MY PARTICIPATION IN THE RELEASED ACTIVITIES, I AGREE THAT I SHALL BE FOUND BY A COURT OF LAW TO HAVE WAIVED MY RIGHT TO MAINTAIN A LAWSUIT AGAINST THE RELEASED PARTIES ON THE BASIS OF ANY CLAIM I HAVE RELEASED OR WAIVED HEREIN. I FURTHER AGREE THAT I FULLY UNDERSTAND THE TERMS OF THIS AGREEMENT AND HAVE SIGNED IT OF MY OWN FREE WILL.

Signature

Print Name

Date

**PARENT OR GUARDIAN’S PERMISSION AND ADDITIONAL INDEMNIFICATION
(Must be completed for participants under the age of 18)**

I hereby represent that I am the parent, natural guardian, or legal guardian of the Participant and, acting in such capacity, I hereby consent to Participant’s engagement in the Release Activities. In consideration for Participant being permitted to engage in the Released Activities, I hereby agree to defend, indemnify, and hold harmless the Released Parties from any and all losses, claims, actions, demands, proceedings, or causes of action which are brought by, or on behalf of, Participant. I hereby agree to defend, indemnify, and hold harmless the Released Parties from any losses, claims, actions, demands, proceedings, or causes of action which arise as a result of any defect in or lack of capacity to act as the parent, natural guardian or legal guardian of Participant. I further represent that I have read this entire Agreement and consent to its terms on behalf of Participant.

Signature

Print Name

Relationship to Participant

Date