PARTICIPANT NAME	FIRST		LAST		P

PARTICIPANTASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT

2019 Tough Mudder Melbourne Event

PARTICIPANTS: READ THIS DOCUMENT CAREFULLY BEFORE SIGNING. THIS DOCUMENT HAS LEGAL CONSEQUENCES AND WILL AFFECT YOUR LEGAL RIGHTS AND WILL LIMIT YOUR ABILITY TO BRING FUTURE LEGAL ACTIONS.

NOTE TO MINORS: IF YOU ARE UNDER THE AGE OF 18, YOU MAY ONLY ATTEND THE TOUGH MUDDER EVENT ACCOMPANIED BY AN ADULT. YOUR PARENT OR GUARDIAN MUST REVIEWAND AGREE TO THE TERMS BELOW IN ORDER FOR YOU TO PARTICIPATE.

NOTE TO PARENTS/GUARDIANS OF MINORS: YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED, AND AGREED TO THE TERMS BELOW (SUCH TERMS BEING INTERPRETED AS IF THEY APPLIED TO BOTH YOU AND YOUR MINOR CHILD/WARD) AND HAVE THE LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR MINOR CHILD/WARD.

Released Parties include: International Management Group of America Pty Ltd (ABN 23 001 788 343) ("**IMG**"), **TOUGH MUDDER PTY. LTD.** (ACN 151 871 340) ("**TM Aus**") and their affiliates, directors, officers, employees, agents, contractors, insurers, spectators, co-participants, suppliers, and volunteers; VENUE and its directors, officers, employees, agents, contractors, insurers, 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 related bodies corporate, 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: the participant (referred to in this document as "I"), as well as participant's 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 participant's behalf.

…. Initial **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 meant to be an extreme test of toughness, strength, stamina, camaraderie, and mental grit that takes place in one place in one day. It is not a race against other contestants, but a competition with oneself and the course. Venues are part of the challenge and usually involve hostile environments that might include extreme heat or cold, snow, fire, mud, dust, and water. Some of the activities, in natural and/or manufactured environments, include but are not limited to 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, encountering dusty or gas-filled environments and traversing muddy areas. In summation, the TM Event is a hazardous activity presenting the ultimate physical and mental challenge to participants.

I acknowledge that the TM Event is an extreme test of my (and/or my participating minor child/ward's) physical and mental limits that carries with it inherent risks of injury (physical and/or mental). **Inherent risks** are risks that cannot be eliminated completely (without changing the challenging nature of the TM Event) regardless of the care and precautions taken by **IMG and the other Released Parties**. I understand that the TM Event is extremely strenuous and the accompanying risks and dangers are generally present. I understand that these hazards may be magnified with the TM Event often conducted under what may be extreme or stressful conditions and circumstances.

I understand and acknowledge that the **inherent risks include**, but are not limited to: 1) falls, tripping, uncontrolled landings, contact or collision with persons or objects (e.g., collision or contact with with spectators, course personnel, other participants, motor vehicles, machinery, natural or man-made fixed objects or obstacles); 2) encounter with natural and man-made obtacles with 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) equipment related hazards (e.g., broken, defective or inadequate competition equipment, unexpected equipment failure, imperfect course conditions); 4) weather-related hazards (e.g., extreme heat, extreme cold, humidity, ice, rain, fog); 5) inadequate first aid and/or emergency measures; 6) judgment- and/or behavior-related problems (e.g., erratic or inappropriate co-participant or spectator behavior, errors in judgment by personnel working the event); and 7) natural hazards (e.g., uneven terrain, rock falls, lightning strikes, earthquakes, wildlife attacks, contact with poisonous plants, snakes, spiders, marine life and/or ticks). Some water obstacles may contain water that has not been tested for chemicals, disease or other contamination.

