

Active Climbing, LLC -- Participation Agreement; Including Indemnification, Covenant Not to Sue, Release of Liability, Rules, and Non-Exhaustive Description of Risks

WARNING! CLIMBING and being a SPECTATOR in this gym is INHERENTLY DANGEROUS. Entering any room outside of the waiting area, and/or using the equipment or structures therein, puts you in the potential landing zone of participants and for other reasons exposes you to being INJURED or KILLED. This agreement not only PERMANENTLY WAIVES significant legal rights, it also forces you to pay for the damages and legal fees of the gym and others if anyone sues regarding injuries to you, injuries caused by you, and for claims related to any minors on behalf of whom you sign, EVEN IF THE MINORS YOU SIGN FOR ARE NOT YOUR CHILDREN. THIS AGREEMENT BINDS THE PERSON WHO SIGNS IT, REGARDLESS OF WHETHER THEY ARE A MINOR, AND ANY ADULT WHO SIGNS THE AGREEMENT ON BEHALF OF A MINOR.

Consideration. I wish to be a spectator or participant, or accompany a spectator or participant, at the recreation facility in Athens known as Active Climbing. In consideration of being allowed to be a spectator or participant, or to accompany a spectator or participant, I agree to the terms of this Participation Agreement (hereinafter the "Agreement").

Release of Liability and Covenant Not to Sue. I hereby forever covenant not to sue and release Active Climbing, LLC, its owners, employees, volunteers, sponsors, independent contractors, personnel, climbing competition organizers, owners of equipment in the facility, *and any of these parties' insurance companies*, (collectively the "Released Parties"), from liability for negligence, wrongful acts, omissions, breach of warranty, and strict liability (but not for gross negligence or willful or wanton misconduct).

Indemnification. I agree to indemnify, hold harmless, and defend the Released Parties from and against any and all causes of actions, claims, demands, losses, damages, liabilities, and costs (including but not limited to attorneys' fees) incurred by Released Parties of any nature whatsoever, including but not limited to those caused by the negligence of any Released Party, arising out of or in any way relating to my use of or presence in the facility or the services provided thereby or my participation in any activity therein, or arising out of the interpretation or enforcement of this Agreement (except for claims resulting from the gross negligence or willful or wanton misconduct of any Released Party). I further agree to indemnify the Released Parties for claims of others arising from my conduct in the facility.

Agreement Binds Third Parties. I acknowledge this entire Agreement, including its waiver and indemnification provisions, to the extent it binds me, shall also bind others who, as a result of the Released Parties' negligence, might otherwise acquire a cause of action on their own behalf or acquire the right to file a claim on my behalf, including my heirs, representatives, executors, administrators, or assigns I may have now or in the future. For example, if my family brought a lawsuit against the released parties for wrongful death as a result of the Released Parties' negligence, this Agreement would both cause their claim to fail and require my family to pay the Released Parties' costs and legal fees.

Certification of Health. I certify that I am in proper physical and mental health to be a spectator or participant in the physical activities I engage in now and into the future, and acknowledge my responsibility to cease activity if my health status precludes my ability to safely be a spectator or participant.

Trial by Jury, Litigation Location. I hereby voluntarily waive any right I may have to a trial by jury in any action, proceeding or litigation involving any Released Party. The laws of the State of Georgia shall govern the rights and obligations of the parties to this Agreement and the interpretation, construction, and enforceability thereof. I agree that any lawsuit brought against any Released Party shall be brought solely in Clarke County, Georgia.

Timespan. This Agreement is a permanent waiver, covenant, and indemnification for negligent acts by the Released Parties, negligence occurring in both the past and future, and for injuries sustained in the past and any sustained in the future, known or unknown.

Rules. I acknowledge that copies of this Agreement are freely available to me. I also agree to abide by the rules set forth by Active Climbing for participants and spectators, and acknowledge that I have received a copy of such rules and know where updated rules are posted.

Integration/Merger Clause. I acknowledge that this Agreement represents the entirety of any legally binding promises among me and the Released Parties and their insurers regarding assumption of risk, covenants not to sue, indemnification, and waiver of liability. This Agreement supersedes any and all previous oral or written promises or agreements, and this Agreement represents the complete and final agreement.

