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Spectator & Volunteer Legal Liability Agreement 2017 Tough Mudder Event

Spectators & Volunteers: READ THIS DOCUMENT CAREFULLY BEFORE SIGNING. THIS DOCUMENT HAS LEGAL CONSEQUENCES AND WILL AFFECT YOUR LEGAL RIGHTS AND MAY ELIMINATE YOUR ABILITY TO BRING FUTURE LEGAL ACTIONS. IF YOU ARE A PARENT OR GUARDIAN OF A SPECTATOR UNDER THE AGE OF 18 WHO IS ATTENDING THE TOUGH MUDDER EVENT WITH YOU, BY AGREEING TO THIS DOCUMENT, YOU HEREBY GIVE APPROVAL FOR YOUR CHILD'S ATTENDANCE AT THE TOUGH MUDDER EVENT.

Parties

Released Parties include: International Management Group of America Pty Ltd (ABN 23 001 788 343) ("IMG"), TOUGH MUDDER PTY. LTD. (ACN 151 871 340) ("IMG") and affiliates, their respective directors, officers, employees, agents, contractors, insurers, spectators, co-participants, equipment suppliers, and volunteers; VENUE and its directors, officers, employees, agents, contractors, insurers, equipment suppliers, and volunteers; all event sponsors, organizers, promoters, directors, officials, property owners, and advertisers; governmental bodies and/or municipal agencies whose property and/or personnel are used; and any or all parent, subsidiary or affiliate companies, licensees, officers, directors, partners, board members, supervisors, insurers, agents, equipment suppliers, and representatives of any of the foregoing including but not limited to IMG.

Releasing Parties include: (referred in this agreement as "I") the spectator or volunteer as well as his or her spouse, children, parents, guardians, heirs, next of kin, and any legal or personal representatives, executors, administrators, successors and assigns, or anyone else who might claim or sue on the spectator's or volunteer's behalf.

Warning of Assumption of Inherent Risks: The Tough Mudder event (hereafter referred to as the "TM Event" and used to refer to the appropriate Tough Mudder, Mudderella or Tough Mudder Half event) is a hazardous activity that takes place in a dangerous and hostile environment. Spectators and volunteers, while not participating, may still be exposed to these risks. Some of the activities include runs, military style obstacles, going through pipes, traversing cargo nets, climbing walls, encountering electric voltage, swimming in cold water, throwing, carrying, or getting hit with heavy objects, and traversing muddy areas. The environment, the activities, and the competitive efforts of the participants can put spectators and volunteers at serious risk of injury. Some of the **inherent risks** to spectators and volunteers include, but are not limited to observation and bearing witness to the following or in some instances actual falls, tripping, uncontrolled landings, contact or collision with 1) persons or objects (e.g., collision with other spectators, course personnel, participants), motor vehicles or machinery, and natural or man-made fixed objects or obstacles; 2) obstacles (e.g., natural and man-made water, road and surface hazards, close proximity and/or contact with thick smoke, dust, gas, and/or open flames, barbed wire, pipes, and electric shocks); 3) weather-related hazards (e.g., extreme heat, extreme cold, humidity, ice, rain, fog); 4) inadequate first aid and/or emergency measures; and 5) judgment- and/or behavior-related problems (e.g., erratic or inappropriate behavior by participants, personnel, or other spectators, and errors in judgment by personnel working the event). I further understand and acknowledge that any of these risks and others, not specifically named, **may cause injury** or injuries that may be categorized as minor, serious, or catastrophic. Common **minor injuries** include, but are not limited to: scrapes, bruises, sprains, strains, muscle tension and soreness, nausea, cuts, sunburn, abrasions, grazes, lacerations, and contusions. Less common **serious injuries** also sometimes occur. They include, but are not limited to: property loss or damage, broken bones, fractures, torn or strained ligaments and tendons, concussions, exposure, dehydration, heat exhaustion and other heat-related illnesses, mental stress or exhaustion, infection, vomiting, dislocations, hyperthermia, hypothermia, anemia, electrolyte imbalance, loss of consciousness, syncope, dizziness, fainting, seizures, electric shock and/or injury, and neurological disorders/pain. **Catastrophic injuries** are rare; however, we feel that our spectators and volunteers should be aware of the possibility. These injuries can include, but are not limited to, permanent disabilities, stroke, single or multiple organ failure or dysfunction, physical damage to organs, spinal injuries, paralysis, heart attack, heart failure, blood cell disorder, brain swelling, and even death.

I understand fully the inherent risks of a spectator or volunteer for a TM Event. I have read the preceding paragraphs and acknowledge that I know, understand, and appreciate the risks of being a spectator or volunteer. I hereby assert that I knowingly assume all of the inherent risks of the activity and take full responsibility for any and all damages, liabilities, losses, or expenses that I incur as a result of my presence at the TM Event. In short, I acknowledge that I am participating in the TM Event entirely at my own risk.

