

**W A I V E R**

**RELEASE OF LIABILITY, PROMISE NOT TO SUE, ASSUMPTION OF RISK AND AGREEMENT TO  
PAY CLAIMS**

Activity: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Activity Date(s) and Time(s): \_\_\_\_\_

Activity Location(s), Premises or Facility(ies): \_\_\_\_\_

In consideration for being allowed to participate in this Activities and/or use of the Premises or Facility, on behalf of myself and my next of kin, heirs and representatives, **I release from all liability and promise not to sue** the State of California, the Trustees of the California State University, California State University, [add Campus name], and their employees, officers, directors, volunteers and agents (collectively "University") and the [add Auxiliary Organization name] and their employees, officers, directors, volunteers and agents (collectively "Auxiliary Organization") from any and all claims, **including claims of the University's or Auxiliary Organization's negligence** resulting in any physical or psychological injury (including paralysis and death), illness, property damage or economic or emotional loss I may suffer because of my participation in this Activity, including travel to, from and during the Activity.

I am voluntarily participating in the Activity. I am aware of the risks associated with traveling to, from and participating in the Activity, which include but are not limited to physical or psychological injury, pain, suffering, illness, disfigurement, temporary or permanent disability (including paralysis), economic or emotional loss, death and/or property damage. I understand that these injuries or outcomes may arise from my own or other's actions, inaction, negligence, conditions related to travel, or the condition of the Activity Location(s). **Nonetheless, I assume all related risks, both known or unknown to me, of my participation in this Activity, including travel to, from and during the Activity.**

I agree to hold the University and Auxiliary Organization harmless from any and all claims, including attorney's fees or damage to my personal property that may occur as a result of my participation in this Activity, including travel to, from and during the Activity. If I need medical treatment, I agree to be financially responsible for any costs incurred as a result of such treatment. I am aware and understand that I should carry my own health insurance.

I am 18 years or older. **I understand the legal consequences of signing this document, including (a) releasing the University and the Auxiliary Organization from all liability, (b) promising not to sue the University and the Auxiliary Organization, (c) and assuming all risks of participating in the Activity, including travel to/from and during the Activity.**

I understand that this document is written to be as broad and inclusive as legally permitted by the State of California. I agree that if any portion is held invalid or unenforceable, I will continue to be bound by the remaining terms.

I have read this document, and I am signing it freely. No other representations concerning the legal effect of this document have been made to me.

Participation Signature: \_\_\_\_\_

Participant Name (Print): \_\_\_\_\_ Date: \_\_\_\_\_

***If Participant is under 18 years of age:***

I am the parent or legal guardian of the Participant. **I understand the legal consequences of signing this document, including (a) releasing the University and the Auxiliary Organization from all liability on my and the Participant's behalf, (b) promising not to sue on my and the participant's behalf, (c) and assuming all risks of the Participant's participation in this Activity, including travel to/from an during the Activity.** I allow Participant to participate in this Activity. I understand that I am responsible for the obligations and acts of Participant as described in this document. I agree to be bound by the terms of this document.

I have read this two-page document, and I am signing it freely. No other representations concerning the legal effect of this document have been made to me.

\_\_\_\_\_  
Signature of Minor Participant's Parent/Guardian

\_\_\_\_\_  
Name of Minor Participant's Parent/Guardian (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Minor Participant's Name

# AORMA Recommended Waiver - Handbook

## 1. Introduction

Releases of liability (“release”) are legal forms designed to transfer responsibility for injuries and property damage from one party to another. A properly administered release can protect the Auxiliary Organization and its employees from liability for injuries that occur to students or other individuals who participate in auxiliary activities on and off campus. A release is a valid and reliable legal tool under California law and should be used to provide a level of protection from liability for accidents, activities carrying certain inherent risks, and in certain circumstances the negligence of the Auxiliary Organization’s employees.

Auxiliary Organizations are responsible for conducting programs and activities in a manner that does not impose an unreasonable risk of loss or injury. If an Auxiliary Organization sponsors activities which involve risks of injury or damage to property and does not obtain a signed release, the Auxiliary Organization may be unnecessarily exposing itself to costly claims or lawsuits. The Auxiliary Organization would also be missing an opportunity to inform participants about the risks associated with an activity or event. Although these agreements are primarily legal tools, they also serve an educational purpose by making participants aware of potential risks. Often providing participants with this information is all that is necessary to avoid preventable accidents.

## 2. Release of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims

### A. Purpose

The *Release of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* signed prior to participation is considered a contract in which the participant agrees to excuse the Auxiliary Organization and CSU from fault or liability for losses associated with the activity in exchange for the opportunity to participate.

### B. Elements

The AORMA Committee has developed the *Release of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* that contains the following elements:

- A *release of liability and promise not to sue* if any loss results from participation in the activity.
- An *express assumption of risk* where the participant acknowledges understanding the nature of the activity and the risks involved, and chooses voluntarily to accept those risks.

- A *hold harmless agreement* where the participant agrees not to hold the Auxiliary Organization or CSU responsible for any loss that may result from participation in the activity.
- An *indemnification* where the participant agrees to pay the Auxiliary Organization and CSU for any losses it may suffer as a result of the participant's participation in the activity.

### 3. Permission Slips

A permission slip requires a parent or guardian to give consent for a minor child to participate in an activity. Although permission slips provide a defense against claims that the Auxiliary Organization infringed upon the parent or guardian's authority over their child, permission slips do not absolve the Auxiliary Organization of liability if a loss occurs during the activity.

