

LIABILITY WAIVER

WARNING: SIGNING THIS DOCUMENT AFFECTS YOUR LEGAL RIGHTS. DO NOT SIGN THIS DOCUMENT BEFORE FULLY READING IT, AND DO NOT SIGN IF YOU DO NOT UNDERSTAND IT.



Your full name

Your legal partner's full name
(if applicable)

Your signature

Signature of legal partner (if applicable)

Persons under 18 years of age

Date

1 BACKGROUND

- 1.1 If you complete and sign the above, you are entering into this document in favour of us. "we/us/our" refers to Boondooma Off Road Association Ltd trading as Manar Off Road Park A.B.N. 46 655 362 084 and its employees, officers, volunteers, agents, contractors and subcontractors.
- 1.2 The terms of this document are included in any contract between you and us for the supply of goods or services by us, including the provision of recreational services at Manar Off Road Park. That is the case whether the contract already exists when you sign this document, or comes into existence later.
- 1.3 The state laws of Queensland and federal laws of Australia govern this document and any contract between you and us for the supply of goods or services by us.
- 1.4 If any provision of this document is illegal or unenforceable or otherwise invalid, it is taken to be removed from this document and the balance of this document stands.

2 WARNING OF RISKS

- 2.1 There are inherent risks of participating in dangerous recreational activities at Manar Off Road Park. Inherent risks are risks that cannot be avoided by the exercise of reasonable care and skill.
- 2.2 There are obvious risks of participating in dangerous recreational activities at Manar Off Road Park. Obvious risks are risks to you that you could suffer harm which would be obvious to a reasonable person in your position and may include matters of common knowledge, things that may have a low probability of occurring or things that are not prominent, conspicuous or physically observable.
- 2.3 There are risks associated with equipment that you might use or come into contact with at Manar Off Road Park, such as motorbikes, quad bikes, all-terrain vehicles, four-wheel drives, cars and so on. We are not in control of all of the equipment that is used at Manar Off Road Park. Equipment may belong to riders and visitors to Manar Off Road Park or have been hired by riders or visitors. There is a risk that you could be injured or killed because of faults or defects in equipment or the way that equipment is used or if equipment is used by someone who has not been properly trained in how to use it.
- 2.4 There are risks connected with:

- (a) any form of physical exercise or physical exertion;
- (b) the normal, correct, safe, incorrect, accidental or reckless use of our facilities or equipment;
- (c) the normal, correct, safe, incorrect, accidental or reckless use or completion of any obstacle or object; and
- (d) any other form of goods or services provided by us at Manar Off Road Park.

2.5 The recreational activities at Manar Off Road Park are dangerous. Engaging in dangerous recreational activities may result in:

- (a) physical harm or personal injury including broken bones, soft tissue injuries, joint injuries, organ damage, permanent injury, permanent disability or death; and
- (b) psychological harm or injury.

2.6 Injury may occur as a result of your, other riders', other attendees' (including those not participating in any activities) and our staff's age, degree of competence, sophistication, experience, coordination, athletic ability, reaction time or ability to ride or drive any mode of transport. The following factors can also cause injury, either alone or in combination with other factors:

- (a) weather, including visibility (e.g. poor visibility or wet weather increases the risks of drivers or riders being in an accident);
- (b) degree of deterioration of our facilities (e.g. terrain is mostly natural trails and the trails can change as a result of the weather);
- (c) surface conditions and other physical conditions (e.g. a rider might not notice loose gravel or a stone or other obstacle or might not have the ability to successfully navigate it, thus causing an accident; or a rider might go onto terrain that they do not have the ability to successfully navigate, thus causing an accident); and
- (d) number of riders or participants engaging in the activities.

2.7 Injury may occur through a range of accidents and occurrences that could happen at a place like Manar Off Road Park, including but not limited to:

- (a) you or others causing or being involved in an accident involving you or others;
- (b) you or others observing someone else causing or being involved in an accident;
- (c) damage to your or our equipment or our facilities;
- (d) any failure to maintain your or our equipment or our facilities;
- (e) the incorrect use of your or our equipment or our facilities;
- (f) a failure by you or others to follow our instructions and directions;
- (g) negligent acts and omissions by you, us or others;
- (h) failures by you or others to avoid other people or hazards;
- (i) any failure to use appropriate protective equipment;
- (j) any failure to observe or obey all signs, warnings, and other rules (including those rules that relate specifically to the operating of bikes or vehicles); or
- (k) the use of alcohol, tobacco, recreational drugs or any other prescribed, legal or illicit drug that adversely affects cognitive or motor function (all of which are strictly prohibited while using our facilities and equipment).

