

Participant Agreement, Release and Liability Waiver (The Agreement) – **SWAP (School Wellness Awareness Project)\***

In consideration for gaining access to 5385 Main Street, Williamsville, NY 14221, the “Location”) and engaging the services of **SWAP (School Wellness Awareness Project)**, or any other location within the state of New York, their agents, owners, officers, directors, representatives, assigns, affiliates, volunteers, participants, employees, insurers, and all other persons or entities acting in any capacity on their behalf, (herein after collectively referred to as “SWAP”), I on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representatives, estate, and insurers, agree as follows:

- I acknowledge and understand that my participation in SWAP obstacle course, games or activities entails known and reasonably foreseeable risks, which are inherent in the nature of the recreational activity and could result in physical or emotional injury including, but not limited to broken bones, sprained or torn ligaments, paralysis, death, or other bodily injury or property damage to myself my child(ren), or to third parties. I am aware and understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. I expressly agree and promise to accept and assume all of the risks existing in this activity. My and/or my child(ren)’s participation in this activity is purely voluntary and I elect to participate, or allow my children to participate, in spite of the risks. If I and/or my child(ren) are injured, I acknowledge that I or my child(ren) may require medical assistance, which I acknowledge will be at my own expense or the expense of my personal insurer(s). I hereby represent and affirm that I have adequate and appropriate insurance to provide coverage for such medical expense. I UNDERSTAND AND AGREE THAT SWAP WILL NOT PAY FOR ANY COST OR EXPENSES INCURRED BY ME IF I AND/OR MY CHILD ARE INJURED UNLESS SUCH INJURY WAS CAUSED BY GREATER THAN ORDINARY NEGLIGENCE OF SWAP. In consideration of SWAP allowing my participation in obstacle course games or activities, I for myself and on behalf of my child(ren) and/or legal ward, heirs, administrators, personal representatives, or assigns, do hereby voluntarily agree to hold harmless, release and discharge SWAP of and from all claims, demands, causes of action, and legal liability, whether the same be known or unknown, anticipated or unanticipated, due to SWAP’s ordinary negligence. I, for myself and on behalf of my child(ren) and/or legal ward, heirs, administrators, personal representatives, or any assigns, further voluntarily agree that, except in the event of SWAP’s gross negligence and willful and wanton misconduct, I shall not bring any

claims, demands, legal actions and causes of action, against SWAP for any economic and non-economic losses due to bodily injury, death, property damage sustained by me and/or my minor child(ren) that are in any way associated with SWAP obstacle course games or activities. Should SWAP or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this Agreement, I for myself and on behalf of my child(ren), and/or legal ward, heirs, administrators, personal representatives or assigns, agree to indemnify and hold them harmless for all such fees and costs..

- I certify that I and/or my child(ren) are physically able to participate in all activities at the Location without aid or assistance. I further certify that I am willing to assume the risk of any medical or physical condition that I and/or my child(ren) may have. I acknowledge that I have read the rules, (the "SWAP Rules") governing my and/or my child(ren)'s participation in any activities at the Location. I certify that I have explained the SWAP Rules to the child(ren) listed in this waiver. I understand that the SWAP Rules have been implemented for the safety of all guests at the Location, including myself and/or my child(ren). I acknowledge that failure to follow the rules could result in the expulsion of myself and/or my child(ren) from the Location. I agree that if any portion of this Agreement is found to be void or unenforceable, the remaining portions shall remain in full force and effect. If there are any disputes regarding this agreement, I on behalf of myself and/or my child(ren) hereby waive any right I and/or my child(ren) may have to a trial and agree that such dispute shall be brought within one year of the date of this Agreement and will be determined by binding arbitration before one arbitrator to be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. I further agree that the arbitration will take place solely in the state of New York and that the substantive law of New York shall apply. If, despite the representations made in this agreement, I or anyone on behalf of myself and/or my child(ren) file or otherwise initiate a lawsuit against SWAP, in addition to my agreement to defend and indemnify SWAP, I agree to pay within 60 days liquidated damages in the amount of \$5,000 to SWAP. Should I fail to pay this liquidated damages amount within the 60 day time period provided by this Agreement, I further agree to pay interest on the \$5,000 amount calculated at 12% per annum.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against SWAP on the basis of any claim from which I have released them herein. I have had sufficient opportunity to read this entire document. I understand this Agreement and I voluntarily agree to be bound by its terms.

Parent/Guardian/Participant (if over 18):

Birthdate:

Address:

City:

State:

Zip:

Contact Number:

Participant:

Birthdate:

I further certify that I am the parent or legal guardian of the child(ren) listed above on this Agreement or that I have been granted power of attorney to sign this Agreement on behalf of the parent or legal guardian of the child(ren) listed above. In the event that I do not have the requisite authority to sign this Agreement on behalf of the child(ren) listed above, I agree that I shall be solely liable for any and all actions, causes of actions, penalties, claims, costs, services, compensation or the like resulting from this misrepresentation. I agree to be contractually bound by this certification.

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Signature of Parent/Guardian/Participant (if over 18)

\*SWAP (School Wellness Awareness Project) is an assumed name filed with the NYS Dept. of State Authorized to conduct business under the Limited Liability Company, Obstacle Play LLC