

Participant's Name: _____

Release of Liability, Waiver of Claims, Indemnification, and Arbitration Agreement for NC Outdoor Adventures, LLC.

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

Release and Waiver of Claims; Indemnification Agreement

In consideration of being allowed to use the facilities and participate in programs and events at NCOA, the Participant, and the Participant's parent(s) and 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 NCOA arising out of the Participant's participation in the programs or the use of any equipment provided by NCOA. The Participant and his/her parents 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 NCOA, its owners, affiliates, operators, employees, agents, and officers, 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;
- 2) TO ASSUME ALL RISKS** of participating in the Programs and using the Equipment, even those caused by the negligent acts or conduct of NCOA, its owners, affiliates, operators, employees, agents, and officers. The Participant and his/her Parents or legal guardian(s) understand that there are inherent risks of participating in the Programs and using the Equipment, which may be both foreseen and unforeseen and include serious physical injury and death;
- 3) TO RELEASE** NCOA, its owners, affiliates, operators, employees, agents, and officers 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 Programs and use of the Equipment, including while receiving instruction and/or training ; and
- 4) TO INDEMNIFY** NCOA, its owners, affiliates, operators, employees, agents, and officers, from all liability for any loss, damage, injury, death, or expense the Participant (or his/her next of kin) may suffer, arising out of his/her participation in the Programs and use of the Equipment.

Arbitration

The Participant, and the Participant's parent(s) or legal guardian(s), if Participant is a minor, hereby agrees to submit any dispute arising from participation in the Programs, for which Participant intends to seek damages in excess of \$75,000.00, to binding arbitration. Submission shall be unlimited. 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. The neutral arbitrator shall be an officer or director of any entity that operates an outfitter and guide climbing or backpacking service in the United States. 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, utilizing the selection criteria for the neutral as set forth above. 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 county and state in which the Programs occurred shall be governed by the Federal Rules of Evidence. The Panel shall establish a reasonable and appropriate discovery schedule to expeditiously resolve this matter. In the event that Participant, or the Participant's parent(s) or legal guardian(s), if Participant is a minor, files a lawsuit in any court relating to, and/or arising from, Participant's participation in the Programs, Participant and/or the Participant's parent(s) or legal guardian(s), by signing this document, stipulate to a cap on Participant's damages of \$75,000.00, exclusive of interest and costs. As a threshold matter, the Panel, or the Court (if a lawsuit is filed), shall confirm whether the Waiver and Release contained in this Agreement are enforceable under applicable law.

Photography/Videography Release

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

Personal Responsibility

The Participant certifies that he/she has no physical or mental condition that precludes him/her from participating in the Programs and that he/she is not participating against medical advice. If activity booked states "must have swim ability" as a requirement participant certifies that he/she is able to swim or has otherwise informed guide prior to trip outing.

The Participant certifies that he/she fully understands that if they leave a booked outing early they accept complete responsibility of themselves and are no longer under the care or supervision of NCOA staff.

If helmets are recommended for use while participating in the Programs, and Participant chooses not to wear a helmet, he/she does so at his/her own risk and accepts full responsibility for any injury that results.

The Participant understands that his/her participation in the Programs is voluntary and further understands that he/she has the opportunity to inspect NCOA's equipment and location before any participation.

The Participant understands that he/she is obligated to follow the rules of the Programs 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 Programs, the Participant observes any unusual hazard, which he/she believes jeopardizes his/her personal safety or that of others, he/she will remove himself/herself from participation in the Programs and immediately bring said hazard to the attention of NCOA.

I, _____ (parent or legal guardian), hereby agree that I will explain to my child that the risk of injury while participating in the Programs can be reduced by following the rules and through the use of *common sense* and *good judgment*.

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 this Agreement shall remain binding and available for use by NCOA 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.

Parents or guardians must also sign if the Participant is UNDER 18.

Participant's Signature: _____ Date: _____

Parent/Guardian Signature: _____ Date: _____

Phone Number: _____ Email Address: _____