

## PANGAEA PUDDLE

### **RELEASE, WAIVER AND LIMITATION OF LIABILITY AGREEMENT**

In consideration of the use of the lakes, fields, grounds, facilities, boats and equipment belonging to, operated by or in the possession of ZACS, Inc., it's shareholders, officers, directors, agents and employees, together with George Vosburgh and Patricia Vosburgh, all of 392 Mahrs Road, Canajoharie, NY 13317 (the "Released Parties"), the undersigned hereby agrees, for himself or herself, and for his or her heirs, executors, administrators and/or assigns, or in the case of an adult signing for a minor child, for such child and the child's heirs and assigns (collectively, the "Releasing Party"), as follows.

**1. RISK FACTORS.** The Releasing Party understands and acknowledges that the activities of wakeboarding, waterskiing, wakeskating, barefooting, slalom skiing, trick skiing (short board), water ski jumping, swimming, rope swinging and related water sport activities, soccer playing, trap shooting, mountain bike riding and other recreational activities (collectively, the "Activities") offered at the Pangaea Puddle, including but not limited to the lakes and ponds, soccer fields, pavilion, trap field, bike trails, roads, drives, lawns, fields, bunk house, rope swing and related property and structures (collectively, the "Facility") all involve risks such as but not limited to the following: 1) falling, 2) drowning, 3) colliding with fixed objects, including the shoreline, lake bottom, water, objects floating upon or submerged in the water, skis/wakeboards/wakerskates, water ski course buoys and anchoring apparatus and the water ski jump, 4) being run over by the boat, 5) becoming entangled in and/or dragged by the ski rope, 6) being kicked or tackled by other players, 7) being shot by other shooters, 8) falling off a bike or colliding with fixed or moveable objects, or 9) all other manners of injury (collectively, the "Risks"), all of which might result in abrasions, lacerations, broken bones, torn muscles, ligaments or cartilage, broken ear drums, blindness, injury to ankles, knees, shoulders, hips, elbows, wrists, head, ribs, neck, back or other bones and/or internal injuries and other types of personal injury and/or property damage (the "Potential Injuries") which might result from the activities themselves, the acts of the Released Parties or others, or the unavailability of emergency care. These risks include RICK OF PROPERTY DAMAGE, BODILY INJURY, PARALYSIS, LOSS OF LIMB(S) AND DEATH.

**2. ASSUMPTION OF RISK.** The Releasing Party ASSUMES ALL RISKS, FORESEEN AND UNFORESEEN, AND INVOLVED WITH OR ARISING FROM THE ACTIVITIES, including without limitation those Risks described in Section 1 above. If injured while at the Facility or while participating in the Activities, the Releasing Party covenants not to sue the Released Parties. If suit is nevertheless commenced and not dismissed, the Releasing Party agrees to limit any recovery for pain, suffering or loss of enjoyment of life to not more than 50% of his or her combined loss of income and medical expense, and the Releasing Party waives and releases any claim for punitive damages or consequential damages, including but not limited to loss of consortium or extreme emotional distress damages.

**3. SKILLS AND TRAINING.** The Releasing Party acknowledges that he, she or the minor for whom he or she is signing has the skills, qualifications, physical abilities and training necessary to engage in the Activities. The Releasing Party agrees that if he or she has any questions as to what skills, qualifications or training are necessary to properly participate in the Activities, singularly or collectively, then they shall direct such questions to the Facility management before engaging in any Activities.

**4. INDEMNIFY AND DEFEND.** The Releasing Party agrees to INDEMNIFY AND DEFEND the Released Parties against, and hold them harmless from, any and all CLAIMS, including attorney fees, which in any way arise from the Activity which is the subject of this agreement and which include but are not limited to those risks described in Section 1, including any liability arising from the act or negligent act of the RELEASED PARTIES, their employees or volunteers, THE RELEASING PARTY, the below named minor or anyone else.

**5. DAMAGE TO FACILITIES.** The Releasing Party agrees to pay any and all damages to any real or personal property of the RELEASED PARTIES caused by the Releasing Party whether negligently, willfully or otherwise.

**6. LEGAL FEES.** In the event of any controversy, claim or dispute between the parties arising out of or relating to this agreement or the breach hereof, or the Activities, the substantially prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney fees and costs. This provision shall not apply to attorney fees paid to a plaintiff's attorney in any action seeking compensation for personal injury, death or property damage, but shall apply to the defendant's legal fees in the event such litigation is substantially resolved in favor of the Released Parties.

**7. AGREEMENT.** The Releasing Party agrees that the use of the Facility shall be governed by Section 9-103 of the New York General Obligations Law to the fullest extent possible as if the Activities were specifically listed among the activities governed by Section 9-103 and as if the Facility amenities were provided to the Releasing Party without charge even though the Releasing Party may have paid a fee for the use of the Facility/amenities. The relevant portions of the General Obligations Law are set forth below. This Agreement shall be construed according to the laws of the State of New York. Any action or proceeding commenced against the Released Parties shall be exclusively venued in Supreme Court, \_\_\_\_\_ County, New York. If any part of this Agreement is deemed void or unenforceable, the remaining portions shall remain in full force and effect.

**8. ACKNOWLEDGMENT.** The Releasing Party has read and understands this agreement and realizes it relates to releasing valuable legal rights and does so freely and voluntarily.

Signature of Releasing Party	Date
Print Name	Date of Birth: _____

**APPROVAL OF PARENT/LEGAL GUARDIAN ON BEHALF OF MINOR**

I am the parent/legal guardian of the below-named minor. I have read and understand the agreement and realize the agreement involves releasing valuable legal rights of the minor and myself. I agree to be bound by all of the terms of the agreement. I also give my consent to the participation in the Activity by the minor. I also give my consent for the minor to be included in photographs, videos, slides and movies taken at the facility of ZACS, Inc. by students, staff, TV, Radio and/or other news media without remuneration of any kind. I understand that pictures become property of ZACS, Inc. and might appear in promotional materials and publications.

Print Name of Minor	Minor's Date of Birth	Today's Date
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Print Name of Parent/Legal Guardian of Minor Under the Age of 18	Signature of Parent/Legal Guardian
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**PARENT/LEGAL GUARDIAN EMERGENCY TREATMENT CONSENT**

As the parent and/or legal guardian of the above-named minor, I agree to the participation by the minor in the Activities. The undersigned hereby consents to medical treatment of the minor in case of emergency.

\_\_\_\_\_  
Signature of Parent/Legal Guardian

**In pertinent part, Section 9-103 of the General Obligations Law provides as follows:**

- a. An owner, lessee or occupant of premises...owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning...canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, spelcological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes.
- b. An owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.