

M/V FeBRINA
WAIVER OF CLAIMS, EXPRESS ASSUMPTION OF THE RISK, RELEASE OF
LIABILITY, AND INDEMNITY AGREEMENT (“WAIVER AGREEMENT”)

FOR COMPULSORY USE BY ALL GUESTS-PASSENGERS-SWIMMERS-SNORKELERS-SKIN DIVERS-SCUBA DIVERS.

PLEASE READ THIS DOCUMENT CAREFULLY AND BE AWARE: BY SIGNING THIS AGREEMENT YOU ARE WAIVING SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE.

In consideration of permitting me to be a guest, passenger, swimmer, snorkeler, scuba diver, skin diver and/or to participate in the Activities, as defined below, and conducted by PETER A. HUGHES (the individual), SUN DANCER, LTD., DANCER INTERNATIONAL, LTD., PETER HUGHES DIVING, INC., and WALINDI PLANTATION DIVE CRUISES PTY, LTD. and/or their principals, directors, officers, employees, agents, affiliates, subsidiaries, parents, facilities, (hereinafter, the “Releasees”), for myself, _____ (Insert Your Name here) my personal representatives, heirs, administrators, executors, successors, assigns and next of kin:

A. I acknowledge and agree:

1. That being a GUEST or PASSENGER on a boat or vessel, a SNORKELER, SKIN DIVER and/or a SCUBA DIVER and/or engaging in swimming, snorkeling, skin diving and/or scuba diving activities, dive boat use, equipment use and/or other water sports (the “Activities”), are inherently potentially hazardous, risky and dangerous activities and involve the risk of property damage and/or serious injury and/or death.

2. That the Activities are physically strenuous and I will be exerting myself. I am aware of the dangers of breath-holding while engaging in the Activities and will not hold Releasees responsible for any and all of such injuries as I may receive as a result of holding my breath. Even though I may follow all appropriate and safe practices associated with the Activities, there is still a risk of my sustaining decompression sickness, embolism, hyperbaric injuries and/or other injuries, and I expressly assume the risk of any or all of said injuries. On this open water diving trip and tour, I will be at a remote location and there may be no immediate medical and/or hyperbaric care available to me, and I expressly assume the risk of engaging in the Activities in such a remote location.

3. That any and all such injuries received may be compounded or increased by negligent rescue operations, or procedures, of the Releasees, or others, and I agree that this Waiver Agreement extends to all acts of negligence by Releasees including, but not limited to negligent rescue operations and is intended to be as broad and inclusive as permitted by the laws governing the Province or State or Country in which the Activities are conducted.

4. That I understand I have given up substantial rights by signing this document. I am aware of its legal consequence, and have signed it freely and voluntarily, without any inducement, assurance, or guarantee being made to me. I intend my signature to be a complete and unconditional release of all liability, to the greatest extent allowed by law; and

B. I represent and agree:

5. That I am of legal age and am competent to sign this Waiver Agreement or, if not, that my parent or legal guardian shall sign on my behalf, or has given written consent to my signing this document, and that my guardian or parent completely understands and concurs with this Waiver Agreement.

6. That I will inspect my snorkeling and/or scuba diving equipment prior to engaging in the Activities and that I will notify the Releasees if any of the equipment is not working properly. I will not hold Releasees responsible for any injuries received as a result of my failure to inspect the equipment and/or to notify Releasees of any equipment that is not working properly prior to engaging in the Activities.

7. That I have, and will furnish, my own equipment and be responsible for its good order and operating condition, regardless of where I obtain it. Prior to each dive, I will check my own equipment and my buddy’s equipment to ensure proper function, completeness and familiarity. I do not expect my equipment to be inspected by anyone else.

8. If I do obtain any equipment from any of the RELEASEES, I accept the equipment as is. RELEASEES accept no responsibility for any defect in any of the equipment of Releasees and do not warrant that it is suitable for any particular purpose. I agree that the use of any such equipment is entirely at my own risk. I shall return any equipment so obtained in good order and opening condition and shall be financially liable for any breakage or deviations there from.

9. That, in executing this Waiver Agreement, I am not relying upon any oral or written representations or statements made by the Releasees, or others, except as what is set forth in this Waiver Agreement; and

C. I assure and agree:

10. That I am physically and mentally fit to engage in Activities. I am not under the influence of any drug, alcohol, or medications that are contraindicative of engaging in the Activities.

11. That I am a certified diver and I am cognizant of all of the inherent dangers, hazards and risks associated with the Activities, and of all applicable basic safety rules; and

D. I understand and agree:

(WAIVER AND RELEASE)

12. Freely and voluntarily, forever, to release, discharge, waive and relinquish, in favor of the Releasees, any and all claims, demands or causes of action, whether matured or unmatured, foreseen or unforeseen, arising from, or in connection with, any of the Activities including, without limitation, those for or relating to accident, personal injury, illness, theft, property damage and/or wrongful death occurring to me, arising out of, relating to, or as a result of my engaging in the Activities, wherever and however such injuries, damages or death may occur and for whatever period of time the Activities may continue, whether caused by negligence of Releasees or otherwise.

