

**RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT**

Tonys Tropical Tours on Maui LLC., a Hawaii limited liability company

**NOTICE: THIS RELEASE AND WAIVER AFFECTS YOUR LEGAL RIGHTS.**

**PLEASE READ IT VERY CAREFULLY AND UNDERSTAND IT BEFORE INITIALING OR SIGNING IT.**

Parents/Legal Guardians should initial on behalf of participating minors after discussing each section with them, indicating that both the Minor and the Parent/Legal Guardian agree to each section.

CUSTOMER NAME (Print): \_\_\_\_\_

If under 18, Name of Guardian: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

I, the above-named person, being above the age of eighteen (18) years, or the legal guardian of the above-named person who is under the age of 18 years (hereinafter referred to as "Minor") on behalf of myself, next of kin, heirs, guardians, assigns, personal representatives and estate (or those of the Minor if I am his/her Legal Guardian) and in consideration of the opportunity to participate in a tour around Maui (the "Activity") with Tonys Tropical Tours on Maui LLC, a Hawaii limited liability company (the "Company") do hereby acknowledge, promise, agree, and covenant with any and all people, companies, or organizations associated with the Company, their administrators, directors, agents, officers, members, volunteers, and employees, other participants, officials and, if needed, rescue personnel (collectively hereinafter referred to as the "RELEASEES") as follows:

**ACTIVITY DESCRIPTION**

Participating in a tour with the Company (the "Activity") involves being a car passenger on potentially dangerous and curvy roads, walking on slippery, uneven or otherwise dangerous terrain, and potentially adverse weather conditions. Participants will ride in a car for up to four (4) hours and walk up to one (1) hour at five (5) different potential sites around the island of Maui, with said sites being subject to change based on weather and other conditions.

**ACKNOWLEDGEMENT OF RISKS**

I FULLY UNDERSTAND AND ACKNOWLEDGE that: (a) Activity INVOLVES RISKS AND DANGERS OF SERIOUS BODILY INJURY INCLUDING BUT NOT LIMITED TO SERIOUS INJURY, PERMANENT DISABILITY, AND EVEN DEATH ("Risks"); (b) there is an inherent danger in the Activity that I am about to engage in voluntarily, including but not limited to: walking on rough or slippery terrain, road accidents or dangerous/inclement weather. I understand that my participation in the Activity may result in injury, death, or illness, physical or mental, or damage to my person and property and that no amount of care, caution, instruction or expertise can completely eliminate the inherent danger. I understand and acknowledge accidents may occur during the Activity; (c) during the Activity I may experience fatigue, chill and/or dizziness, which may diminish my reaction time and that of others and may therefore increase the risk of accident; (d) changing weather, rain and/or other conditions, slippery or otherwise dangerous walking terrain, my own inability to properly participate in the Activity or to follow rules and directions concerning the Activity and unforeseeable events may all contribute to the chances of accident, injury or death; (e) the Risks and dangers may be caused by my own actions or inactions, the actions or inactions of others participating in the Activity, the conditions in which the Activity takes place, or THE NEGLIGENCE OF THE RELEASEES; (f) there may be OTHER RISKS or SOCIAL AND ECONOMIC LOSSES either not known to me or not readily foreseeable at this time; (g) I FULLY ACCEPT AND ASSUME ALL SUCH RISKS AND ALL RESPONSIBILITY FOR LOSSES, COSTS, AND DAMAGES I incur as a result of my participation, or that of the minor, in the Activity.

