

OBSERVER ASSUMPTION OF RISK AND RELEASE OF LIABILITY AGREEMENT

This Observer Assumption of Risk and Release of Liability Agreement (the "Agreement") is entered into between the undersigned (hereinafter "you") and Apex Powered Paragliding LLC, an Oklahoma limited liability company, as of the date of your signature (the "Effective Date"). If you choose to sign this Agreement, you assume all risks associated with observing powered paragliding, which can be a very dangerous and sometimes deadly activity, and you waive significant legal rights you might have in the event you witness a person suffer injury or death when powered paragliding, or you yourself are injured or killed when observing powered paragliding. You should read this Agreement carefully prior to signing it. You should not sign this Agreement if you are not willing to assume all risks associated with observing powered paragliding or you do not want to waive any legal rights you or your estate might have if you observe a person suffer injury or death when powered paragliding, or you yourself are injured or killed when observing powered paragliding.

1. **Definitions.** This Agreement uses terms that have definitions that are specific to this Agreement. These definitions may be different than your understanding of these terms' general definitions. You should review these definitions carefully so you completely understand these terms in the context of this Agreement. As used in this Agreement, these terms have the following definitions:
 - a. "Apex" means Apex Powered Paragliding LLC, an Oklahoma limited liability company, and its subsidiaries, holding companies, affiliates owners, shareholders, members, directors, managers, officers, employees, instructors, agents, representatives, attorneys, advisors, consultants, subcontractors, independent contractors, lessees, lessors, vendors, and the United States Powered Paragliding Association, a Delaware non-profit corporation (the organization that certifies Apex instructors).
 - b. "Claim" means any demand, negotiation, or claim, and any lawsuit, action, arbitration, mediation, or other proceeding before any state, federal, administrative, governmental, quasi-governmental, tribal, international, or private court, tribunal, other authority.
 - c. "Damages" means any direct, indirect, special, general, compensatory, consequential, collateral, punitive, liquid, or other damages that result from any Injury or death.
 - d. "Estate" means your estate upon your death and the beneficiaries to that estate, whether by intestate succession, will, trust, or other method of descent and distribution, and any person authorized to bring any Claim against Apex on behalf of your estate, including, but not limited to, any relative, descendent, administrator, personal representative, trustee, or other person or entity legally able to act on behalf of your estate.
 - e. "Injury" means any mental, emotional, physical, or financial injury suffered by you, and any injury to your property or any property under your control.
 - f. "Legal Expenses" means attorney fees, expert witness fees, witness fees, consulting fees, settlement proceeds, and any other fee, cost, or expense related to defending or settling a Claim.
 - g. "Powered Paragliding" means all acts related to powered paragliding or non-powered paragliding at or with Apex, including, but not limited to, procuring, assembling, preparing, maintaining, repairing, boarding, disembarking or jumping from, launching, flying, landing, crashing, piloting, driving, riding in, pushing, pulling, starting, turning-off, being in the general area of, observing, and watching a powered paraglider or non-powered paraglider. "Powered Paragliding" also includes the training, instruction, and other advice you receive from Apex,

preparation of the parachutes, gear, instruments, and other items or equipment used or available when powered paragliding or non-powered paragliding.

h. "Third Party" means any person or entity other than you, your Estate, or Apex.

(Initial your agreement to and understanding of the definitions of the terms as stated in Section 1: _____)

2. **Consideration.** In consideration for the ability to utilize Apex's facilities, equipment, and services at the then-current costs and fees charged by Apex, you agree to release Apex from liability for Damages resulting from its negligence, refrain from bringing certain Claims against Apex, indemnify Apex from certain Claims against Apex, and make certain representations to Apex, all of which are set forth more fully below in this Agreement.

3. **Term.** The term of this Agreement is from the Effective Date through December 31 of the calendar year of the Effective Date. As of January 1 of the calendar year following the Effective Date, you must sign a subsequent Observer Assumption of Risk and Release of Liability Agreement (or similar agreement) to resume Powered Paragliding with Apex, which will be provided by Apex for your review. You will not engage in Powered Paragliding with Apex at that time until you have signed a subsequent Observer Assumption of Risk and Release of Liability Agreement (or similar agreement). If you do engage in Powered Paragliding with Apex without signing a subsequent Observer Assumption of Risk and Release of Liability Agreement (or similar agreement), this Agreement will continue to control at all times you engage in Powered Paragliding with Apex.

4. **Risk of Powered Paragliding.**

a. **Acknowledgment of Risk.** You acknowledge and agree that Powered Paragliding is an inherently dangerous and high-risk activity that can result in serious Injury or death. These inherent dangers and risks will always be present with Powered Paragliding. These inherent dangers and risks are present even if the weather conditions are ideal, all safety precautions were followed, and all other instruction and rules were adhered to or obeyed. Greater danger and risk may exist if the pilot, Apex, or any other person is negligent or otherwise at fault when Powered Paragliding. Powered Paragliding may involve dangers and risks that are not known by you, Apex, or any other person.

