

## Southeast Mountain Guides LLC

### Assumption of Risk, Waiver of Liability, & Indemnification Agreement - Read Before Signing

Name of Participant: \_\_\_\_\_ Date (M/D/Y): \_\_\_\_/\_\_\_\_/\_\_\_\_

Southeast Mountain Guides, LLC (hereafter referred to as **SOUTHEAST**) offers high adventure opportunities for all ages. Southeast caters to individuals, families, and groups. Southeast activities are geared for all skill levels – both experienced climbers and beginners. Activities are provided on Southeast property, on private property, National Forest land, and National Park land. Featured activities include 1) Via Ferrata (a climbing system that aids the climber by cables and iron rungs for hands and feet), 2) guided rock climbing (offers private guided rock climbing trips from professionally certified climbing instructors), and 3) guided rappelling (offering both private and group guided rappelling trips). Southeast activities involve adventure, excitement, challenge, fun, develop fitness, promote self confidence, and have many other obvious values.

While the benefits of participation in Southeast activities are obvious, Southeast feels it is important that the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** understand that there are **inherent risks** in all physical activities, including outdoor activities such as Via Ferrata, guided rock climbing, and guided rappelling which can't be eliminated regardless of the care taken by Southeast.

While participant safety is of major concern to Southeast, the fact is that rock climbing and rappelling are conducted in a natural setting which contains unpredictable hazards; in such a setting Southeast can never be in total control. While it is impossible to list all of the inherent risks of rock climbing or rappelling, the following list illustrates some of the inherent risks faced by the participant: illness-related risks which includes contraction of or exposure to airborne illnesses and infectious diseases; weather-related risks (e.g., hot, humid, or cold weather; unexpected lightning; sudden high winds); over-exertion; being struck by debris, dislodged rocks, or other objects; falls from a rock wall, cliff, cable, swing, bridge or ladder; loss of footing due to mud, slippery rocks or unstable stones; collisions with stationary objects or other participants; participant failure to adhere to posted rules or warnings; careless, erratic, or negligent acts by co-participants; careless, erratic, or negligent acts by non-participating general public; unexpected carabiner, harness, or equipment failure; errors in judgment by Southeast personnel and instructors -- including, but not limited to, misjudging participant ability or fitness level, misjudging weather conditions, failure to give adequate warnings or sufficient instructions, and concentration lapses while supervising.

Southeast feels that it is important that the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** understand that three types of injuries can occur. Minor injuries are the most common and include, but are not limited to, insect bites/stings, sunburn, muscle soreness, headaches, sprains, cuts, black eyes, blisters, bruises, and abrasions. Serious injuries are less common, but can occur occasionally. They include, but are not limited to, broken bones, concussions, torn ligaments or cartilage, eye injuries, cuts, broken teeth, heat-related illness, and internal injuries. Catastrophic injuries are very rare; but Southeast feels that every **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** should be aware of the possibility. These infrequent injuries include permanent disability, brain injury, paralysis, blindness, heart attack, stroke, and even death.

**Assumption of Inherent Risks:** I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)**

- 1) assert that I am familiar with the inherent risks of rock climbing and rappelling and I have been reminded of some of the inherent risks by the preceding paragraphs.
- 2) understand that all activities of Southeast include inherent risks that cannot be eliminated regardless of the care taken by Southeast.
- 3) know, understand, and appreciate the types of injuries inherent in Southeast activities.
- 4) hereby assert that participation is voluntary and knowingly assume all inherent risks of the activity.

**Waiver of Liability for Ordinary Negligence of SOUTHEAST:** In consideration of permission to participate in Southeast activities, today and ON ALL FUTURE DATES, I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)**, on behalf of myself, my spouse, heirs, executors, administrators, personal or legal representatives, and assigns (hereafter referred to as the Releasing Parties) do hereby waive, release, covenant not to sue and discharge Southeast [including ROC Entreprise, all corporate partners and owners, directors, board members, officers, employees, volunteers, independent contractors, sponsors, vendors, consultants, agents, equipment suppliers, insurers, other Southeast participants, owners of all venues, and the U.S. Government, National Forest and National Land, its management, and employees] (hereafter referred to as the Protected Parties) from liability from any and all claims, demands, and actions of every name and nature including those arising from the ordinary negligence (including negligent rescue operations) of the Protected Parties.

This agreement applies to 1) personal injury (including death) from incidents or illnesses arising from participation in Southeast activities including, but not limited to: Via Ferrata, guided rock climbing, guided rappelling, night climbs, group instruction, clinics, special events, merit badges, combo packages, multi-pitch climbing, training/conditioning activities, and all incidents on the premises. It applies while I am an observer or spectator; during personal use of all facilities; and while being transported or walking to a venue. This applies to all facilities, venues, equipment, and all premises including the associated trails and parking lots and to 2) any claims resulting from the damage to, loss of, or theft of property.

