

WAI NANI SURF & PADDLE, LLC
PARTICIPATION AGREEMENT AND GENERAL RELEASE

Wai Nani Surf & Paddle, LLC, a Minnesota limited liability company (“**WNSP**”), provides stand up paddle boarding instruction, services and equipment to its customers. Stand up paddle boarding (“**SUP**”) / kayaking is an inherently dangerous sport or activity. Therefore, WNSP will not provide SUP instruction, services or equipment to any customer unless and until the customer has fully executed this *Participation Agreement and General Release* (“**this Agreement**”) and delivered it to WNSP. This Agreement shall cover and apply to all SUP engaged in by Participant by or through WNSP and shall continue to be in full force and effect indefinitely and not just for any particular class, day, season or year.

Participant named below desires to receive SUP instruction, services and/or equipment from WNSP. In connection therewith, Participant acknowledges and agrees as set forth above and as follows:

1. *****SUP IS AN INHERENTLY DANGEROUS ACTIVITY.***** The following risks and hazards, among others, may be encountered while engaging in SUP:
 - Falling from your stand up paddle board;
 - Being hit by a stand up paddle board;
 - Collisions with others engaged in SUP or their boards;
 - Other boat, jet ski, or swimming traffic;
 - Hitting the bottom of the lake, river or creek;
 - Exhaustion;
 - Dehydration;
 - Water pollution;
 - Sunburn;
 - Exposure to fish, seaweed, algae, and other forms of aquatic life;
 - Drowning.

2. **ASSUMPTION OF RISK.** Participant voluntarily assumes all risk of loss, damage, injury, or death that may be sustained by Participant or Participant’s property as a result of participating in SUP through or in connection with WNSP.

3. **FITNESS FOR PARTICIPATION.** Participant certifies, represents and warrants to WNSP that Participant is fit for SUP. Participant should not engage in SUP if Participant is pregnant, or suffers from any ailment or condition that might be triggered or exacerbated by strenuous exercise, exposure to sunlight, or being in or under water, including but not limited to:
 - any heart condition;
 - any back problem;
 - any condition resulting in loss of consciousness;
 - epilepsy or other any other condition characterized by seizure.

4. **INSURANCE.** Participant certifies, represents and warrants to WNSP that Participant has adequate insurance to cover any injury or damage Participant may sustain, cause or suffer while participating in SUP by or through WNSP.

5. **INDEMNIFICATION.** In consideration of being allowed to participate in SUP by or through WNSP, Participant shall and hereby does agree to indemnify, hold harmless and defend WNSP and its employees, volunteers, contractors, subcontractors, agents, governors, managers and members from and against any and all claims, causes of action, injuries, losses, liabilities, liens, damages, costs and expenses (including reasonable attorneys' fees), whether known or unknown (“**Claims**”), arising out of or in any way resulting from SUP or provision of SUP instruction, services or equipment to Participant by WNSP or its employees, volunteers, contractors, subcontractors, agents, governors, managers or members.

6. **WAIVER AND RELEASE.** Participant hereby waives, and forever releases WNSP and its employees, volunteers, contractors, subcontractors, agents, governors, managers and members from, any and all Claims arising out of or in any way resulting from SUP or provision of SUP instruction, services or equipment to Participant by WNSP or its employees, volunteers, contractors, subcontractors, agents, governors, managers or members.

7. **RESPONSIBILITIES OF PARTICIPANT.** While engaged in SUP by or through WNSP, Participant will use SUP equipment properly and obey all rules, regulations and directions of WNSP. In particular, Participant will abide by the directions contained in the attached SUP SAFETY: WAI NANI STYLE, which Participant has read and understands. Participant acknowledges that circumstances may arise that are beyond the control of WNSP. Participant shall at all times behave in a manner that does not endanger Participant or others.

8. **PERMISSION TO USE IMAGE.** Participant hereby grants to WNSP the right to use Participant's photographic and video images and audio recordings, and reproductions of the same, for any marketing, promotion or other commercial purpose as WNSP in its sole discretion sees fit, and without any compensation to Participant.

9. **GOVERNING LAW; JURISDICTION.** This Agreement shall be governed by and construed under the laws of the State of Minnesota, and, in the event of litigation involving this Agreement, Participant and WNSP hereby consent to the exclusive jurisdiction of and venue in the Fourth Judicial District Courts of the State of Minnesota venued in Hennepin County, Minnesota.

10. **ATTORNEYS' FEES.** The prevailing party in any proceeding brought to enforce the terms of this Agreement shall recover from the other party the prevailing party's reasonable attorneys' fees and costs incurred in bringing, prosecuting or maintaining such proceeding.

11. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of WNSP and Participant and their respective managers, governors, members, employees, volunteers, agents, representatives, successors, assigns, heirs, legatees, distributees, personal representatives and administrators.