2.8 You acknowledge and state that:

- (a) you are participating voluntarily at your own risk;
- (b) an adequate warning has been provided with respect to the risks at Manar Off Road Park;

- (c) those risks are being voluntarily assumed by you;
- (d) you are physically fit and have no condition or injury that could be affected by your participation in or observing recreational activities at Manar Off Road Park;
- (e) we may administer or coordinate the administration of medical treatment which may be considered necessary by us in the event of injury or illness that arises during any recreational activities, and you will indemnify us and promptly pay upon written demand the costs of any medical treatment required.

3 WAIVER

- 3.1 To the extent allowed by law, we exclude and you hereby release and waive, any right to make any claim (including on behalf of any person whom which you are legally responsible for) for any personal injury, death, aggravation or acceleration of injury or disease, psychological harm, economic or consequential loss, liability, expense or cost arising from:
- (a) any of the inherent risks associated with dangerous recreational activities at Manar Off Road Park;
 - (b) any of the obvious risks associated with dangerous recreational activities at Manar Off Road Park;
 - (c) any negligence by us;
 - (d) the negligence of any other invitees or third party;
 - (e) any breach of your obligations under this document or your other obligations to us;
 - (f) any failure to follow our instructions or directions;
 - (g) any damage, fault or defect connected with any vehicle, vehicle component, property, equipment or our facilities;
 - (h) any failure to maintain any vehicle, vehicle component, piece of property, equipment or our facilities;
 - (i) any failure to notify you of any damage, fault or defect connected with any vehicle, vehicle component, property, equipment or our facilities;
 - (j) any loss or damage to any personal property belonging to you, including while undertaking any dangerous recreational activities;
 - (k) any loss or damage that arises through a failure to avoid other people or hazards;
 - (l) any failure to use appropriate protective equipment;
 - (m) any failure to observe or obey all signs, warnings and other rules;
 - (n) the use of alcohol, tobacco, recreational drugs, or any other prescribed, legal or illicit drug that adversely affects cognitive or motor function; and
 - (o) any wilful damage, unlawful act or omission by you.

4 INDEMNITY

- 4.1 If you are signing this document as the legal guardian for someone else, and that other person is not bound by this document or something in it, you must indemnify us and keep us indemnified against any claim against us by that other person that would have been released and waived, or that the other person could not bring, if that other person had signed and was fully bound by this document.

5 AUSTRALIAN CONSUMER LAW

- 5.1 If you and we have entered into, or enter into, a contract for the supply of recreational services under the Australian Consumer Law, the following are excluded:

- (a) all of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (which includes consumer guarantees as to due care and skill, fitness for purpose and reasonable time for supply) are excluded from the contract;
- (b) you cannot exercise a right conferred by such a provision; and
- (c) we are not liable for a failure to comply with a guarantee that applies under that Subdivision to the supply, but only in relation to liability for:
 - (d) death;
 - (e) physical or mental injury of an individual (including aggravation, acceleration or recurrence of such an injury of the individual);
 - (f) the contraction, aggravation or acceleration of a disease of an individual; or
 - (g) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstances, occurrence, activity, form of behavior, conduct or situation in relation to an individual that:
 - (i) may be harmful or disadvantage to the individual or community;
 - (ii) may result in harm or disadvantage to the individual or community.

5.2 Also, the exclusions under clause 5.1 do not apply significant personal injury suffered by you that is caused by our reckless conduct (that is, conduct if we are aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to you or another person, that we engage despite the risk and without adequate justification).

5.3 To the extent that we supply any goods or services not ordinarily acquired for personal, domestic or household use or consumption and you are a consumer under the Australian Consumer Law:

- (a) we do not exclude or modify any condition, warranty or other obligation in relation to the supply that it is unlawful for us to exclude or modify; and
- (b) if allowed by law, our sole liability for breach of any such condition, warranty or obligation is limited to:
 - (i) the replacement of the goods or the supply of equivalent goods, or payment of the cost of replacing or acquiring equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of having the goods repaired;
 - (iv) the supply of the services again; or
 - (v) the payment of the cost of having the services supplied again.

5.4 To the extent that we supply any goods or services to you and you are not a consumer under the Australian Consumer Law then if allowed by law, our liability in connection with the supply or any failure to supply the goods or services is limited to the amount (or the aggregate of the amounts) (if any) payable by you for the goods or services.