I further understand and acknowledge that any of these risks and others, not specifically named, may cause injuries that may be categorized as minor, serious, or catastrophic. **Minor injuries** are common and include, but are not limited to: scrapes, bruises, sprains, nausea, and cuts. **Serious injuries** 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, eye irritations and/or injury, electric shock and/or injury, and neurological disorders/pain. **Catastrophic injuries** are rare; but are a 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, blood cell disorder, brain swelling, and even death.

I understand that it is my responsibility to inspect the course, facilities, equipment, and areas to be used, and if I believe or become aware that any are unsafe or pose unreasonable risks I will adjust my behavior appropriately and I will immediately notify appropriate personnel. I acknowledge that the time for me to inspect the course facilities, equipment and areas may be limited and IMG makes no warranty, express or implied, as to the safety or suitability of any obstacle at the beginning or throughout the event.

I fully understand the risks involved in the TM Event and assert that I (and/or my participating minor child/ward) am/are willingly and voluntarily participating in the event. I have read the preceding paragraphs and acknowledge that: 1) I know the nature of the TM Event; 2) I understand the demands of this activity relative to my physical condition; and 3) I appreciate the potential impact of the types of injuries that may result from the TM Event. I assert that I (and/or my minor child/ward to whom I have explained the inherent risks) knowingly assume all of the risks of the activity and take full responsibility for any and all damages, liabilities, losses, or expenses that I/we incur as a result of participating in the TM Event. In short, I (and/or my participating minor child/ward) am/are participating in the TM Event entirely at my own risk.

…. Initial **Waiver of Liability:** To the extent permitted by law (including the *Competition and Consumer Act 2010* (Cth), and the *Australian Consumer Law and Fair Trading Act 2012* (Vic) and in consideration of being permitted to participate in the TM Event, I agree (on behalf of the Releasing Parties) that the Releasing Parties will not make, take or seek any claim, counter claim, cross claim, action, proceeding, application, complaint, course or action, judgment or demand ("**Claims**") against IMG, TM Aus and any of the other Released Parties arising directly or indirectly out of or in connection with my (and/or my participating minor child/ward) attendance at, and participation in, the TM Event and I (on behalf of the Releasing Parties) unconditionally and irrevocably forever waive, release, covenant not to sue, and discharge IMG, TM Aus and the other Released Parties from and against any loss, liability, cost (including all legal costs and expenses on an indemnity basis), expense, damage, charge, penalty, outgoing or payment, however arising and whether present, unascertained, future or contingent and includes indirect and consequential loss ("**Loss**") arising directly or indirectly out of or in connection with my (and/or my participating minor child/ward) attendance at, and participation in, the TM Event

…. Initial **Indemnification Agreement:** To the extent permitted by law (including the *Competition and Consumer Act 2010* (Cth), *Australian Consumer Law and Fair Trading Act 2012* (Vic), I hereby agree to hold harmless, defend, and indemnify IMG, TM Aus and the other Released Parties from any and all Claims made against, or Loss suffered or incurred by, IMG, TM Aus and the other Released Parties and which arises directly or indirectly as a result of or in connection with my (and/or my participating minor child/ward) attendance at, and participation in, the TM Event.

…. Initial **Other Agreements**

Venue and Jurisdiction: 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.

Severability: I understand and agree that this Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be **as broad and inclusive as is permitted** by the State or Territory in which the TM Event is held and that if any provision shall be found to be unlawful, void, or for any reason unenforceable, then **that provision shall be severed from this Agreement and does not affect the validity** and enforceability of any remaining provisions. Furthermore, notwithstanding anything to the contrary contained within this Agreement, this Agreement will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any services pursuant to this Agreement of any provision of any Act of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia which by law cannot be excluded, restricted or modified.

PARTICIPANT NAME **FIRST** | | | | | | | | | | | | **LAST** | | | | | | | | | | | | | | | |

Entire Agreement: I affirm that this agreement supersedes any and all previous oral or written promises or agreements. I understand that **this is the entire Agreement** between me and IMG and **cannot be modified or changed** in any way by representations or statements by any agent or employee of IMG. This Agreement may only be amended by a written document duly executed by all parties.

