



## **Liability Waiver for Guests of New Day Dairy, LLC (aka, New Day Dairy GuestBarn)**

### **PARTICIPANT AGREEMENT**

#### **WAIVER OF LIABILITY, INDEMINFICATION, AND HOLD HARMLESS AGREEMENT**

**Waiver of Liability:** In consideration for receiving permission to stay at New Day Dairy's GuestBarn and participate in a tour of New Day Dairy, I, on behalf of myself, my family members, my heirs, personal representatives, or assigns, do hereby agree to RELEASE, WAIVE, DISCHARGE, AND COVENANT NOT TO SUE New Day Dairy LLC, located at 31000 175<sup>th</sup> St., Clarksville, IA 50619, their members, agents, volunteers, or employees (hereinafter referred to as FARM) from any and all liability, claims, demands, actions, and causes of action whatsoever arising out of or related to any loss, damage, or injury, including death, that may be sustained by me, or to any property belonging to me, while participating in such activity, while in, on or upon the premises where the activities are being conducted, REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE ORDINARY NEGLIGENCE (ACTIVE OR PASSIVE) OF FARM.

AND that except in the event of the FARM's gross and willful negligence, I agree not to bring any claims, demands, actions and causes of action, and/or litigation, against the FARM for any economic and noneconomic losses due to bodily injury, death, and/or property damage sustained by me in relation to the premises and operations of the FARM.

**Assumption of Inherent Risks:** I am fully aware and understand there are inherent risks involved in agricultural and agritourism activities, which risks include, but are not limited to, bodily injury, physical harm and even death to participants and spectators from touring the farm which may occur in normal participation of such activities. I acknowledge that the operation of equipment, harvesting of produce, behavior of any animal, and customary agricultural or agritourism activities conducted at a farm is contingent to some extent upon the ability of the operator and participant. Further, I understand that "inherent risks of agriculture activities" shall mean those dangers or conditions which are an integral part of agricultural and agritourism activities, including, but not limited to:

- operation of farming equipment and machinery that may result in injury, harm, or death to persons on or around such implements;
- dangers of being in areas marked Do Not Enter, Off Limits to Customers, or any other methods

to demonstrate that specific areas are off-limits;

- the propensity of any animal to behave in ways that may result in injury, harm, or death to persons on or around them and/or damage to personal property in their vicinity;
- the unpredictability of an animal's reaction to such things as sounds, sudden movements and unfamiliar objects, persons or other animals;
- certain hazards such as surface and subsurface objects;
- exposure to biological, environmental, and chemical hazards;
- hazards related to climbing ladders, repetitive movements (such as cultivating or picking produce), and exposure to outdoor weather conditions;
- limited availability of emergency medical care; and
- the potential of any participant or spectator to act in a negligent manner that may contribute to injury to the participant or others.

I understand that FARM does not require me to participate in this activity. I voluntarily assume full responsibility for any risks of loss, property damage, or personal injury, including death, that may be sustained by me, or any loss or damage to personal property owned by me, as a result of being engaged in such an activities, WHETHER CAUSED BY THE ORDINARY NEGLIGENCE OF FARM or otherwise, to the fullest extent allowed by law.

**Use of Substances:** I am fully aware that illegal substances are not permitted on the property or during any activities. Smoking may only occur at designated locations and alcoholic beverages must be consumed responsibly and only in the GuestBarn and accompanying patio/garden area. I fully agree to abide by this rule. If I do not abide by this rule, I surrender my permission to be on FARM and agree to leave the property immediately.

**Indemnification:** I also AGREE TO INDEMNIFY AND HOLD HARMLESS the FARM from any loss, liability, damage, or costs, including court costs and reasonable attorneys' fees that FARM may incur due to my participation in said activities, whether caused by FARM's ordinary negligence or otherwise, to the fullest extent allowed by law.

**Acknowledgements, Assertions, and Agreements:** I warrant that a full and fair disclosure of my ability to participate in the above noted activities have been made, and further:

**Health Status** – I assert that:

- I do not have any undisclosed chronic physical or mental conditions that would contra-indicate my participation in agricultural or agritourism activities; and
- I possess sufficient physical fitness and skill to enable safe participation.

**Emergency Care** – I authorize or agree:

- For the administration of emergency first aid, CPR, and use an AED as may be deemed necessary;
- For FARM to secure emergency medical care or transportation (i.e., EMS) as may be deemed necessary; and
- To assume all costs of emergency medical care and transportation for myself and/or minor child(ren).

### **Rules & Safety Equipment –**

- I agree to abide by the rules and regulations established by FARM; and
- I acknowledge that the FARM is conducting all activities in good faith and may find it necessary to terminate my participation if it is determined that I am incapable of safely meeting the rigors of the activity. I accept the FARM's right to take such actions for the safety of myself, other participants, and/or the animals on the premises.

**Covenant not to Sue; Mediation; Venue; and Severability Clauses:** I covenant not to sue FARM for any present or future claim arising directly or indirectly from my participation at the FARM. This includes claims resulting from the inherent risks of agricultural and agritourism activities and the active or passive negligence of the FARM.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Iowa. Any action brought under this Agreement shall be brought within one (1) year of the incident or dispute giving rise to said claim in a court of competent jurisdiction in the County of Butler County. I further agree that prior to litigation, such incident or dispute shall first be mediated by a trained Mediator knowledgeable in agricultural or agritourism activities from a list acceptable to the FARM. Costs of mediation shall be shared equally by the parties. In the event of litigation, the prevailing party shall be entitled to costs and fees associated with the litigation, including reasonable attorney fees and reimbursement of any mediation fees.

I also expressly agree that this Participant Agreement is intended to be as broad and inclusive as permitted by the laws of the State of Iowa and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

**IN BOOKING NEW DAY DAIRY GUESTBARN, I ACKNOWLEDGE AND REPRESENT THAT I fully understand these terms and conditions. I understand that I am giving up substantial rights, including my right to sue FARM for injuries resulting from the inherent risks of agricultural or agritourism activities or the active or passive negligence of FARM. I further acknowledge that I am freely and voluntarily booking the GuestBarn, and intend my booking to be a complete and unconditional release of all liability, including that due to ordinary negligence by FARM, to the greatest extent allowed by the laws of Iowa, for all of those in my party.**