12. **INTERPRETATION; SEVERABILITY.** Participant expressly agrees that this Agreement, and in particular the release, waiver and indemnification provisions hereof, is intended to be as broad and inclusive as permitted by the laws of the State of Minnesota. If any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Agreement, which shall continue to be enforceable.

13. **ENTIRE AGREEMENT.** This Agreement constitutes the full, complete and exclusive agreement between Participant and WNSP regarding the subject matter hereof, and cannot be amended or revoked except in a writing signed by Participant and WNSP.

Date: _____ 2020 _____

Participant's Name (Please Print)

Participant's Signature

(Or, if Participant is under 18 years of age, then Participant's parent or legal guardian must sign for, by and on behalf of Participant)

Participant's Address: _____

Participant's Phone: _____ Participant's Email: _____

SUP SAFETY: WAI NANI STYLE

1. Always Stand Up Paddleboard (SUP) and or Kayak with a companion
2. Avoid high wind conditions and off shore breeze
3. Be aware of changing weather conditions
4. Avoid paddling if waves are large or currents are strong
5. Wear a leash especially if water conditions require one
6. Avoid crowds –watch out for swimmers, kayakers, boats and divers
7. Keep out of beach swim areas
8. Fall AWAY from your board and paddle
9. Cover your head when you fall
10. Be aware of current and boat chop
11. Approach wakes or waves board nose first, fin back
12. Avoid waves hitting the SUP board from the side
13. Stay out of boat launch areas
14. If needing to enter a boat launch area, come in on knees
15. Learn to SUP on flat water
16. Don't surf the stand up paddleboard unless you are an experienced surfer
17. Wear a personal flotation device (PFD) at all times
18. Take a break when tired, sit or kneel on the board
19. Use care and caution when entering rocky areas
20. Use a hat and sunscreen
21. Stay hydrated
22. Be respectful of wildlife and water plants
23. Absolutely no littering

Return all equipment (board, paddle, PFD and leash) to Wai Nani Surf & Paddle staff. Do not leave on beach. Please rinse all sand and seaweed off board and paddle prior to return. Thank you!

*****DAMAGE RESPONSIBILITY*****

The renting party is responsible for immediate FULL REPLACEMENT VALUE and/or REPAIR COST of any stolen, damaged, and/or lost gear. Equipment must be returned in the same condition that it was rented. Important: It is the renter's responsibility to note any pre-conditioned damage prior to accepting rental gear.

Wai Nani Surf & Paddle OFF-SITE Rental Agreement

By Engaging in an Off-Site Wai Nani Surf & Paddle SUP Rental, the Customer Must Also Sign and Agree to the Following Terms and Conditions:

SIGNED CONTRACTS: All customers must read and sign the rental agreement contract before using any equipment. The contract may include a waiver of liability that waives certain rights and puts the responsibility on the renter.

HEALTH & FITNESS: All customers must be fit and healthy enough for the proposed activity. All Wai Nani Surf & Paddle participants or users of rental gear must have appropriate swimming abilities and are required to use a US Coast Guard Approved PFD and board leash (supplied by Wai Nani Surf & Paddle) while using the rental equipment.

SKILL LEVEL: Users should not attempt to operate any equipment they are not trained, skilled or qualified to use.

THIRD PARTY USE: Only persons who have signed the rental contracts and waivers may use the gear. Anyone intending to do instruction or teach a person using the rental gear, must be qualified to do so, and should have professional liability insurance appropriate to their training activity.

LOCAL RULES & WEATHER: All customers agree to follow the local rules and guidelines, including the water right of way rules, "rules of the road", and to always exercise discretion and caution when deciding when, where and how to ride. All customers should make themselves aware of prevailing weather conditions and stay informed about wind and weather related warnings or advisories.

BEFORE DECIDING TO ENGAGE IN ANY water related activity, it is strongly recommended that renters review the terms of their health/medical insurance in case of a sports related injury. Renters should be aware of the coverage and the limits to their personal liability insurance coverage in the event of an injury to another person or property.

PRE-PAYMENT REQUIRED: Wai Nani Surf & Paddle requires pre-payment in full of any off-site SUP rental.

DAMAGE DEPOSITS AND RESPONSIBILITY: The renting party is responsible for immediate **FULL REPLACEMENT VALUE and/or REPAIR COST** of any stolen, damaged, and/or lost gear. Equipment must be returned in the same condition that it was rented. A valid credit card is required for deposit requirements. Important: It is the renter's responsibility to note any pre-conditioned damage prior to accepting rental gear.

I, _____, agree to the conditions above set forth by Wai Nani Surf & Paddle and am proceeding with the equipment rental based on these conditions.

Renter Name (PRINT): _____ Date: _____ 2020 _____

Rental Date : _____ Rental Time: _____ Return: _____