Waiver of Liability for Ordinary Negligence: To the extent permitted by law I agree that under this agreement IMG and the other Released Parties shall be excluded from liability for ordinary negligence in the conduct of the TM Event and the application of any of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law and further IMG and the Released Parties shall be excluded from liability under any civil liability or consumer law applicable to the State in which this event is held subject to the exception that this exclusion of liability will not apply in circumstances where the conduct of IMG or its officers, servants or agents is reckless. In consideration of being permitted to be a spectator and/or volunteer in the TM Event, to the extent permitted by law, **I (on behalf of the Releasing Parties) hereby forever waive, release, covenant not to sue, and discharge IMG and the other Released Parties from any and all claims, actions, suits, demands, losses and other liabilities of any kind resulting from the INHERENT RISKS of the TM Event or the ORDINARY NEGLIGENCE of IMG (or other Released Parties) that I may have arising out of my presence at the TM Event. This waiver does not apply if the exclusion, restriction or modification would apply to significant personal injury suffered by a person that is caused by the reckless conduct of IMG.**

This agreement applies to 1) personal injury (including death, physical and/or mental injury) from incidents or illnesses arising from the TM Event which includes injury during course inspection, observation, obstacle participation, the event, medical treatment, Burn Zones, base area features and while on the premises (including, but not limited to base area, stands, sidewalks, parking areas, sponsor promotions, restrooms, first-aid tents, and dressing facilities); and 2) any and all claims resulting from damage to, loss of, or theft of property.

Indemnification Agreement: To the extent permitted by law, **I hereby agree to hold harmless, defend, and indemnify** (which for the avoidance of doubt includes defending and paying any judgment, court costs, investigation costs, attorney's fees, and any other expenses incurred that relate to a breach of this contract) **IMG (and the other Released Parties) from any and all claims made by me (or any Releasing Party) arising from injury or loss due to my participation in the TM Event.** This applies both to claims arising from the **inherent risks** of the TM Event or the **ordinary negligence** of IMG (or any Released Parties).

I further agree to hold harmless, defend, and indemnify (which for the avoidance of doubt includes defending and paying any judgment, court costs, investigation costs, attorney's fees, and any other expenses incurred that relate to a breach of this contract) **IMG (and the other Released Parties) against any and all claims of co-participants, rescuers, and others arising from my conduct** in the course of my participation in the TM Event.

Other Agreements

- 1) I understand that if Mediation and Arbitration prove unsuccessful and legal action is brought, the appropriate state or federal trial court for the country of Australia in the State or Territory that the TM Event is held has the **sole and exclusive jurisdiction** and that **only the substantive laws of the State or Territory in which the TM Event is held** shall apply.
- 2) I assert that this Agreement is intended to be **as broad and inclusive as is permitted** by the State or Territory in which the TM Event is held that if any provision shall be found to be unlawful, void, or for any reason unenforceable, then the remaining portions shall remain in full effect.
- 3) I affirm that this agreement supersedes any and all previous oral or written promises or agreements; constitutes the **entire agreement** between me and IMG; and can be amended only by a written document duly executed by all parties.
- 4) In the event of a legal issue, **I agree to engage in good faith efforts to mediate** any dispute that might arise. Any agreement reached will be formalized by a written contractual agreement at that time. Should the issue not be resolved by mediation or otherwise unresolved within sixty (60) days of IMG being notified by you of such issue, I agree that all disputes, controversies, or claims arising out of my participation in the TM Event **shall be submitted to binding arbitration** in accordance with the applicable rules of the Australian Centre for International Commercial Arbitration then in effect. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English and the number of arbitrators shall be one (1). The cost of such action shall be shared equally by the parties.
- 5) I agree that any arbitration, mediation or legal action shall proceed solely on an individual basis without the right for any claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. Claims may not be joined or consolidated unless agreed to in writing by all parties.

Limitations to Spectators and Volunteers: I understand that I have been granted permission to be a spectator or to serve as a volunteer for the TM Event. I understand that this DOES NOT GRANT ME PERMISSION TO PARTICIPATE in any part of the TM Event. I affirm that I have not paid the fee required to participate and recognize

SPECTATOR OR VOLUNTEER NAME

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LAST

that should I participate in any activity, IMG will eject me from the premises immediately and will, under no circumstances, be held responsible or liable for any injury which I may suffer while participating illegally.

Health-Related Permissions by Spectators and Volunteers: In the event of an injury or illness that renders me unconscious or incapable of making a medical decision, I authorize and give my consent to IMG personnel and emergency medical personnel at the event to make emergency medical decisions (including providing emergency medical treatment) on my behalf (including, but not limited to CPR). I further authorize IMG to secure reasonably necessary emergency medical care or transportation and I agree to **assume all costs** of emergency medical care and transportation.