(Initial your acknowledgment of the inherent risks of Powered Paragliding: _____)

b. **Assumption of Risk.** You voluntarily, willingly, and knowingly assume any and all dangers and risks associated with observing Powered Paragliding, whether those risks are known or unknown, including those that may result in Injury or death. This includes the dangers and risks inherent with Powered Paragliding, and any dangers or risks that are caused by Apex's negligence or other act or omission. Examples of the risks you assume include, but are not limited to, equipment malfunction, Apex's negligent training and instruction of the pilots and its negligent maintaining of equipment, deficiencies in the landing or launch area, complications caused by the weather, and unforeseen or unpredictable occurrences while Powered Paragliding. The only dangers or risk you do not assume are those that cannot be assumed under Oklahoma law, including dangers and risks caused by Apex's gross negligence or willful misconduct.

(Initial your agreement to assume the risks related to Powered Paragliding: _____)

5. **Release of Liability.**

a. **Release of Liability from Liability for Damages.** You agree that if you suffer any Injury or death while observing Powered Paragliding, you, on behalf of yourself and your Estate, release and discharge Apex from any liability for any Damages resulting from your Injury or death, even if those Damages result from Injury or death caused Apex's negligence or other act or omission. The only liability for Damages that you do not release Apex from is liability for Damages that cannot be waived under Oklahoma law, including Damages caused by Apex's gross negligence or willful misconduct.

(Initial your agreement to release Apex from liability for Damages as set forth in Section 5.a: _____)

b. **Waiver of Claims against Apex.** Because you have released Apex for any liability for Damages in Section 7.7.a above, you, on behalf of yourself and your Estate, agree not to bring any Claim against Apex for any Injury or death suffered by you, even if the Injury or death results from Apex's negligence or other act or omission. For example, if you suffer Injury or death and you incur medical bills, funeral costs, lost wages, lost profits, or any other loss for which Apex might be liable because of its negligence or other act or omission, you or your Estate will not make any Claim against Apex. However, you do not waive any Claims that are not waivable by law, such as Claims based on Apex's gross negligence or willful misconduct.

(Initial your agreement to waive Claims against Apex as set forth in Section 5.b: _____)

6. **Legal Expenses and Indemnification.**

a. **Legal Expenses for Third Party Claims.** You, on behalf of yourself and your Estate, agree to reimburse Apex for all reasonable Legal Expenses incurred by Apex in defending itself against any Claim brought by any Third Party related to: (i) Injury or death caused or suffered by you in connection with observing Powered Paragliding; and (ii) any financial, mental, emotional, or physical injury to a Third Party's person or property caused by you.

(Initial your agreement to pay Legal Expenses to Apex for the Third Party Claims set forth in Section 6.a: _____)

b. **Indemnification of Damages to Third Parties.** You, on behalf of yourself and your Estate, agree to indemnify Apex for all Damages incurred by Apex resulting from any Claim brought by any Third Party related to: (i) Injury or death caused or suffered by you in connection with Powered Paragliding; and (ii) any financial, mental, emotional, or physical injury to a Third Party's person or property caused by you.

(Initial your agreement to indemnify Apex for any Damages incurred from Third Party Claims as set forth in Section 6.b: _____)

c. **Collection Expenses.** You, on behalf of yourself and your Estate, agree to reimburse any Legal Expenses or reasonable collection costs incurred by Apex in attempting to collect reimbursement for any Legal Expenses or Damages incurred by Apex as described in Section 6.a and 6.b above.

(Initial your agreement to reimburse Apex for any collection expenses as described in Section 6.c: _____)

d. **Legal Expenses for Your Claims.** You, on behalf of yourself and your Estate, agree that if you or your Estate brings a Claim against Apex for any Damages related to your Injury or death

in connection with Powered Paragliding, and you are not the prevailing party, you or your Estate, as applicable, will reimburse Apex for all reasonable Legal Expenses incurred in defending against the Claim.

(Initial your agreement to pay Apex's Legal Expenses incurred as a result of a Claim that you or your Estate brings and Apex is the prevailing party as described in Section 6.d: _____)

7. **Representations to Apex.** Before Apex will allow you to observe any Powered Paragliding services or activities at its facility, you must make certain truthful, voluntary representations to Apex. If you do not think you can honestly make the representations in this Section 7, you should not sign this Agreement.

a. **Age of Majority.** You represent that you are at least 18 years of age, and if you live in another state or country, you are of the age necessary to enter into contracts according to the laws of your home state or country.