- IMPORTANT NOTE - YOU MUST COMPLETE AND SIGN PAGE 3 -

13. That, under no circumstances will I, or my estate, sue Releasees, and I agree that, under no circumstances, will I, or my heirs, executors, administrators and assigns prosecute or present any claim for personal injury, illness, theft, property damage or wrongful death against Releasees, as a result of the Releasees' negligence or otherwise.

(ASSUMPTION OF RISK)

14. Expressly to assume, without any limitation, full responsibility for any and all risks of bodily injury, condition, ailment, sickness, heart attack, panic attack, hyperventilation, allergic reaction, animal attack or bite, animal, plant or chemical envenomization, wrongful death or property damage, now and forever, arising out of, or related to, or as a result of my participation in the Activities, weather and climactic conditions, acts of God, acts of war or terrorism, any and all other activities related to, arising from or involving the vessel, or any other related operations, whether foreseen or unforeseen, and whether caused by negligence of the Releasees, or otherwise.

15. I voluntarily accept any and all additional risks, and I am fully prepared to pay any and all expenses related to evacuation and recompression chamber treatment, should same be deemed necessary by myself and/or any of the RELEASEES, and should same be available.

(INDEMNIFICATION)

16. Expressly agree to indemnify, defend, save and hold harmless the Releasees from any loss, liability, damage or cost that they may incur, now and forever, arising out of, or related to, or as a result of, my participation in the Activities and/or any other related operations, whether caused by the negligence of Releasees, or otherwise.

17. That, if any provision of this document is found to be unenforceable or invalid, that provision shall be severed from this contract. The remainder of this Waiver Agreement shall then be construed as though the unenforceable provision had never been contained in this document and shall remain in full force and effect.

(PRESERVATION OF NATURE CLAUSE)

18. To leave all land, surface and sub-surface sites of the Activities undisturbed. I will not willfully damage, collect or remove any live animal, shellfish, fish, coral and/or items pertaining to shipwrecks, including fixtures, from their present marine environment or ecosystem. I shall bear full responsibility and financial liability for any violations of this provision.

19. That this Waiver Agreement shall be governed, interpreted, construed, enforced and determined according to the laws of Papua New Guinea.

20. That, despite the foregoing prohibition against suing Releasees, if any lawsuits are filed against RELEASEES, such lawsuits shall be adjudicated only in the courts or tribunals of Papua New Guinea, to the exclusion of any other courts or tribunals. In any such lawsuits, dismissals or judgments in favor of all, or any of, the Releasees shall entitle the Releasees to recover reasonable attorneys' fees, costs and disbursements from the Plaintiff(s) who brought such lawsuits.

SIGNATURE SECTION

I, _____, RESIDING AT _____, IN THE TOWN OF _____, STATE OF _____, ZIP CODE _____, SAY AS FOLLOWS:

a. I KNOW THAT THIS TWO (2) PAGE DOCUMENT IS MUCH MORE THAN A RECEIPT. I KNOW IT IS A WAIVER AND RELEASE AGREEMENT. I KNOW I AM GIVING UP SUBSTANTIAL LEGAL RIGHTS.

Answer: YES _____ NO _____

b. I HAVE READ THIS TWO (2) PAGE DOCUMENT FROM BEGINNING TO END?

Answer: YES _____ NO _____

c. I KNOW WHAT THIS TWO (2) PAGE DOCUMENT IS THAT I AM SIGNING?

Answer: YES _____ NO _____

d. WHAT IS THIS TWO (2) PAGE DOCUMENT WHICH YOU ARE SIGNING?

Answer: _____
(Write here "WAIVER AGREEMENT")

e. DO YOU MAKE THE FOUR (4) "LETTERED" STATEMENTS OR ANSWERS TO THE QUESTIONS PRINTED ABOVE AND DO YOU INTEND THAT THE PARTIES WHOM YOU ARE RELEASING SHALL RELY UPON THE STATEMENTS AS THE TRUTH?

Answer: YES _____ NO _____

f. DO YOU UNDERSTAND THAT SIGNING THIS DOCUMENT SERVES TO RELEASE AND WAIVE SUBSTANTIAL RIGHTS OR CLAIMS YOU MAY OTHERWISE HAVE HAD FOR DAMAGES AND FORBIDS YOU TO SUE?

Answer: YES _____ NO _____

g. IN ORDER TO SHOW THAT YOU KNOW WHAT YOU ARE DOING, PLEASE COPY, IN YOUR OWN HANDWRITING, IN THE SPACE IMMEDIATELY FOLLOWING, THE ANSWER YOU WROTE IN ITEM "d" ABOVE.

THEREFORE, I AM SIGNING MY NAME IMMEDIATELY ABOVE THE WORDS "THIS IS A RELEASE AND WAIVER" SET FORTH BELOW, TO SHOW THAT I MEAN EVERYTHING THAT IS SAID, AND ALL THAT I HAVE SAID, IN THIS DOCUMENT.

SIGN HERE:

THIS IS A RELEASE AND WAIVER

WITNESSED BY: _____
NAME: _____
ADDRESS: _____
DATED: _____