



BOULDERING TERMS AND CONDITIONS, WAIVER, RELEASE OF LIABILITY, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT

(this "Agreement")

THESE TERMS AND CONDITIONS APPLY TO THE PARTICIPANT'S USE OF THE "PARKS" (AS THE TERM IS DEFINED UNDER THE *NIAGARA PARKS ACT*, RSO 1990, C.3) OR ANY LANDS IN WHICH THE NIAGARA PARKS COMMISSION HAS ANY INTEREST IN, PURSUANT TO THE PERMIT ISSUED TO THE PARTICIPANT BY THE NIAGARA PARKS COMMISSION. THIS IS AN ABSOLUTE AND UNCONDITIONAL RELEASE OF LIABILITY, ASSUMPTION OF RISKS, AND INDEMNITY AGREEMENT. PLEASE READ IT CAREFULLY BEFORE SIGNING. BY SIGNING, YOU WILL GIVE UP SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ALSO ACKNOWLEDGE THAT YOU HAVE READ AND COMPLIED WITH THE CONTENTS OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY ALL THE TERMS SET OUT IN IT. YOU ACKNOWLEDGE THAT THE ACTIVITIES (AS DEFINED HEREIN) INVOLVE MANY SERIOUS RISKS AND DANGERS, INCLUDING, BUT NOT LIMITED TO, INJURY, ILLNESS, DISABILITY AND DEATH.

DESCRIPTION OF BOULDERING ACTIVITIES

The Bouldering Activities (the "Activities") referred to in this Agreement include, but are not limited to, bouldering on outdoor climbing structures with natural hand holds and the use of boulders for body support. The Activities take place in the Niagara Glen, which is the property of The Niagara Parks Commission (hereinafter referred to as "NPC").

The Participant agrees to participate in the Activities in accordance with the Bouldering Rules, in which they are referred to as the "boulderer". The Participant understands that they will be permitted to participate in the Activities only if they have been issued a permit, paid the necessary fee to obtain a non-transferable and non-saleable permit and otherwise comply with the Bouldering Rules, and the Rules and Regulations of the NPC as set out in the *Niagara Parks Act*.

In consideration of the Participant being permitted to participate in the Activities, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. The Participant understands that they must supply all necessary climbing and other equipment, and protective gear. The Participant acknowledges that they are strongly encouraged to wear helmets, and that those under the age of 18 must be accompanied by a parent or guardian while participating in bouldering. **All participants are also strongly encouraged to be accompanied by another person who can act as a "spotter" and seek help in case of emergency as cellular phone coverage in Niagara Glen (where the Activities will take place) is intermittent.**
2. The Participant agrees to participate in the Activities in accordance with the Bouldering Rules and understands that their participation is non-transferable and non-saleable. The Participant acknowledges and accepts that NPC reserves the right to amend or cancel the Activities, or change the Bouldering Rules, at any time without notice.

ASSUMPTION OF RISKS, WAIVER OF CLAIMS, RELEASE OF LIABILITY AND INDEMNITY AGREEMENT

3. The Participant is aware that participation in the Activities involves many serious risks and dangers, including, but not limited to, injury (including, but not limited to, broken bones, muscular injuries, sprains, cuts, dislocations, abrasions and bruises), illness, disability and death. These can result from a variety of factors, including but not limited to, falls; fatigue; overexertion; exhaustion; heart problems; medical illnesses and emergencies; dehydration; weather conditions; exposure to the elements; visibility conditions; terrain; collisions with other participants, and man-made and natural objects; falling objects, accidents, medical problems, and other hazards; equipment failures or malfunctions; and other participants' errors. The Participant acknowledges that the failure to wear a helmet may increase the risk of injury, illness, disability and death. The Participant acknowledges that they will be entirely responsible for ensuring their own safety while participating in the Activities, and that there will be no NPC personnel or staff supervising or instructing them. Furthermore, The Participant acknowledges that there will not be a physician or other medical personnel nearby in the event that they become injured or ill. Because of the location of the Niagara Glen and the Activities, medical help may be some considerable distance and time away in the event of a medical emergency. As well, the Participant understands that cellular phone coverage in the Niagara Glen (where the Activities will take place) may be intermittent, thus interfering with or preventing the ability to seek help in the event of an emergency. The Participant agrees that their participation in the Activities is entirely voluntary, and they knowingly and freely assume all such risks and dangers.
4. **The Participant agrees as follows, on behalf of themselves and their personal representatives, estate, heirs, next of kin, executors, administrators and assigns:**
 - a. **to waive any claims that the Participant has now or may have in the future against NPC, His Majesty the King in the Right of the Province of Ontario (hereinafter referred to as "Ontario"), and their respective commissioners, directors, officers, employees, guides, agents, subcontractors, suppliers, sponsors, representatives, successors and assigns (collectively, the "Releasees") in any way relating to or arising in connection with their registration for and/or participation in the Activities (including, without limitation, relating to injury, accident, illness, disability, death, loss, damage or expense of any kind), for any reason whatsoever, including, without limitation, the negligence or breach of contract of the Releasees or any other participant in the Activities;**
 - b. **to fully discharge, release and hold harmless the Releasees from and against any and all liability, claims, causes of action, actions, suits, contracts, proceedings, demands, damages, entitlements, dues and debts of any kind (including costs and expenses related thereto) that the Participant has now or may have in the future against the Releasees in any way relating to or arising in connection with their registration for and/or participation in the Activities (including without limitation relating to injury, accident, illness, disability, death, loss, damage or expense of any kind), for any reason whatsoever, including, without limitation, the negligence or breach of contract of the Releasees or any other participant in the Activities;**

- c. **to not make any claim or commence or maintain any action or proceeding against any third party which might be entitled to claim contribution or indemnity or other relief over against the Releasees under the provisions of any statute or otherwise, in respect of any matter released by this Agreement; and**
- d. **to defend, indemnify and hold harmless the Releasees from any and all liability, claims, causes of action, actions, suits, contracts, proceedings, demands, damages, entitlements, dues and debts of any kind (including costs and expenses related thereto)** in any way relating to or arising in connection with the Participant's negligence or any act or omission of the Participant in any way relating to or arising in connection with the Participant's registration for and/or participation in the Activities, including but not limited to the injury, illness, disability or death of any other person(s) and/or damage to or loss of their property, provided that (i) the Releasees shall be entitled to participate in the defense of such claim and to employ counsel at the Participant's expense to assist in the handling of such claim, (ii) the Participant will obtain the prior written approval of the Releasees before entering into any settlement of such claim or ceasing to defend against such claim, and (iii) where the Participant fails to acknowledge their indemnification obligation or to assume the defense of any claim in a timely manner, the Releasees shall have the right to defend the claim in such manner as they may deem appropriate, at the Participant's cost and expense (including payment of any judgment or award and the costs of settlement or compromise of the claim);

provided that in each case any liability, claim, cause of action, action, suit, contract, proceeding, demand, damage, entitlement, dues or debt in any way relating to or arising in connection with any breach of applicable privacy legislation shall be excluded from the above provisions of this Section 4.

DECLARATION

- 5. The Participant hereby declares, represents and warrants that:
 - a. They are in good health and physical condition and are not suffering from any physical disability or illness and are not on any medication that might reasonably be expected to adversely affect their ability to safely participate in the Activities or interfere with or adversely affect their participation in the Activities. The Participant has also been suitably trained in the Activities.
 - b. This declaration is to the best of the Participant's knowledge and belief a true and accurate statement of the facts contained herein.
 - c. The Participant has read, is in compliance with and will comply with and agree to be bound by, the Bouldering Rules and the *Niagara Parks Act* and its regulations.



OTHER TERMS OF THIS AGREEMENT

6. This Agreement shall be effective and binding on the Participant's personal representatives, estate, heirs, next of kin, executors, administrators and assigns, in the event of their death or incapacity.
7. The Releasees may assign this Agreement without the Participant's prior consent.
8. The Participant agrees that NPC is acting as agent and trustee for the other Releasees in accepting in favour of them the provisions of this Agreement in favour of the Releasees and agree that NPC may enforce such provisions of this Agreement for, in favour of, and on behalf of any of such Releasees.
9. In entering into this Agreement, the Participant is not relying on any oral or written representations or statements made by the Releasees other than set forth in this Agreement.
10. This Agreement shall be governed by the laws of the Province of Ontario and the Participant hereby attorns to the exclusive jurisdiction of the Courts of the Province of Ontario in respect of the determination of any matter or dispute arising under or in respect of this Agreement.
11. In the event that any provision or term of this Agreement is held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
12. This Agreement (and its counterparts) may be executed and delivered by electronic means, including by electronic signature, and any such electronic signature shall be deemed to be an original signature for all purposes. The Participant agrees that an electronic signature, whether digital or encrypted, is intended to authenticate this Agreement and shall have the same force and effect as a manual signature. The Participant acknowledges and agrees that this Agreement, when executed electronically, shall be legally binding and enforceable. For greater certainty, the electronic acceptance of this Agreement (including typing my name in a designated signature field or otherwise indicating my acceptance through an electronic process) shall constitute valid execution and delivery of this Agreement.