Property Theft/Damage Included. This Agreement includes claims for damages involving property damage or theft.

Minors. All certifications or promises in this Agreement referencing “I” or otherwise to me, I am additionally making on behalf of any minors for whom I am signing. For example, by waiving the right for my heirs, representatives, executors, administrators, or assigns to bring a claim on my behalf, I am agreeing to the same waiver for any minors for whom I am signing, and thus eliminating the cause of action another parent or guardian would otherwise be able to bring, and likewise binding those guardians to indemnify the Released Parties. I further agree to explain the risks and rules of the facility and to ensure my child or ward follows those rules. I also understand that I am personally indemnifying the Released Parties for claims the minor or their parent(s)/guardian(s) might have against the Released Parties for negligence. This means, for example, if Active Climbing’s negligence causes the death of a child I am babysitting temporarily, I am agreeing to pay for Active Climbing’s defense costs and damages if the minor’s parents bring a lawsuit against Active Climbing. If I am not the child’s parent or legal guardian and wish to avoid signing this indemnification agreement, THE MINOR’S PARENT OR LEGAL GUARDIAN MUST SIGN ONE.

INITIALS ACKNOWLEDGING INDEMNIFICATION OF OTHER PARENTS’ CHILD: _____

Severability. If any portion of this Agreement is held invalid, the remainder shall remain in full force and effect.

Dangers Specific to Climbing. CLIMBING IS INHERENTLY DANGEROUS. THIS RISK CANNOT BE ELIMINATED. Even when using a rope, the belayer may fail to belay properly, the equipment may fail, or you may fall at an angle that forces an inversion or otherwise causes you to hit objects at a speed, trajectory, or angle that causes injury or death.

Severability. If any portion of this Agreement is held invalid, the remainder shall remain in full force and effect.

Dangers to Spectators. I ACKNOWLEDGE THAT BEING A SPECTATOR IN THIS GYM IS INHERENTLY DANGEROUS. THIS RISK CANNOT BE ELIMINATED. YOU WILL BE A SPECTATOR IN AREAS WHERE PEOPLE MAY BE CLIMBING OR OTHERWISE SUSPENDED ABOVE YOU. Because of the equipment and activity in this facility, merely being a spectator presents unavoidable physical dangers, including but not limited to dangers arising from: falling people or equipment, collapse of equipment or structures, the presence of machinery or devices used to maintain the walls and facility, and any and all other dangers, foreseeable or not. Signing this agreement binds you regardless of your status as a spectator or participant, regardless of your initial intention to watch or participate, and you hereby agree that you assume the risks of participation even if you do not, at present, intend to participate.

Dangers Non-Specific to Climbing. Although the Released Parties primarily maintain the facility for climbing, a variety of equipment exists in this space that may be used for other athletic activities, including but not limited to weight lifting, gymnastics, yoga, and circus arts. You agree that the inherent, fundamental nature of this facility presents extreme, inherent dangers stemming from the presence of this equipment, the use of this equipment, and the use by others of this equipment. You further acknowledge that a shared athletic space presents an unavoidable, heightened risk for disease infection. People participating in these activities may fall onto you, swing into you, or drop equipment onto you, and thereby injure or kill you. Equipment includes but is not limited to free weights, pull-up bars, weight machines, campus boards, a trapeze bar, a rope swing, aerial fabrics, and monkey bars. All of this equipment can cause serious, permanent, and fatal injuries to participants or nearby spectators.