Mediation and Arbitration: 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 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.

Class Actions: 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.

I understand that IMG reserves the right to refuse my application to register at any time for capacity/field limit, safety, insurance or any other reason.

…. Initial **Agreements for the Protection of Participants:**

- I (and/or my participating minor child/ward) am/are **in good health** and in proper physical condition to safely participate in the TM Event. I certify that I (and/or my participating minor child/ward) have **no known or knowable physical or mental conditions** that would affect my/our ability to safely participate in the TM Event, or that would result in my/our participation creating a risk of danger to myself or to others.
- I acknowledge that IMG recommends and **encourages each particpant to get medical clearance** from his/her personal physician prior to participation.
- I (and/or my participating minor child/ward) **have not been advised or cautioned against participating** by a medical practitioner.
- I understand that it is my responsibility to continuously **monitor my own (and/or my participating minor child/ward's) physical and mental condition during the Course**, and I agree to withdraw immediately and to notify appropriate personnel if at any point my/our continued participation would create a risk of danger to myself or to others.
- In the event of an injury to me that renders me (and/or my participating minor child/ward) unconscious or incapable of making a medical decision, **I authorise and give my consent to IMG and emergency or medical personnel at the event to make emergency medical** decisions (including providing emergency medical treatment) on my (and/or my participating minor child/ward's) behalf (including but not limited to CPR).
- I authorize IMG to **secure emergency medical care or transportation** when reasonably necessary (at my cost and expense).
- I acknowledge that IMG has instituted its **rules for the protection** of the participant and co-participants. I (and/or my participating minor child/ward) agree to familiarize myself/ourselves with those rules and follow them at all relevant times. I also recognize the authority of IMG to halt my/our participation (and, if necessary, have me removed from the premises) if my/our participation, conduct, or presence endangers myself or my co-participants.

Liability Exclusions. I acknowledge and agree that the TM Event constitutes a recreational service within the meaning of section 139A of the Competition and Consumer Act 2010 (Cth) and section 22 of the Australian Consumer Law and Fair Trading Act 2012 (Vic) as the TM Event is (i) a sporting event or similar leisure time pursuit; and/or (ii) other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purpose of recreation, enjoyment or leisure.

Provisions of the Competition and Consumer Act 2010 (Cth) and Australian Consumer Law and Fair Trading Act 2012 (Vic) imply certain guarantees into contracts for the supply of certain goods and services, such as warranties that services will be rendered with due care and skill and that goods supplied will be reasonably fit for purpose.

By signing this agreement I agree that:

- the application of Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law (Victoria)* and the *Australian Consumer Law* are excluded;
- all rights under Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law (Victoria)* and the *Australian Consumer Law* are excluded; and
- all liability of the Released Parties for a failure to comply with a guarantee under Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law (Victoria)* and the *Australian Consumer Law* is excluded,

in relation to the supply of recreational services under this agreement and to the extent any liability is in respect of:

- death;
- physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- the contraction, aggravation or acceleration of a disease; or
- the coming into existence, aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual: (i) that is or may be harmful or disadvantageous to an individual or the community; or (ii) that may result in harm or disadvantage to an individual or the community.

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* (Vic), 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* (Vic) 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* (Vic) and section 22(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

Acknowledgment of Understanding: I have read this Assumption of Risk, Waiver of Liability, Indemnification Agreement, and the Liability Exclusions and fully understand its terms. I am 18 years or over and I understand that I (and/or my participating minor child/ward) am/are giving up substantial rights, including my/our right to sue. I further acknowledge that I (and/or my participating minor child/ward) am/are signing the agreement freely and voluntarily, and intend my signature to be a complete and unconditionally release of all liability due to ORDINARY NEGLIGENCE of IMG (and other Released Parties) or the INHERENT RISKS of the activity, to the greatest extent allowed by the laws in force of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia in which the Event is held.

_____ _____ _____

Signature Print Name Date