

# **RELEASE OF LIABILITY, ASSUMPTION OF RISK, WAIVER OF CLAIMS, INDEMNIFICATION & BINDING ARBITRATION AGREEMENT**

**Notice** – By signing this document you may be waiving certain legal rights, including the right to sue.

## **Release and Waiver of Claims; Assumption of the Risk; Indemnification Agreement**

In consideration of being allowed to use the facilities and participate in Mountaineering/Rock Climbing/Hiking/Snowshoeing/Lodging and other activities (collectively the “Activities”) provided by Adirondack Rock & River Guide Service Inc. and Edward M. Palen (the “Host”), the Participant, and the Participant’s parent(s) or legal guardian(s) if the Participant is a minor, do hereby agree, to the fullest extent permitted by law, as follows:

- 1) **TO WAIVE ALL CLAIMS** that they have or may have against the Host arising out of the Participant’s participation in the Activities or the use of any equipment provided by the Host (“Equipment”), including while receiving instruction and/or training;
- 2) **TO ASSUME ALL RISKS** of participating in the Activities and using the Equipment, even those caused by the **negligent** acts or conduct of the Host, its owners, affiliates, operators, employees, agents, officers, and/or any entity to which the Host owes a contractual indemnification obligation. The Participant and his/her parent(s) or legal guardian(s) understand that there are inherent risks of participating in the Activities and using the Equipment, which may be both foreseen and unforeseen and include serious physical injury and death;
- 3) **TO RELEASE** the Host, its owners, affiliates, operators, employees, agents, officers, and/or any entity to which the Host owes a contractual indemnification obligation from all liability for any loss, damage, injury, death, or expense that the Participant (or his/her next of kin) may suffer, arising out of his/her participation in the Activities and/or use of the Equipment, including while receiving instruction and/or training. The Participant and his/her parent(s) or legal guardian(s) specifically understand that they are releasing any and all claims that arise or may arise from any **negligent** acts or conduct of the Host, its owners, affiliates, operators, employees, agents, officers, and/or any entity to which the Host owes a contractual indemnification obligation, to the fullest extent permitted by law. However, nothing in this Agreement shall be construed as a release for conduct that is found to constitute gross negligence or intentional conduct; and
- 4) **TO INDEMNIFY** the Host, its owners, affiliates, operators, employees, agents, officers, and/or any entity to which the Host owes a contractual indemnification obligation, from all liability for any loss, damage, injury, death, or expense that the Participant (or his/her next of kin) may suffer, arising out of participation in the Activities and/or use of the Equipment, including while receiving instruction and/or training.

## **Photography/Video Release**

Participant hereby grants to the Host, its representatives, and employees the right to take **photographs/videos of Participant** in connection with Participant’s participation in the Activities. Participant hereby authorizes the Host to copyright, use, and publish the same in print and/or electronically. Participant hereby agrees that the Host may use such photographs of Participant for any lawful purpose, including but not limited to publicity, illustration, advertising, and Web content.

## **Personal Responsibility**

**The Participant and his/her parent(s) or legal guardian(s) certify that Participant has no physical or mental condition that precludes him/her from participating in the Activities and that he/she is not participating against medical advice.**

**The Participant and his/her parent(s) or legal guardian(s) understand that Participant’s participation in the Activities is voluntary and further understand that they have the opportunity to inspect the Host’s Equipment and facilities before any participation.**

**The Participant and his/her parent(s) or legal guardian(s) understand that Participant is obligated to follow the rules of the Activities and that he/she can minimize his/her risk of injury by doing so and through the exercise of *common sense* and by being aware of his/her surroundings.**

**If, while participating in the Activities, the Participant or his/her parent(s) or legal guardian(s) observe any unusual hazard or condition, which they believe jeopardizes Participant’s personal safety or that of others, Participant and/or his/her parent(s) or legal guardian(s) will remove Participant from participation in the Activities and immediately bring said hazard or condition to the attention of the Host.**

**Binding Arbitration**

The Participant, and the Participant's parent(s) or legal guardian(s) if the Participant is a minor, hereby agrees to submit any dispute, claim, or controversy, relating to and/or arising from (a) this Release of Liability, Assumption of Risk, Waiver of Claims, Indemnification & Binding Arbitration Agreement, (b) Participant's participation in the Activities, and/or (3) any other interaction between the Participant and the Host, including the determination of the scope or applicability of this agreement to arbitrate, to binding arbitration. For such disputes, there shall be a three-member arbitration panel, consisting of two party-appointed arbitrators (one arbitrator to be appointed by each party) and one neutral arbitrator (collectively, the "Panel"), to be chosen by the party-appointed arbitrators. In the event that the two party-appointed arbitrators are not able to agree on a third, neutral arbitrator, the neutral arbitrator shall be appointed by the United States District Court, for the district in which the Activities occurred. Each party shall pay its own costs, including the costs associated with the party-appointed arbitrators, and the parties shall share equally the costs associated with the neutral arbitrator. The arbitration proceeding shall proceed in the State and County where the Activities occurred, and shall be governed by the Federal Rules of Evidence. The Panel shall establish a reasonable and appropriate discovery schedule to expeditiously resolve this matter. As a threshold matter, the Panel shall confirm whether the Waiver and Release contained in this Agreement are enforceable under applicable law. Judgment on the Award may be entered in any court having jurisdiction over the parties and controversy. Participant and the Host specifically intend this Binding Arbitration provision to survive in the event that any other portion of this Agreement is held invalid. **NOTICE TO PARTICIPANT: By signing this Agreement, you are giving up your right to commence litigation against the Host in a court of law, and you are giving up your right to a trial by jury.**

To the extent that any portion of this Agreement is deemed to be invalid under the law of the applicable jurisdiction, the remaining portions of the Agreement shall remain binding and available for use by the Host and its counsel in any proceeding.

I HAVE READ AND UNDERSTAND THIS AGREEMENT AND I AM AWARE THAT BY SIGNING THIS AGREEMENT I MAY BE WAIVING CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE.

Participant's Name (Printed): \_\_\_\_\_

Participant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Parent/Guardian's Name (Printed): \_\_\_\_\_

Parent/Guardian's Signature: \_\_\_\_\_ Date: \_\_\_\_\_