

Winger Productions *LLC*
**ASSUMPTION OF RISK, WAIVER OF LIABILITY,
AND INDEMNITY AGREEMENT**

PARTICIPANTS: READ THIS DOCUMENT CAREFULLY BEFORE SIGNING. THIS DOCUMENT HAS LEGAL CONSEQUENCES AND WILL AFFECT YOUR LEGAL RIGHTS AND WILL ELIMINATE YOUR ABILITY TO BRING FUTURE LEGAL ACTIONS.

Parties

Released Parties include Winger Productions LLC and its directors, officers, employees, agents, contractors, insurers, spectators, equipment suppliers, and volunteers; BIG GAME RACEWAY PARK, INC. and its directors, officers, employees, agents, contractors, insurers, equipment suppliers, and volunteers; all WINGER PRODUCTIONS LLC event sponsors, organizers, promoters, directors, officials, property owners, and advertisers; governmental bodies and/or municipal agencies whose property and/or personnel are used; and any or all parent, subsidiary or affiliate companies, licensees, officers, directors, partners, board members, supervisors, insurers, agents, equipment suppliers, and representatives of any of the foregoing.

Releasing Parties include: the participant as well as participant's spouse, children, parents, guardians, heirs, next of kin, and any legal or personal representatives, executors, administrators, successors and assigns, or anyone else who might claim or sue on participant's behalf.

.... **Initial Assumption of Inherent Risks**

The Burner event (hereafter referred to as the **Burner event**) is meant to be an extreme test of toughness, strength, stamina, camaraderie, and mental grit that takes place in one place in one day. It is not a race against other contestants, but rather a competition with oneself and the course. The object is to complete the course. Venues are part of the challenge and usually involve hostile environments that might include extreme heat or cold, snow, fire, mud, extreme changes in elevation, and water. Some of the activities include runs, military style obstacles, going through pipes, traversing cargo nets, climbing walls, encountering electric voltage, swimming in cold water, throwing or carrying heavy objects, and traversing muddy areas. In summation, the Burner event is a hazardous activity that presents the ultimate physical and mental challenge to participants.

I acknowledge that the Burner event is an extreme test of my physical and mental limits that carries with it inherent risks of physical injury. **Inherent risks** are risks that cannot be eliminated completely (without changing the challenging nature of the Burner event) regardless of the care and precautions taken by Winger Productions LLC (hereafter used when referring to the corporate entity and protected parties). I also understand that it is extremely strenuous with the accompanying risks and dangers generally present in such activities. I understand that these hazards may be magnified due to the fact that the Burner event is often conducted under what may be extreme conditions and circumstances.

I understand and acknowledge that the **inherent risks include**, but are not limited to: 1) contact or collision with persons or objects (e.g., collision with spectators or course personnel), contact with other participants, contact or collision with motor vehicles or machinery, and contact with natural or man-made fixed objects or obstacles); 2) encounter with obstacles (e.g., natural and man-made water, road and surface hazards, close proximity and/or contact with thick smoke and open flames, barbed wire, pipes, and electric shocks); 3) equipment related hazards (e.g., broken, defective or inadequate competition equipment, unexpected equipment failure, imperfect course conditions); 4) weather-related hazards (e.g., extreme heat, extreme cold, humidity, ice, rain, fog); 5) inadequate first aid and/or emergency measures; 6) judgment- and/or behavior-related problems (e.g., erratic or inappropriate co-participant behavior, erratic or inappropriate behavior by the participant, errors in judgment by personnel working the event; and 7) natural hazards (e.g. uneven terrain, rock falls, lightning strikes, earthquakes, wildlife attacks, contact with poisonous plants, marine life and/or ticks).

I further understand and acknowledge that any of these risks and others, not specifically named, may cause injury or injuries that may be categorized as minor, serious, or catastrophic. **Minor injuries** are common and include, but are not limited to: scrapes, bruises, sprains, nausea, and cuts. **Serious injuries** are less common, but do sometimes occur. They include, but are not limited to: property loss or damage, broken bones, torn ligaments, concussions, exposure, heat-related illness, mental stress or exhaustion, infection, and concussions. **Catastrophic injuries** are rare; however, we feel that our participants should be aware of the possibility. These injuries can include permanent disabilities, spinal injuries and paralysis, stroke, heart attack, and even death.

I also understand that it is my responsibility to consult with my personal physician prior to participating in the Burner event to ensure that such participation will not pose any unusual risks to my health and well-being.

I understand that it is my responsibility to inspect the Course, facilities, equipment, and areas to be used, and if I believe or become aware that any are unsafe or pose unreasonable risks, I agree to immediately notify appropriate personnel. By participating in the event, I am acknowledging that I have found the course, facilities, equipment, and areas to be used to be safe and acceptable for participation. I accept full and sole responsibility for the condition and adequacy of my equipment.