**Indemnification:** I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)**, also agree to hold harmless, defend, and indemnify Southeast (that is, defend and pay any judgment and costs, including investigation costs, attorney's fees, and related expenses) from any and all claims of Releasing Parties or others acting on my behalf, arising from my participation in Southeast Activities, (including those arising from the inherent risks of the activity or the ordinary negligence of Protected Parties).

I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)**, further agree to hold harmless, defend, and indemnify Southeast against any and all claims of co-participants, rescuers, and others arising from the conduct of the participant in Southeast activities.

**Clarifying Clauses:** I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** confirm:

- 1) This agreement **supersedes any and all previous oral or written promises or agreements**. I understand that this is the entire agreement between me and Southeast and that it cannot be modified or changed in any way by representations or statements by any agent or employee of Southeast.
- 2) The foregoing Assumption of Risk, Waiver of Liability, Indemnification Agreement, and Covenant Not to Sue is intended to be as broad and inclusive as is permitted by the laws of the State of Kentucky and that **if any portion thereof is held invalid**, it is agreed that the balance shall continue in full legal force and effect.
- 3) If legal action is brought, either the state court serving Wolfe County, Kentucky, or the U.S. District Court for the Eastern District of Kentucky has the **sole and exclusive jurisdiction** and that only the substantive laws of the State of Kentucky shall apply.
- 4) I will engage in good faith efforts to mediate any dispute that might arise. Any agreement reached will be formalized by a written contractual agreement at that time. Should the issue not be resolved by mediation, I agree that *all disputes, controversies, or claims arising out of participation in Southeast shall be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.*

**Acknowledgements to Promote Participant Safety:**

*Health Status.* The **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** affirms that he or she:

- Possesses no health problems or physical disabilities that would make participation unwise or risk injury.
- Understands that Southeast advises all participants to seek medical clearance prior to participation.
- Understands that it is his or her duty 1) to inform staff of disabilities or illnesses; and 2) discontinue activity immediately if there is any unusual discomfort (e.g., faintness, shortness of breath, high anxiety, chest pains) during participation.
- Is physically and mentally capable (sufficient skills, strength, maturity, coordination, and fitness) to safely participate.

*Medical Care.* The **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** affirms that he or she:

- Authorizes the use of first aid/CPR by Southeast staff if Southeast staff deems it is needed.
- Authorizes Southeast to secure emergency medical care and transport if deemed necessary.
- Agrees to assume all cost of emergency care and transportation.

*Rules and Safety.* The **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)** agrees:

- To report all injuries (even minor injuries) so that Southeast may make a record of the injury.
- To wear all recommended safety gear during participation.
- To inform Southeast of any use of controlled substances such as alcohol, drugs or illegal substances.
- To follow all rules, guidelines, and instruction established by Southeast.
- To inform Southeast of any conduct or condition that creates a hazard for participants or others – and will immediately discontinue further participation in said activity.
- That Southeast has authority to halt my participation if it endangers me or others.

**Acknowledgment of Understanding:** I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)**, have read and understand this Agreement. I understand that I am **giving up substantial rights**, including the right of both the participant and the parent or guardian to sue for damages in the event of death, injury, or loss. I, the **Southeast Adult Participant or Southeast Minor Participant (& Parent/Guardian)**, acknowledge that I am voluntarily signing this agreement, and **intend my signature to be a complete release of all liability, including that due to inherent risks or ordinary negligence by the Protected Parties**, to the greatest extent allowed by law of the State of Kentucky. *Further, I, the Parent/Guardian, assert that I have explained the risks of the activity to my minor son or daughter and that he or she understands this Agreement.*

**Complete Only if Participant is Under 18 years of age**

**If Participant is a Minor, at Least one Parent/Guardian Must Sign Below:**

\_\_\_\_\_  
Name of **Participant** (Print)

\_\_\_\_\_  
Signature of **Participant**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date: (M/D/Y)

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_\_  
Mo. Day Year

_____ Name of Parent/Guardian (Print)	_____ Name of Parent/Guardian (Print)
_____ Signature of Parent/Guardian	_____ Signature of Parent/Guardian
Date: ____/____/_____ 	Date: ____/____/_____ 

E-Mail: \* \_\_\_\_\_ Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

In Case of Emergency (Must be someone **Not** participating), Please Notify \_\_\_\_\_ Phone (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

\* We will send you coupons and event updates a few times throughout the calendar year. If you do not desire this please check NO: \_\_\_\_ and your email address will only be used to contact you for subjects deemed important (such as a lost cell phone, etc).