### 4. Informed Consent

The *Release of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* developed by the AORMA Committee contains the elements found in an informed consent. An informed consent transfers liability from the Auxiliary Organization and CSU for risks identified in the consent. The participant, parent or guardian who signs the consent acknowledges that he or she has read and understood the risks and agrees not to hold the Auxiliary Organization or CSU responsible for any harm that results from the risks listed. However, because the Auxiliary Organization or CSU may not be protected if a loss occurs due to a risk not listed on the consent, it should not be used in lieu of the approved waiver.

### 5. Procedures/Strategies for Risk Management

While a release is an important risk management tool, it should not be relied upon solely to reduce the exposure to risk. The Auxiliary Organization bears responsibility for conducting its activities and events in a manner that reasonably protects the health and safety of students or other participants. For this reason, the following risk control measures should be utilized in addition to the use of a release:

- a. Conduct a risk assessment of the program/activity prior to the commencement of the activity.
- b. Inspect facilities and equipment for safety hazards frequently and take action to correct. Document actions taken.
- c. Train staff in emergency response procedures such as first aid and CPR.
- d. Train staff and participants on how to properly use facilities and equipment.
- e. Develop and enforce policies and procedures that minimize risk.
- f. Design programs that reflect the relevant safety standards of the given activity.
- g. Consider purchasing or requiring others to purchase appropriate insurance coverage as applicable.

## A. Instructions

Those responsible for organizing an auxiliary-sponsored activity for which the *Release of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* is required should provide participants with the release sufficiently in advance of the activity to give each prospective participant a chance to read and consider the document. They should also inform participants if an alternative assignment is available and what steps to take to participate in the alternative assignment. Use a separate release for each participant.

Before distributing the release, insert the time, location and description of the activity. Be very detailed. For example, if the activity involves two or more locations, write down each location such as “the Getty Museum in Los Angeles and Angel Stadium in Anaheim.” If the event consists of two or more activities, include each activity such as “swimming, biking and mountain climbing.” Providing more details allows participants to better understand the risks involved and provides additional protection to the Auxiliary Organization and CSU. Although the preference is that releases should be signed on an event-by-event basis, participants may sign for multiple events over a period of time so long as each event is mentioned and described in the release and the risks presented by each event are similar.

Case law in California describes how releases should be printed, including their layout and font size. For this reason, do not change the format of the release in any way without prior legal review. Releases cannot be included as the “fine print” in a larger publication such as a brochure. They must be printed and viewed as a separate document. This separation makes it harder for participants to claim later on that they didn’t know what they were signing.

General language has been provided to inform the participant of the types of losses that may occur. Any additional information you wishes to furnish about an activity such as expected weather conditions or any specific risks in addition to bodily injury, damage to property, liability to others, and/or damage to property of others associated with the activity should be presented separately from the release. However, do not make any representations to those signing the release concerning the legal effect of signing the document.

Anyone who refuses to sign a release shall not be allowed to participate in the activity. The opportunity to participate is exchanged for the agreement to release the Auxiliary Organization and CSU from liability for injury or property damage that may result from participation. Occasionally someone signs the release after crossing out certain portions that they do not like or adding words to modify the release. This is not acceptable.

## B. Electronic Signatures

Electronic signatures and acknowledgements can only be used if Government Code §16.5 and California Code of Regulations §22000 are adhered to and the student's / participant's signature and acknowledgement can be authenticated and a copy of the authentication and process can be produced upon request. It is recommended that Auxiliary Organization utilize existing security applications and access protocol when establishing an electronic signature process.

Electronic signatures and acknowledgements cannot be used for minors. Waivers signed by parent/guardians, must be a hard copy with "wet" signatures.

The electronic signature or acknowledgement must be stronger than simply clicking "I Agree". It should require the full name of the participant that is signing along with an acknowledgement by the participant that by clicking/checking the subject electronic signature button, that they have read, understood and are accepting the waiver.

If these additional electronic safeguards can't be initiated, then the use of a paper waiver / release with a "wet" signature must be used.

Waivers sent with an electronic signature or acknowledgement should be stored in electronic form. It is sensible to regularly backup or store waivers that are in electronic form on other media (i.e. burning to a CD) in case of hard drive failure.

### **C. Minors and Foreign Language**

Participants under 18 years of age must obtain their parent/guardian's signature prior to participating in an activity. Because the participant's parent or guardian signs the release, there is no requirement to also have the participant sign the agreement, however a good practice would be to have the minor read and sign the waiver as well.

There is no legal requirement to provide releases in languages other than English. In general, California courts have held that releases written in English signed by adults who cannot read English are valid. If a potential participant advises that they do not understand the release document, they should not be allowed to participate until the release is understood, accepted and executed.

### **D. Retention and Storage**

Releases must be stored for at least three years after an activity ends. Documents signed by a parent or guardian on behalf of a minor must be retained for at least three years after an activity ends or until the minor turns twenty, whichever is longer. Departments or units who sponsor an activity requiring a release should store the release by activity date in alphabetical order by participant name. Doing so greatly expedites retrieval if a release is needed for a legal proceeding. If space becomes a problem, releases can be

stored electronically in lieu of the signed original, but we recommend keeping wet signatures for two years if possible.

## **6. Conclusion**

Releases of liability and informed consents represent a complex area of contract law. This handbook is general and is intended only to provide basic information. Your Auxiliary Organization should consult its counsel to respond to any questions or to assist in the use of releases and informed consents as part of the risk management process.