I UNDERSTAND FULLY THE INHERENT RISKS INVOLVED IN THE BURNER EVENT AND ASSERT THAT I AM WILLINGLY AND VOLUNTARILY PARTICIPATING IN THE EVENT. I have read the preceding paragraphs and acknowledge that 1) I know the nature of the Burner event; 2) I understand the demands of this activity relative to my physical condition; and 3) I appreciate the potential impact of the types of injuries that may result from the Burner event. **I HEREBY ASSERT THAT I KNOWINGLY ASSUME ALL OF THE INHERENT RISKS OF THE ACTIVITY AND TAKE FULL RESPONSIBILITY FOR ANY AND ALL DAMAGES, LIABILITIES, LOSSES, OR EXPENSES THAT I INCUR AS A RESULT OF PARTICIPATING IN THE BURNER EVENT.**

.... **Initial Waiver of Liability for Ordinary Negligence**

In consideration of being permitted to participate in the Burner event, **I (on behalf of the Releasing Parties) HEREBY FOREVER WAIVE, RELEASE, COVENANT NOT TO SUE, AND DISCHARGE WINGER PRODUCTIONS LLC AND THE OTHER RELEASED PARTIES FROM ANY AND ALL CLAIMS RESULTING FROM THE INHERENT RISKS OF THE TM EVENT OR THE ORDINARY NEGLIGENCE OF WINGER PRODUCTIONS LLC (OR OTHER RELEASED PARTIES) THAT I MAY HAVE ARISING OUT OF MY PARTICIPATION IN THE BURNER EVENT.**

This agreement applies to 1) personal injury (including death) from incidents or illnesses arising from the Burner event participation. This includes injury during course inspection, observation, practice runs, the event, and while on the premises (including, but not limited to stands, sidewalks, parking areas, restrooms, and dressing facilities); and 2) any and all claims resulting from damage to, loss of, or theft of property.

.... **Initial Indemnification Agreement**

In consideration of being permitted to participate in the Burner event and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **I hereby agree to hold harmless, defend and indemnify Winger Productions LLC (and the other Released Parties) from and against: 1) Any and all claims made by me (or any Releasing Party) arising from injury or loss due to my participation in the Burner event; and 2) Against any and all claims of co-participants, rescuers, and others arising from my conduct in the course of my participation in the Burner event.** For the purposes hereof, "claims" includes all actions and causes of action, claims, losses, costs, expenses and damages, including legal fees and related expenses. This indemnity shall survive the expiration or sooner termination of the Burner event.

.... **Initial Other Agreements**

Venue and Jurisdiction:

I understand that if legal action is brought, the Trumbull County Court of Common Pleas has the **sole and exclusive jurisdiction** and that **only the substantive laws** shall apply.

Severability:

I understand and agree that this Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be **as broad and inclusive as is permitted** and that if any provision shall be found to be unlawful, void, or for any reason unenforceable, then **that provision shall be severed from this Agreement and does not affect the validity** and enforceability of any remaining provisions.

Integration:

I affirm that this agreement supersedes any and all previous oral or written promises or agreements. I understand that **this is the entire Agreement** between me and Winger Productions LLC and **cannot be modified or changed** in any way by representations or statements by any agent or employee of Winger Productions LLC. This Agreement may only be amended by a written document duly executed by all parties.

Mediation and Arbitration:

In the event of a legal issue, **I agree to 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 my participation in the Burner event **shall be submitted to binding arbitration** in accordance with the applicable rules of the American Arbitration Association then in effect. The cost of such action shall be shared equally by the parties.

.... **Initial Agreements for the Protection of Participants:**

- I represent and warrant that I am **in good health** and in proper physical condition to safely participate in the Burner event. I certify that I have **no known or knowable physical or mental conditions** that would affect my ability to safely participate in the Burner event, or that would result in my participation creating a risk of danger to myself or to others.
- I acknowledge that Winger Productions LLC recommends and **encourages each client to get medical clearance** from his/her personal physician prior to participation.
- I assert that I **have not been advised or cautioned against participating** by a medical practitioner.
- I understand that it is my responsibility to continuously **monitor my own physical and mental condition during the Course**, and I agree to withdraw immediately and to notify appropriate personnel if at any point my continued participation would create a risk of danger to myself or to others.
- I represent and warrant that I am covered by **medical insurance**.
- In the event of an injury to me that renders me unconscious or incapable of making a medical decision, **I authorize appropriate Winger Productions LLC personnel and emergency medical personnel at the event to make emergency medical decisions** on my behalf (including, but not limited to CPR and AED).
- I authorize Winger Productions LLC to **secure emergency medical care or transportation** (i.e., EMS) when deemed necessary by Winger Productions LLC.
- I agree to **assume all costs** of emergency medical care and transportation.
- I acknowledge that Winger Productions LLC has instituted its **rules for the protection** of the participant and co-participants. I agree to familiarize myself with those rules and follow them throughout the event. I also recognize the authority of Winger Productions LLC to halt my participation (and, if necessary, have me removed from the premises) if my participation, conduct, or presence endangers myself or my co-participants.

Acknowledgment of Understanding:

I have read this Assumption of Risk, Waiver of Liability, and Indemnification Agreement and fully understand its terms. I understand that I am giving up substantial rights, including my right to sue. I further acknowledge that I am signing the agreement freely and voluntarily, and intend my signature to be a complete and unconditional release of all liability due to ORDINARY NEGLIGENCE of Winger Productions LLC (and other Released Parties) or the INHERENT RISKS of the activity, to the greatest extent allowed by law.

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Signature of Participant

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Date

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Name (Printed)