**I have read this section, and initial to show that I understand and agree: \_\_\_\_\_**

**COVID -19 AND OTHER DISEASES**

I understand that despite reasonable efforts by the Company and/or Activity provider, there may be someone who is sick or has a contagious disease, such as COVID-19, and in consideration of participating in the Activity, I acknowledge the contagious nature of COVID-19 and other similar diseases, and that participating in the Activity with the Company involves the risk of injury to me, my family and/or anyone else who may come in contact with me and/or my family. By signing below, I accept and voluntarily assume all risks associated with my and my family's participation in the Activity with the Company, including, but not limited to, the risk that my family and I may be exposed to, come in contact with others infected with COVID-19 or other diseases, and that any such exposure or infection may result in personal injury, illness, permanent disability, and/or death. I agree to indemnify and hold the Company and all other Releases harmless against any and all claims (whether known or unknown), demands, damages (including physical and economic), rights of action or causes of action (collectively, "Claims"), from any person or entity, whether or not caused by the sole or partial negligence of the Released Parties, which may be incurred or sustained by any related parties which result from or arise out of (either directly or indirectly) me or my family's participation in the Activity. Further, to the fullest extent permitted by law, I, for myself, my family, my heirs, executors and administrators, hereby fully and forever covenant not to sue the Released Parties, and forever release and discharge the Released Parties from any and all Claims, whether or not caused by the sole or partial negligence of the Released Parties, in connection with my or my family's participation in the Activity. I understand and agree that this release includes any Claims based on the actions, omissions, or negligence of the Released Parties, and whether a COVID-19 infection or other disease occurs before, during, or after participating in the Activity.

**I have read this section, and initial to show that I understand and agree: \_\_\_\_\_**

**WARRANTIES**

I acknowledge, agree, and represent that I, or the Minor for whom I sign, understand the nature of the Activity and that I have no physical infirmity, chronic ailment, and or injury of any nature that would impact my, or the Minor for whom I sign, ability to participate in the Activity. I, or the Minor, am in good health and physically and mentally able to participate in the Activity. I further acknowledge that I, or the Minor for whom I sign, am not aware of pregnancy or any medical conditions, such as but not limited to heart, back or neck injuries or a predisposition to car or motions sickness that could be aggravated by participating in the Activity or that would prohibit my participation in the Activity; I, or the Minor for whom I sign, further agree and warrant that if at any time I believe conditions to be unsafe, I will immediately discontinue further participation in the Activity.

**I have read this section, and initial to show that I understand and agree: \_\_\_\_\_**

**MEDICAL EMERGENCY**

I hereby consent to receive medical treatment, for me and/or the Minor, including but not limited to, first aid and emergency transport, which may be deemed advisable in the event of injury, accident and/or illness during the Activity. I understand that the Activity that I am participating in may be conducted at sites that are remote from available medical assistance and nonetheless agree to proceed with such participation in spite of the possible absence of medical assistance. I further consent I will be personally responsible for the cost of any emergency or other medical care that I receive.

**I have read this section, and initial to show that I understand and agree: \_\_\_\_\_**

**RELEASE**

I hereby voluntarily release and forever discharge the Releasees from any and all liability, claims, demands, actions or rights of action, which are related to, arise out of, or are in any way connected with my participation in this Activity, including specifically, but not limited to, the negligent acts or omissions of the Releasees, for any and all injury, death, illness, or disease, and damage to my person and property. I agree, promise and covenant to hold harmless and indemnify the Releasees for any such injury, death, illness, disease or damage. I further agree, promise and covenant not to sue, assert or otherwise maintain or assert any claim against the Releasees for any injury, death, illness or disease, or damage to my property, arising from or connected with my participation in this Activity. I further agree and promise that if, despite this Release and Waiver of Liability, Assumption of Risk, and Indemnity Agreement, I, or anyone on my behalf, make a claim against any of the Releasees, I will indemnify, save and hold harmless each of the Releasees in conjunction with any injury, disability, death, loss or damage to person or property that may

occur as a result of engaging in the Activity as well as from any litigation expenses, attorney fees, loss liability, damage, or cost which may be incurred as the result of such claim and to reimburse them for any such expenses incurred. Furthermore, I consent to the use of my image in photos, videos, audio recording, and film by any of the organizers of the Activity in their sole discretion.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**JURISDICTION**

Notwithstanding the waiver of liability, release, indemnification and covenant not to sue, which I am signing, I hereby agree and confirm that any claim, action or dispute arising under this agreement or as a result of my participation in the Activity shall be commenced in the Second Circuit Court of the State of Hawaii.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**ENTIRE AGREEMENT**

I understand that this is the entire Agreement between me and the Releasees, and that it cannot be modified or changed in any way by the representations or statements of any employee or agent the Releasees, or by me.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

My signature below indicates that I have read this entire document or had it explained to me if I do not read or speak English, and that I understand it completely and agree to be bound by its terms.

\_\_\_\_\_

Date

\_\_\_\_\_  
Signature of Participant/ Parent / Legal Guardian

\_\_\_\_\_  
Signature of Witness