(Initial your agreement that you are at least 18 years of age and the age of majority in your home state or country: _____)

b. **Not Commercial Aircraft.** You represent that you understand that the powered paragliders used by Apex for Powered Paragliding are not required by law to be inspected and maintained in the same manner as, or in accordance with, the standards applicable to commercial aircraft, and that Apex's powered paraglider operators are not required by law to have the same licenses or ratings as commercial airline pilots.

(Initial your agreement that Powered Paragliding aircraft and pilots are not held to the same rigorous standards as commercial aircraft and pilots: _____)

c. **No Insurance Coverage.** You represent that you understand that Apex provides no insurance coverage, whether accidental, general liability, health, or any other type of insurance coverage to anyone who observes Powered Paragliding with Apex. Any type of insurance coverage for your observation of Powered Paragliding is your own responsibility.

(Initial your agreement that you understand Apex does not provide any insurance coverage for you while observing Powered Paragliding: _____)

d. **Free Choice.** You represent and agree that you are signing this Agreement Apex with your free and voluntary choice, without coercion, intimidation, force, obligation, or threat of physical, emotional, or financial harm. You also represent that your physical and economic wellbeing is not dependent upon observing Powered Paragliding with Apex.

(Initial your agreement that you are signing this Agreement with your own free choice: _____)

8. **Minor Child Observers.**

a. **Release of Claims.** If you have one or more minor children present during your observation of Power Paragliding, either your own children or children for which you are their lawful legal guardian, write their names here (if no such children are present, write "N/A"): _____.

To the fullest extent allowed by law, on behalf of the children listed in the foregoing sentence, you release and discharge Apex from any liability for any Damages resulting from your Injury or

death (including, but not limited to, Damages for observing your Injury or death and loss of benefits from family relationship (e.g., loss of consortium claims)), and any Damages resulting from any mental, emotional, physical, or financial injury or death suffered by your children, even if those Damages result from an injury or death caused Apex's negligence or other act or omission. The only liability for Damages that you do not release Apex from on behalf of your children is liability for Damages that cannot be waived under Oklahoma law, including Damages caused by Apex's gross negligence or willful misconduct.

(Initial your agreement to release Apex from liability for Damages on behalf of your children as set forth in Section 8.a: _____)

b. Waiver of Claims. Because you have released Apex for any liability for Damages on behalf of your children in Section 8.a above, you, on behalf of children named in Section 8.a, agree not to bring any Claim against Apex for your Injury or death, or any mental, emotional, physical, or financial injury or death suffered by your children, even if the Injury or death results from Apex's negligence or other act or omission. However, you do not waive any Claims that are not waivable by law, such as Claims based on Apex's gross negligence or willful misconduct.

(Initial your agreement to waive Claims against Apex on behalf of your children as set forth in Section 8.b: _____)

9. **Photo and Video Release.** I hereby grant Apex permission to use my likeness in a photograph, video, or other digital media (“photo”) in any and all of its publications, including web-based publications, without payment or other consideration. I understand and agree that all photos will become the property of the Apex and will not be returned. I hereby irrevocably authorize the Apex to edit, alter, copy, exhibit, publish, or distribute these photos for any lawful purpose. In addition, I waive any right to inspect or approve the finished product wherein my likeness appears. Additionally, I waive any right to royalties or other compensation arising or related to the use of the photo.
10. **Amendment.** This Agreement may be amended only by a written instrument signed by you and an authorized representative of Apex.
11. **Integrated Agreement.** This Agreement constitutes the entire understanding between you and Apex with respect to this Agreement's subject matter. This Agreement supersedes all previous understandings, negotiations, either oral or written, with respect to its subject matter. If you had Apex or a Third Party help explain this Agreement to you, their interpretation or knowledge of this Agreement's subject matter does not affect in any way the meaning or validity of this Agreement.
12. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable for any reason, such provision will be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to this Agreement, and the remaining provisions hereof will not be affected thereby. If the provision cannot be adjusted to achieve the intent of the Parties in accordance with law, such provision will be voided and the remaining provisions hereof will not be affected thereby.
13. **Governing Law, Jurisdiction, and Venue.** This Agreement is governed by the laws of the State of Oklahoma without regard to its conflicts of law principles. You consent to personal jurisdiction and venue in the District Court for the State of Oklahoma, Oklahoma County, for all disputes regarding this Agreement.

- 14. **Survival.** Sections 1, 4–8, 11, and 12 will survive any termination or expiration of this Agreement.
- 15. **Understanding of this Agreement.** You represent that you have read, understand, and agree to all terms in this Agreement, and that you have had an opportunity to have this Agreement reviewed by an attorney.
- 16. **Electronic Signature.** This Agreement may be executed in any format, including hardcopy, digital, or electronic version, each of which will constitute an original and will fully bind each Party who executed it.

Apex Powered Paragliding LLC:

"You":

By: _____
Justin Booher, Manager

By: _____
Signature

Date: _____

Printed Name: _____

Date of Birth: _____

Address: _____

Phone Number: _____

Date: _____