FOR EVENTS HELD IN VICTORIA

Warning under the Australian Consumer Law and Fairtrading Act 2012 (Vic): Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you—

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the Australian Consumer Law and Fair Trading Act 2012, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012.

Entry and Participation Agreements

Rules: I agree to become familiar with and abide by all written, posted or communicated rules of IMG, as well as all written, posted or communicated rules of the Venue. I shall comply with all directions, instructions and decisions of IMG and Venue personnel. I further agree not to challenge these rules, directions, instructions, or decisions on any basis at any time.

Emergency Delay or Cancellation: I acknowledge that IMG at its sole discretion may delay, modify, or cancel the TM Event if conditions or natural or man-made emergencies make administering the event unreasonably difficult or unsafe. I agree that “emergency” is defined to mean any event beyond the control of IMG, including but not limited to: high wind, extreme rain or hail, hurricane, tornado, earthquake, flood, acts of terrorism, fire, threatened or actual industrial action, insurrection, war, public disaster, and unavoidable casualty.

Govern Participation: I understand that IMG has the authority to issue instructions or directions relating to the manner of my safe participation in the Course or Related Activities and the authority to halt my participation in the Course or Related Activities at any time they deem it necessary to protect the safety of participants, spectators, and personnel; and/or promote fairness and the spirit of IMG.

Removal from Course: I understand that IMG and Venue personnel may immediately **cause** anyone who disobeys any rules, directions, instructions, decisions, or laws, or whose behavior endangers safety or negatively affects a person, facility, or property of any type or kind, **to be removed from the Course.**

Fee Refunds: I understand that all fees and associated costs (including optional product purchases, spectator tickets, and donations), paid in registration for this TM Event are not refundable for any reason under any circumstances, including but not limited to injury, a scheduling conflict, and/or event cancellation.

Military: I understand that active duty or deployed military participants may be entitled to a refund on a case-by-case basis upon providing sufficient, official documentation regarding the deployment that conflicts with participating in the event.

Attitude and Behavior: I will behave appropriately at all times; demonstrate respect for all people, equipment, and facilities, and participate with a cooperative and positive attitude.

Alcohol & Drugs: I certify that I am not, and on the date of the TM Event will not be, under the influence of alcohol or any non-prescription drugs that would in any way impair my ability to safely participate in the TM Event. I understand that the consumption of any alcohol and any illicit or illegal drugs or substances during the TM Event is strictly prohibited. Tough Mudder will only allow the responsible consumption of alcohol after the TM Event. The consumption of any illicit or illegal drugs or substances before, during, and after the TM Event is strictly prohibited. I agree to take full responsibility for any alcohol consumption at the TM Event.

Specific Rules: I specifically acknowledge and agree to abide by the following rules: 1) no urination or defecation is permitted outside of designated areas; 2) no non-medically necessary wheeled conveyances or non-service animal pets are allowed in the Course at any time; 3) no clothing, props or equipment that pose an unnecessary risk to participants, spectators or personnel are permitted; and 4) I agree to obey civil and criminal laws including traffic laws.

Photography: I understand that any and all photographs, motion pictures, recordings, and/or likenesses of me captured during the TM Event by IMG, its affiliated entities or contractors, and/or the media become the sole property of IMG. I grant the right, permission and authority to IMG and its designees to use my name and any such photographs, motion pictures, recordings, and/or likenesses for any legitimate purpose, including but not limited to promoting, advertising, and marketing activities. I further understand that IMG and its designees have the full right to sell and/or profit from the commercial use of such photographs, motion pictures, recordings, and/or likenesses.

Majority Age: I affirm that I have reached majority age. Majority age is 18 in all States.

Acknowledgment of Understanding:

I have read this Assumption of Risk, Waiver of Liability, and Indemnification Agreement and fully understand its terms. I understand that I am giving up substantial rights, including my right to sue. I further acknowledge that I am signing the agreement freely and voluntarily, and intend my signature to be a complete and unconditional release of all liability due to ORDINARY NEGLIGENCE of IMG or the INHERENT RISKS of the activity, to the greatest extent allowed by law in the State or Territory in which the TM Event is held.

Signature

Print Name

Date

IF YOU ARE A PARENT OR GUARDIAN OF A SPECTATOR OR VOLUNTEER UNDER THE AGE OF 18 WHO IS ATTENDING THE TOUGH MUDDER EVENT WITH YOU PLEASE LIST THE NAMES OF THE CHILD SPECTATOR(S) OR VOLUNTEER(S) ATTENDING WITH YOU:

CHILD SPECTATOR/VOLUNTEER NAME(S):

1. _____
2. _____
3. _____

Name and Contact Information of a Party to Contact in Case of an Emergency:
