

NOAH'S ARK WHITEWATER RAFTING COMPANY PARTICIPANT RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT

In consideration of the services of Noah's Ark Whitewater Rafting Company, its agents, owners, officers, volunteers, participants, employees, related or affiliated companies, including specifically (but not limited to) d/b/a Noah's Ark Adventure Company, LLC, Browns Canyon Adventure Park of Colorado, LLC, Eremos Properties, LLC and all other persons or entities contracted by any of these companies or acting in any capacity on its behalf (hereinafter collectively referred to and defined as "N.A."), I hereby agree to forever release, hold harmless and discharge from liability N.A. on behalf of myself, my parents, my heirs, assigns, personal representative and estate as follows:

1. Inherent Risks I acknowledge that any adventure activity such as rafting/canoeing or ropes/zip/challenge courses entails known and unanticipated risks that could result in physical or emotional injury, death, or damage to myself, my property or to third parties. I understand and acknowledge that the enjoyment and excitement of adventure activities is derived in part from inherent risks incurred by activity beyond the accepted safety of life at home or in my normal day to day activities and that these inherent risks contribute to my enjoyment and excitement and are an integral reason for my participation in these activities. I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. **I acknowledge that I AM ULTIMATELY RESPONSIBLE for my own safety during my participation in N.A. events/activities.** I also understand and acknowledge that failing to use or properly use safety type equipment increases my risk of injury or of not surviving an accident or incident while participating in adventure activities.

The inherent risks associated with the **rafting, canoeing, or water related activities** (hereinafter "boating") in which I am about to participate in include, but are not limited to: encountering whitewater rapids and changing water flows; and the possibility that I will be jolted, jarred, bounced, thrown to and fro and shaken about during rides through some of these rapids or changing water flows; it is possible that I could be injured if I come in contact with food boxes, oars, paddles, other storage containers, or other fixed equipment necessary to the operation or outfitting of the boat; there may be errors in food storage or preparations; I recognize there are foot cups or foot holds in some watercraft which may assist in stabilizing or holding myself or others in the watercraft but which may present an increased risk of knee, ankle or other injury as a result of restricted movement; the boat may break down or be faulty; it is possible that loss of control of the boat could occur resulting in collision or capsizing or sinking and that if a boat turns over or flips, I could be "washed" overboard; boats are slippery when wet and are naturally unstable so I could slip and fall or be knocked out of the boat even in flat or non-moving water; while in the water, I may become disoriented, panicked and/or experience trauma from rocks, boulders, etc.; I can slip or fall during hiking or portaging or getting on and from the boat and I understand that the areas in which I might hike sometimes hide dangerous obstacles such as tree wells, tree stumps, creeks, rocks, and boulders, forest dead fall, etc.; the boat or any portion of it may collide with or encounter other boats, man-made or natural objects including submerged or semi-submerged trees, rocks, branches, boulders, bridges, etc.; accidents can occur getting on and off the boat. **I acknowledge that I AM ULTIMATELY RESPONSIBLE FOR MY OWN SAFETY** during participation in N.A. events/activities.

I acknowledge that any form of ropes climbing facilities, zip lines, or ropes/challenge type activities (collectively 'ropes/zip/challenge') courses or programs entail known and unanticipated risks that could result in physical or emotional injury, death, damage to myself, to property, or to third parties. I understand and acknowledge that the enjoyment and excitement of adventure activities - in this case ropes/zip/challenge courses - is derived in part from inherent risks incurred by activity beyond the accepted safety of life at home or in my normal day to day activities and that these inherent risks contribute to my enjoyment and excitement and are an integral reason for my participation in this activity. I understand that such risks cannot be eliminated without jeopardizing the essential qualities of the activity. I also understand and acknowledge that, a condition of my participation in or use of the N.A. ropes/zip/challenge course is that I wear a helmet, harness and belay device. Failing to use or properly use safety type equipment such as harnesses or helmets increases my risk of injury or of not surviving an accident or incident while using or participating in ropes/zip/challenge courses and N.A. is not responsible for anything that might result from my failure to use or properly use any safety type equipment. I understand and acknowledge that the N.A. ropes/zip/challenge course has specific weight parameters/restrictions; **participants must weigh at a minimum of fifty (50) pounds and may weigh no more than a maximum of two hundred seventy-five (275) pounds.** I certify that I am within the N.A. ropes/zip/challenge course weight parameters/restrictions.

I specifically acknowledge that the inherent risks associated with ropes/zip/challenge activities using fabricated structures, surfaces, towers, and platforms, cables or ropes includes, but is not limited to: falling off the climbing structure, being hit by swinging apparatus, falling on or being impacted by other participants, hanging from a belay cable, poor or improper belaying or other techniques, the possibility that I will be jolted, jarred, bounced, thrown to and fro or shaken about while on the ropes/zip/challenge course, that I may lose my balance or grip, I may encounter slippery or wet equipment, becoming entangled in ropes, impacting the ground and/or climbing apparatus or ropes, encountering loose or dropped or damaged ropes or holds, equipment failure, improperly maintained equipment,

displaced safety equipment, belay or anchor or harness failure, general slips/trips/falls or painful crashes while using any of the equipment or climbing structures or landing platforms or the premises as large, climbing out of control or beyond my or another participants limits, the negligence of other climbers or spotters or visitors who may be present, participants giving or following inappropriate climbing advice or move sequences, my or another's failure to follow the rules of N.A., and my own negligence or inexperience. Ropes/zip/challenge activities can be strenuous and people with heart or cardiovascular ailments should not participate. In addition, people with neck or spinal restrictions should exercise great caution in choosing this activity as strains and sprains are common where participants will be jumping, swinging, climbing and moving with their full weight hanging from their hands and arms during portions of this activity. By signing this Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement, I acknowledge that **I AM ULTIMATELY RESPONSIBLE FOR MY OWN SAFETY** during my participation in the N.A. adventure.

I acknowledge that, in the remote locations used by N.A., participants may experience extreme **environmental** and/or weather conditions. Exposure to the natural elements can be uncomfortable and/or harmful and I am aware that this exposure could cause sunburn, dehydration, heat exhaustion, heat stroke, heat cramps, hypothermia or fatigue, frostbite and high altitude illnesses (HAPE and HACE), some or all of which may diminish my or the other participants ability to react or respond; I understand that prolonged exposure to cold water can result in "cold water immersion" syndrome or "cold shock," hypothermia and in extreme cases death. Common (sometimes life threatening) injuries for these types of activities include, but are not limited to the following: strains, sprains, burns, fractures, cuts, and/or wounds and trauma to the head or body. Participants may encounter dangerous wildlife or insects. Delays or inconvenience because of inclement weather, including but not limited to low visibility, high winds, heavy rain or snow, storms or lightning, extreme temperature variations, etc., can occur. Communication in the terrain used by N.A. for its activities can be difficult and in the event of an accident, rescue and medical treatment may be significantly delayed or unavailable. As in all activities which are part of the N.A. adventure, N.A. or its staff may misjudge some of these issues. I expressly acknowledge that naturally occurring disease processes (including, but not limited to, the **Corona Virus**) occur in all environments in which this activity will take place. I acknowledge that, while N.A. has taken reasonable and recommended measures to avoid contact, transmittal or contamination of the virus between people (including guests/participants, employees and other third parties) that it is ultimately my responsibility to safe guard myself and others. I understand and agree that, if I choose to participate in this activity, that N.A. cannot and will not have any legal liabilities toward me if I contract the virus.

I acknowledge that my time at N.A. events/activities may require me to use **technical equipment** (including, but not limited to, rafts, rowing frames, oars, paddles, ropes, ice axes, watercraft, bolted rock anchors, carabiners and other hardware) that I might not be familiar with and that I or other participants may find difficult to use and which I or other participants may use incorrectly. This improper use or operation may include, but is not limited to: the failure to observe and obey all safety rules or instructions given to the participant by N.A. or guide/staff. I acknowledge that, despite reasonable care and maintenance, essential equipment may fail, malfunction or cause injury or worse harm to myself or others.

I acknowledge that I may choose to participate in activities that are provided by **other vendors or operators** over which N.A. has no control. Those activities are incidental to the activities provided by N.A. and may involve errors in judgment by the other vendors or operators for which N.A. can bear no liability. I acknowledge that N.A. is not a "Common Carrier" but rather is in the adventure trip (rock climbing, hiking, rafting, backpacking, etc.) business. Transportation to and from activities is incidental to the activity. Transport and car, bus or van travel in some instances may be provided by N.A. and/or N.A. employees and may involve errors in judgment by N.A. staff operating the vans, buses, cars or other transport vehicles. The vehicles and transport trailers may malfunction, break down or be poorly maintained, causing injury, accidents, delays or in the extreme case, death. Transport may be provided by independent contractors to N.A. and may involve errors in judgment by those independent contractors.

I understand and expressly acknowledge that I have responsibilities, including the responsibility for my own safety while participating in any or all of the activities associated with or provided by N.A. I also acknowledge that I have the responsibility to inspect any and all facilities or equipment to be used and to immediately advise N.A. of anything which I consider to be unsafe or to refuse to participate. Furthermore, N.A. guides/staff have difficult jobs to perform. They seek safety, but they are not infallible. They might be ignorant of a participant's fitness or abilities. They might misjudge the weather, the elements, or the terrain. They may give inadequate warnings or instructions and it is possible the participant may fail to understand the safety directions due to language issues. I specifically acknowledge that decisions made by guides/staff and participants are often made in wilderness/remote/dangerous settings and are made based on often imprecise, momentary and subjective perceptions so that decisions are subject to errors in judgment that can not and should not be associated with fault at a later point in time.

2. Express Assumption of Risk I expressly agree and promise to accept and assume all the risks existing in this activity. This means I am not just assuming the inherent risks of the activity but rather that I am assuming all of the risks of the activity, *even if they are not expressly stated in this document*. My participation in this activity is purely voluntary, and I elect to participate in spite of the risks. I

agree and understand that my decision to encounter the risks in this activity is the most substantial factor causing any ultimate harm that may come to me during this activity. This is a purely voluntary un-necessary activity for me and even if I do not (or claim that I do not) have knowledge of a particular risk, this express agreement to assume all risks whether they are known or unknown to me is intended to defeat all claims I might have against N.A.

3. Specific Express Legal Agreements My intent in signing this release contract is that it will be given broad effect by the Colorado courts even if a specific risk or possible claim is not listed herein. I expressly agree and acknowledge that I am waiving arguments against N.A. as to when and where an activity begins or ends and that once I am engaged *in any way* in N.A. activity, this release contract will apply. I also expressly agree that this release contract will be admissible into evidence in any legal proceeding which I initiate or become involved in against N.A., even if the Court rules that the contract is not dispositive of the case. I expressly agree and acknowledge that the terms and conditions of this Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement are contractual in nature and that I am signing it of my own free will.

4. Release and Waiver of Rights Including for ALL Claims including NEGLIGENCE I hereby voluntarily release, defend, discharge, and agree to indemnify and hold harmless N.A. from ANY AND ALL claims, demands, or causes of action, which are in any way connected with my participation in this activity or my use of N.A.'s equipment or facilities, including **any such claims which allege any theory of negligence**, negligence per se, strict liability, premises liability, torts, breach of warranty, misrepresentation, non-disclosure, state and federal statutory claims, unfair trade or business practices, breach of contract, and all other claims for relief and causes of action. What I am agreeing to in this clause is that, beyond the legal application of the inherent risk and assumption of the risk provisions, this separate provision means I am waiving **all claims** I might have against N.A. sounding in any of the above theories including but not limited to negligence. I agree that the risks of death, injury, property loss or other damages are known and unambiguous to me and that, even if a specific type of loss is not listed in this document it is my express agreement to not hold N.A. liable for death, injury or other style of damage encountered.

5. Indemnity Should N.A. or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this agreement or to defend against lawsuits or claims brought by me or someone on my behalf, I agree to indemnify and hold them harmless (in other words, I agree to pay for...) for **all** such fees and costs. Plaintiff put – if I or anyone else violates this release contract and brings suit against N.A. I agree to pay all of N.A.'s legal fees in defending themselves.

6. Personal Skill & Insurance I certify that I have sufficient skill and fitness to participate in the activities offered by N.A. I further certify that I have no medical, mental or physical conditions which could interfere with my safety or ability to participate in these activities, or else I am willing to assume and bear the cost of all risks (that may be created, directly or indirectly, by any such condition. I further certify that I have adequate insurance to cover any injury, damage or emergency transportation costs I may cause or suffer while participating (regardless of the cause) or else agree to bear the costs of such injury, damage or emergency transportation costs myself. I understand and acknowledge that certain adventure activities and outdoor recreating are, in some contexts, considered 'high risk' activities and that my life insurance coverage may be affected; I understand it is my responsibility to give appropriate notice to my personal insurance companies regarding this activity.

7. Medical Issues I further agree that, in the event that N.A. deems it necessary to administer emergency first aid or CPR or to remove me from its activities or premises or from the field or to seek emergency medical care for me that, by signing this document, I am giving N.A. permission to: administer emergency first aid or CPR, secure emergency transport or medical care and/or disclose any medical information it may have about me to any health care provider which may become involved in my care, treatment or removal from the field. By signing this Agreement, I am waiving any right to object to or bring any type of action or claim against N.A. for its administration of emergency first aid or CPR or for securing emergency transport or medical care and/or for the disclosure of personal medical information it may have about me to any health related person who becomes involved in my care or removal from N.A. activities or the field.

8. Photographic Assignment I understand that N.A. reserves the right to take photographic or film (of whatsoever nature) records of any or all activities and I hereby agree that N.A. may use such records for promotional and/or commercial purposes without any remuneration to me. I hereby assign all right, title and interest I may have in or to any and all media in which my name or likeness might be used by N.A. I agree and acknowledge that N.A. cannot control media or photographic images of me that may be generated or disseminated by other participants or third parties.

9. Release as Contract and Personal Capacity On behalf of myself and any of the children for which I am responsible I expressly agree and acknowledge that the terms and conditions of this Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement are contractual in nature and that I/we are signing of my/our own free will. I/we expressly acknowledge that I/we are not

under the influence of drugs or alcohol at the time of my/our signing of this document and that there are no other impediments or reasons why I/we would lack the capacity to enter into this contract with N.A. I also expressly agree that I have fairly entered into this Agreement.

10. Forum Selection, Severability, Breach of Contract/Warranty Waiver, Etc. I agree that the venue and jurisdiction for any dispute regarding this Agreement or the services rendered by N.A. shall be Chaffee County, Colorado or the District Court of Colorado (if I am from out of state), and I further agree that the substantive law of Colorado shall apply in any action without regard to the conflict of law rules of other states and I hereby irrevocably waive any other jurisdiction or venue to which I or my estate might otherwise have been entitled. I agree to submit to the jurisdiction of the Colorado courts. I agree that if any portion of this agreement/contract is found to be void or unenforceable, the remaining portion shall remain in full force and effect; this document is intended to be interpreted as broadly as possible. A copy of this release can be used as if it were the original. I understand that this document constitutes the entire Agreement/Contract between ourselves and N.A. and that it cannot be modified or changed in any way by representations or statements of any nature (be they vocal, advertising, etc.) outside of this document; in other words, I am also waiving any claims that I might have for breach of contract or warranty for statements or representations made outside of this release contract.

By signing this document, I acknowledge for myself and any of the children I am responsible for that if anyone is hurt or property is damaged during my participation in this activity, I/we may be found by a court of law to have waived my/our right to maintain a lawsuit against N.A. on the basis of any claim from which I/we have released them herein.

My express intention in signing this complete release of claims document is to voluntarily exchange this release contract with N.A. for the opportunity to participate in recreational activities with N.A.

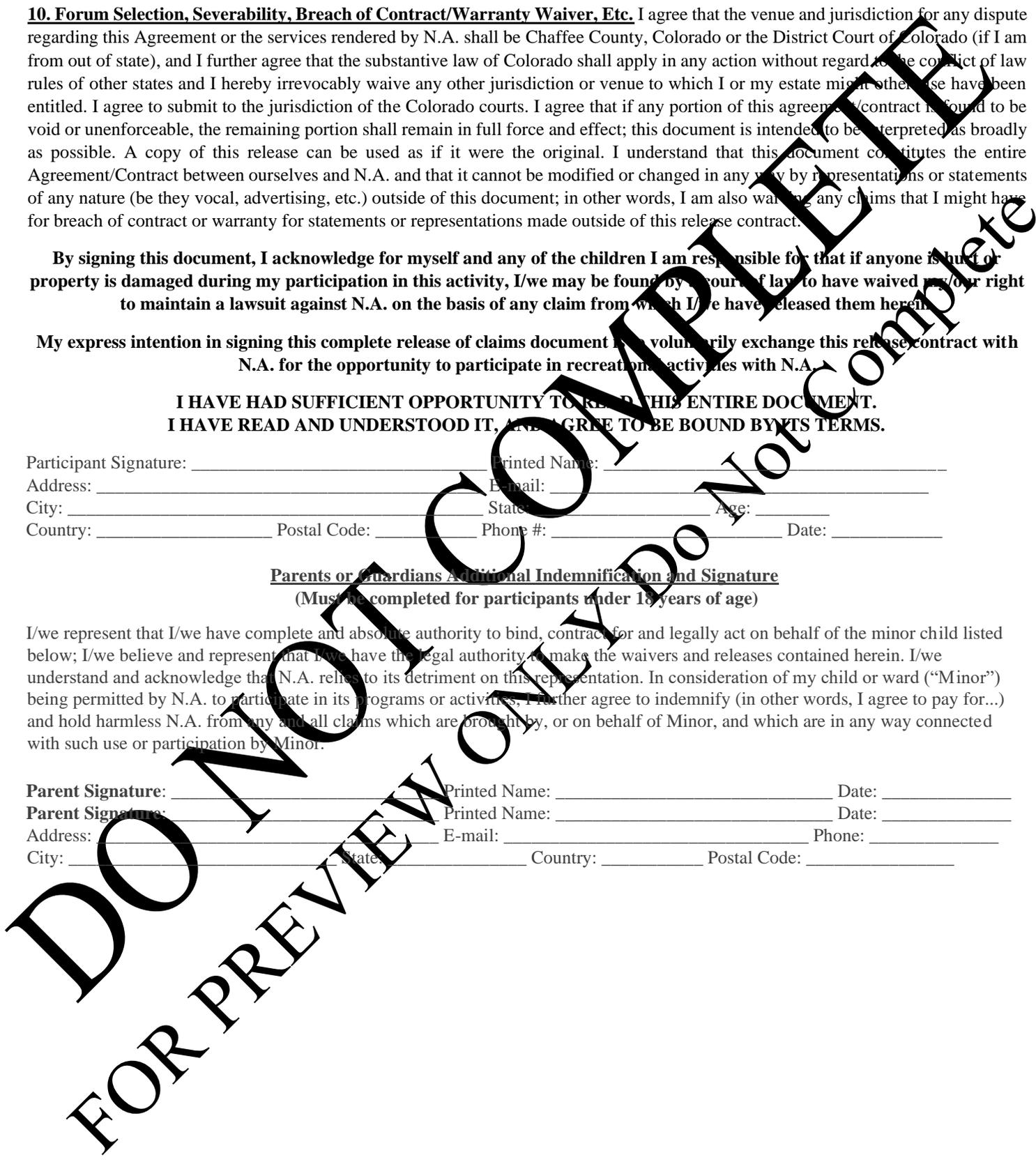
**I HAVE HAD SUFFICIENT OPPORTUNITY TO READ THIS ENTIRE DOCUMENT.
I HAVE READ AND UNDERSTOOD IT, AND I AGREE TO BE BOUND BY ITS TERMS.**

