

## ASSUMPTION OF RISK, WAIVER OF CLAIMS, AND RELEASE OF LIABILITY AGREEMENT

Participant Name: \_\_\_\_\_ Participant Date of Birth: \_\_\_\_\_

Province / Territory: \_\_\_\_\_ Email address: \_\_\_\_\_

Parent/Guardian Name: \_\_\_\_\_ Email address: \_\_\_\_\_  
(if the Participant is younger than 18 years old)

This is a binding legal agreement. Clarify any questions or concerns before signing.

This Agreement must be signed by the Participant and/or the Participant's parent/guardian (if applicable, when the Participant is younger than 18 years old) prior to participation.

The Participant acknowledges and agrees to the terms outlined in this document. When applicable, the Participant's parent/guardian acknowledges and agrees to the terms on behalf of the Participant and references in this document to the Participant agreeing to or acknowledging a risk or term is understood to be referring to the Participant's parent/guardian agreeing to or acknowledging the risk or term on behalf of the Participant.

### ACTIVITIES

The Participant is voluntarily participating in the spectating, orientation, instruction, activities, competitions, programs, and services (collectively the "**Activities**") of Dyl's Waterpark Inc. (o/a FunSplash Sports Park).

Dyl's Waterpark Inc. (o/a FunSplash Sports Park) and its owners, directors, officers, employees, contractors, volunteers, officials, participants, agents, sponsors, owners/operators of any facility or course used by Dyl's Waterpark Inc. (o/a FunSplash Sports Park), including representatives of the Niagara Peninsula Conservation Authority and the City of Hamilton, Ontario (collectively the "**Organization**") are not responsible for any injury, personal injury, damage, property damage, expense, loss of income or loss of any kind suffered by a Participant during or as a result of the Activities and/or, when the Participant is 18 years old or older, when caused by the negligence of the Organization.

### RISKS

The Activities have foreseeable and unforeseeable inherent risks, hazards and dangers that no amount of care, caution or expertise can eliminate, including without limitation, the potential for serious bodily injury, permanent disability, paralysis, and loss of life. These risks include:

- a) Health: executing strenuous and demanding physical techniques; physical exertion; overexertion; stretching; dehydration; fatigue; cardiovascular workouts; lack of fitness or conditioning; traumatic injury; sprains and fractures, spinal cord injuries, bacterial infections; rashes; and the transmission of communicable diseases, including viruses of all kinds, COVID-19, bacteria, parasites or other organisms or any mutation thereof
- b) Injuries such as death, serious neck and spinal cord injuries which may render the Participant permanently paralyzed or brain damaged; serious injury to virtually all bones, joints, ligaments, muscles, tendons and other aspects of the body; and concussions or other head injuries, including but not limited to, closed head injury or blunt head trauma
- c) Premises: defective, dangerous or unsafe condition of the facilities; collisions with objects, equipment or persons; and travel to and from the premises
- d) Use of equipment: mechanical failure of the equipment; deflated inflatables; negligent design or manufacture of the equipment; the provision of, or the failure by, the Organization to provide any warnings, directions, instructions or guidance as to the use of the equipment; failure to wear safety or protective equipment such as a life jacket; and failure to use or operate equipment within the Participant's own ability
- e) Forces of nature including lightning and weather conditions which may result in exposure to sun, dehydration, heatstroke, sunstroke or hypothermia
- f) Impact or collision with watercrafts, inflatables, water, or any other features within the facility; physical contact with other participants, employees, spectators, equipment, and hazards

- g) Advice: negligent advice regarding the Activities
- h) Ability: failing to act safely or within the Participant's own ability or within designated areas
- i) Water-related risks including drowning; extended time in water or underwater; entering the water by falling, sliding, diving or jumping; and boat capsizing and entrapment
- j) Insect bites, aggressive and/or poisonous marine life; and bacterial infections and rashes related to E.coli, blue green algae, etc. (known or unknown)
- k) The Participant's conduct and conduct of other persons including any physical altercation between participants
- l) Travel: travel to and from the Activities

The Participant accepts the inherent physical risks

COVID-19. The COVID-19 disease has been declared a worldwide pandemic by the World Health Organization and is extremely contagious. The Organization has put in place preventative measures to reduce the spread of COVID-19; however, the Organization cannot guarantee that the Participant will not become infected with COVID-19. Further, participating in the Activities could increase the Participant's risk of contracting COVID-19 or any other contagious disease.

COVID-19 Protocol. The Organization may develop COVID-19 protocols to which all participants must adhere. The Participant has reviewed the COVID-19 protocols and, when applicable, responded to any COVID-19 questionnaire or compliance declaration provided to the Participant by the Organization. The Organization has the discretion to remove the Participant from the Activities if the Participant does not comply with the protocols.

The Participant accepts the COVID-19 risks and the COVID-19 protocols

Negligence. The Organization may be negligent, which may include failure by the Organization to take reasonable steps to safeguard or protect the Participant from the risks, dangers and hazards associated with participation in the Activities.