Equipment Failure. You acknowledge that equipment in this facility, including but not limited to the climbing equipment, is subject to failure, resulting from causes including but not limited to defects in the equipment, structural weaknesses in the manufacturing, weaknesses arising from use, negligent installation, and interference or adjustment of equipment by visitors. You acknowledge that latent weaknesses developing in safety systems may not always be detectable through reasonable care, and that you assume the risk of equipment failure. Much of the safety equipment in this gym is made of aluminum and not steel. Aluminum is weaker and can develop sharp edges that can cut rope or puncture on contact. Climbing holds attached to the wall may spin, causing otherwise firm grips on the wall to fail. Knots tied with webbing, cord, or rope, which may secure equipment attached to the ceiling, inevitably come undone over time. Straps, fabric, cord, rope, harnesses, safety pads, and metal in this gym are all destroyed over time with use and you should not trust your safety to the performance of any equipment if you are not familiar with how to inspect that equipment for damage or other causes of potential failure. Misuse of the equipment itself may cause harm, the equipment cannot safeguard against all risk of harm, and you acknowledge that the existing equipment, set-up, or installation may not be the ideal safety system for any given activity. Equipment lent to you by the Released Parties may not be appropriate for the activity you are engaging in. You are responsible for checking equipment lent to you, including checking whether rope is of sufficient length to complete a route and lower off. Inserting fingers in metal bolt hangers can cause loss of the finger in a fall. Fingers and limbs can become jammed or stuck in safety equipment or holds and be permanently injured by falls.

Dangers Resulting from Others. Even if you observe all prudent safety practices, the acts or omissions of other climbers, belayers, or your belayer may cause injury or death. The belayer (the person in charge of handling a rope) may fail to maintain control of the rope and drop and kill you. THE NEGLIGENCE WAIVER OF THIS AGREEMENT COVERS ALL NEGLIGENT ACTS OF THE RELEASED PARTIES, AND THUS INCLUDES NEGLIGENCE IN INSTRUCTION AND NEGLIGENT BELAYING BY STAFF AND OTHERS.

Risks Specific to Bouldering (Climbing with pads in lieu of a rope). The ceiling of this facility is at least 18 feet high and the floor is made of concrete. Falling from any height is therefore potentially fatal. To abate this risk, the facility has bouldering pads, known as crash pads, spread underneath the climbing wall and some of the other equipment. Falls are extremely dangerous even with the existence of the pads, for reasons including but not limited to the following: others in the facility may move the pads to an inappropriate location, the pads may be stacked unevenly forcing an unstable fall, gaps between the pads may cause an unstable fall or provide an opening to the concrete below, empty spots may exist in pads that otherwise appear of uniform height and density, rolling or collapsing from a fall may still propel you toward an unprotected floor or person or object including the wall itself and the holds and equipment attached to it, and the cushion of the padding may simply be insufficient to prevent the force of the fall from causing injury. The ubiquitous presence of the pads may deceive you into thinking that there are no possible falls where you would land directly on concrete. The height of the roof may give the appearance that the pads are sufficient to provide protection against a fall of this height--this may not be true, depending on the person and the fall. This gym, unlike many climbing gyms, has climbing surfaces allowing climbers to "top out," that is, climb over and fully on top of the climbing surface, which presents additional risks, including a greater risk of inversion, a higher fall height, and decreased visibility.

Potential Injuries. Potential results of participation or being a spectator include but are not limited to death, paralysis, cuts, abrasions, punctures, nerve damage, repetitive use damage, and limb dislocation or destruction.

ADULT	<u>ADULT - Participant Over the Age of 18 OR Guardian of Minor Participant Listed Below</u>			
	_____		_____/____/____	
	Name (Print Clearly)		Signature	Date
	_____		_____	_____
	Address (Print Clearly)		City	State Zip Code
	_____/____/____	(_____)_____	(_____)_____	
Date of Birth	Phone Number	Emergency Number		
_____		How did you hear about us? Circle one		
Email Address (optional)		Friend, Family, Radio, newspaper, web, other _____		

MINOR	<u>MINOR(S) - Participant if Under 18 (Guardian must also fill out above box)</u>			
	_____	_____/____/____	_____	_____/____/____
	Name (Print Clearly)	Date of Birth	Name (Print Clearly)	Date of Birth
	_____	_____/____/____	_____	_____/____/____
Name (Print Clearly)	Date of Birth	Name (Print Clearly)	Date of Birth	

EMPLOYEE	<u>EMPLOYEE USE ONLY</u>		
	_____		_____/____/____
	Signature		Date
	Employee Witness (print name)		
Checked ID? Yes / No	1 st Page Signed? Yes / No	2 nd Page Signed? Yes / No	Indemnification Initialed? Yes / No