Participant Signature: _____ Printed Name: _____
Address: _____ E-mail: _____
City: _____ State: _____ Age: _____
Country: _____ Postal Code: _____ Phone #: _____ Date: _____

Parents or Guardians Additional Indemnification and Signature
(Must be completed for participants under 18 years of age)

I/we represent that I/we have complete and absolute authority to bind, contract for and legally act on behalf of the minor child listed below; I/we believe and represent that I/we have the legal authority to make the waivers and releases contained herein. I/we understand and acknowledge that N.A. relies to its detriment on this representation. In consideration of my child or ward ("Minor") being permitted by N.A. to participate in its programs or activities, I further agree to indemnify (in other words, I agree to pay for...) and hold harmless N.A. from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent Signature: _____ Printed Name: _____ Date: _____
Parent Signature: _____ Printed Name: _____ Date: _____
Address: _____ E-mail: _____ Phone: _____
City: _____ State: _____ Country: _____ Postal Code: _____



ADDITIONAL TRIP INFORMATION

Participant Name: _____ Trip Date: _____

All participants must fill out the following information:

1. The following is a **non-exhaustive** list of medical conditions that could potentially be exacerbated by the activities at Noah's Ark, **especially intense exercise and swimming, cold water immersion and hypothermia**. This trip may involve activities both at high altitude and remote locations with limited access to medical care.

1. Chronic cardiovascular disease (i.e. history of heart attack, heart failure, atrial fibrillation or other dysrhythmia, peripheral vascular disease, history of stroke, etc.)
2. Current pregnancy
3. Blood disorders (i.e. anemia, sickle cell disease, clotting disorders, currently taking any blood thinners, etc.)
4. Neurological conditions (i.e. seizure disorders, epilepsy, dizziness, fainting episodes, etc.)
5. Chronic pulmonary disease (i.e. asthma, COPD, pulmonary fibrosis, etc.)
6. Diabetes
7. Chronic joint or back/neck injuries; including history of prior orthopedic surgeries
8. Altitude related conditions
9. Any other condition that may limit your ability to safely participate in intense exercise, and/or contribute to your own self rescue.

If you have, or have a history of, any of the above conditions, or others you are in question about, we **recommend** you consult with your Health Care Provider AND inform your **Trip Leader** and **Guide** at Noah's Ark prior to participating in any activities.

Do you have **ANY** of the above medical conditions or others that we should know about?

CIRCLE ONE:

YES I have one, or multiple, of the above medical conditions.

NO I **do not** have **ANY** of the above medical conditions.

If **YES**, please describe:

2. Do you have any of the following dietary preferences? *Noah's Ark can accommodate the following food preferences:*

Gluten Free

Peanut/Tree Nut Allergy

Vegetarian

Do you have any environmental, medication or other severe allergies?

CIRCLE ONE:

YES

NO

If **YES**, please describe (i.e. severity, reaction, etc.):

Individuals with a history of severe allergic (anaphylactic) reactions are recommended to bring a personal supply of epinephrine, preferably in a pre-loaded auto-injector, and know how to use it.

4. Do you have previous whitewater rafting experience?

CIRCLE ONE: YES NO

5. Emergency Contact:

Name

Relationship

Phone Number

DO NOT COMPLETE
FOR PREVIEW ONLY Do Not Complete