The Participant accepts that the Organization may be negligent  
(check only if the Participant is 18 years old or older)

## TERMS

In consideration of the Organization allowing the Participant to participate in the Activities, the Participant agrees:

- a) That the Participant is not relying on any oral or written statements made by the Organization or their agents, whether in a brochure or advertisement or in individual conversations, to agree to participate in the Activities
- b) That when the Participant practices or trains in their own space, the Participant (or the Participant's parent/guardian, if applicable) is responsible for the Participant's surroundings and the location and equipment that is selected for the Participant
- c) That the Participant's mental and physical condition is appropriate to participate in the Activities and the Participant (or the Participant's parent/guardian, if applicable) assumes all risks related to the Participant's mental and physical condition
- d) To comply with the rules and regulations for participation in the Activities
- e) To comply with the rules of the facility or equipment
- f) That if the Participant observes an unusual significant hazard or risk, the Participant will remove themselves from participation and immediately bring their observations to a representative of the Organization
- g) The risks associated with the Activities are increased when the Participant is impaired and the Participant will not participate if impaired in any way
- h) That it is the Participant's (or the Participant's parent/guardian, if applicable) sole responsibility to assess whether any Activities are too difficult for the Participant. By the Participant commencing an Activity, the Participant (or the Participant's parent/guardian, if applicable) acknowledges and accepts the suitability and conditions of the Activity
- i) That COVID-19 is contagious in nature and the Participant may be exposed to, or infected by, COVID-19 and such exposure may result in personal injury, illness, permanent disability, or death

- j) That the Participant (or the Participant's parent/guardian, if applicable) is responsible for choosing the Participant's safety or protective equipment and the secure fitting of that equipment

### **ACTIVITIES STATUS**

The Participant (and the Participant's parent/guardian, if applicable) agrees that the Organization has the discretion to cancel or modify the structure of any Activities due to a public health or safety issue, which may include removing specific disciplines or age groups from a competition, changing a competition format, or changing the manner in which individuals become eligible to participate.

The Participant (and the Participant's parent/guardian, if applicable) agrees that the Organization may implement and enforce guidelines for participation that may include adhering to 'Return to Play' protocols, signing declarations of compliance, or requiring that personal protective equipment be worn by Participants (and their parents/guardians, if applicable). The Organization has the discretion to remove any Participant (and their parents/guardians, if applicable) who does not comply with the Return to Play protocols, sign a declaration, or wear personal protective equipment. When required, the Participant is responsible for providing their own personal protective equipment.

### **DISCLAIMER**

When the Participant is 18 years old or older, the Participant assumes all risks arising out of, associated with or related to, participation in the Activities and waives any and all claims that the Participant may have now or in the future against the Organization. The Participant, when 18 years old or older, accepts and fully assumes all such risks and possibility of personal injury, death, property damage, expense and related loss, including loss of income, resulting from participation in the Activities.

When the Participant is 18 years old or older, the Participant forever indemnifies and releases the Organization from any and all liability for any and all claims, demands, actions, damages (including direct, indirect, special and/or consequential), losses, actions, judgments, and costs (including legal fees) (collectively, the "Claims") which the Participant has or may have in the future, that might arise out of, result from, or relate to, participation in the Activities, even though such Claims may have been caused by any manner whatsoever, including but not limited to, the Organization's negligence, gross negligence, negligent rescue, omissions, carelessness, breach of contract and/or breach of any statutory duty of care of the Organization.

For all Participants. The Organization is not responsible or liable for any damage to the Participant's vehicle, property, or equipment that may occur as a result of the Activities. This Agreement is intended to be as broad and inclusive as is permitted by law of the Province of Ontario and if any portion thereof is held invalid, the balance shall continue in full legal force and effect. The Participant (or the Participant's parent/guardian, if applicable) agrees to file any lawsuit against the Organization in the Province of Ontario and further agrees that the substantive law of the Province of Ontario will apply with regard to conflict of law rules.

### **Image Consent**

The Participant grants permission to the Organization to photograph and/or record my image and/or voice on still or motion picture film and/or audio tape (collectively the "Images"), and to use this material to promote the Organization through the media of newsletters, websites, television, film, radio, print and/or display form and for factual information.

The Participant hereby assigns to the Organization all rights, title, and interest, including copyright, in and to any and all such Images and I hereby irrevocably authorize the Organization, without limitation, to reproduce, copy, sell, exhibit, publish, or distribute, in any medium now known or later developed, any and all such Images in perpetuity for the purposes expressed above.

The Participant further releases and forever discharges the Organization from any and all claims and demands arising out of or in connection with the use of said Images, including but not limited to any and all claims for invasion of privacy, defamation, or infringement of copyright.

### **ACKNOWLEDGMENT**

The Participant (and the Participant's parent/guardian, if applicable) acknowledges that they have read and understand this Agreement, that they have executed this Agreement voluntarily, and that this Agreement is to be binding upon themselves, their heirs, spouse, children, parents, guardians, next of kin, executors, administrators and legal or personal representatives. They further acknowledge that by signing this Agreement they have waived their right to maintain a lawsuit against the Organization on the basis of any claims from which they have released herein.

When the Participant is younger than 18 years old, the undersigned acknowledges and agrees that they are a parent/guardian of the Participant and have full legal responsibility for the decisions of the Participant.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Participant (if the Participant is 18 years old or older)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Parent/Guardian (if the Participant is younger than 18 years old)

SAMPLE