

Grit & Wit
May 9, 2019 at

Kingsborough Community College

**RELEASE, WAIVER OF LIABILITY, ASSUMPTION OF RISK, DEFENSE
INDEMNITY AND HOLD HARMLESS 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 Grit & Wit Entertainment, Inc. and its members, directors, officers, employees, agents, contractors, insurers, course personnel, spectators, co-participants, equipment and service suppliers, merchandisers, concessionaries, food and beverage purveyors, and volunteers (collectively "Grit & Wit"); Kingsborough Community College and its directors, officers, employees, agents, contractors, insurers, equipment and service suppliers, and volunteers; all Grit & Wit 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, employees, insurers, agents, equipment and service 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.

Related Activities include: the provision of food and/or beverages before, during, and after the Grit & Wit Event by Grit & Wit and/or other vendors, the sale of clothing, mementos, and other merchandise by Grit & Wit and/or other vendors.

Initial Assumption of Inherent Risks:

The Grit & Wit Event (hereafter referred to as the G&W 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. The course is a significant part of the challenge and involves a challenging environment that might include physical conditions of extreme heat or cold, snow, fire, mud, extreme changes in elevation, and water, testing a participant's strength, stamina, agility, balance and ingenuity, among other skills. Some of the activities include runs, military style obstacles, going through pipes, traversing cargo nets, climbing walls, swimming in cold water, throwing or carrying or getting hit with heavy objects, and traversing muddy areas. In summation, the G&W Event is a hazardous activity that presents the ultimate physical and mental challenge to participants.

I acknowledge that the G&W 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 G&W Event) regardless of the care and precautions taken by Grit & Wit and other Released 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 G&W Event may be 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 (e.g., collision with other participants, spectators, volunteers, or course personnel), contact with other participants, contact or collision with motor vehicles or machinery, and contact with natural or man-made fixed or mobile objects or obstacles and/or the ground or water; 2) encounter with obstacles (e.g., natural and man-made water hazards, road and surface hazards, close proximity and/or contact with thick smoke and open flames, barbed wire, and pipes.); 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, sun, humidity, ice, rain, fog); 5) inadequate or negligent first aid and/or emergency measures; 6) judgment- and/or behavior-related problems (e.g., erratic or inappropriate co-participant or spectator behavior, erratic or inappropriate behavior by the participant, errors in judgment by personnel and/or others working the Event; and 7) natural hazards (e.g. uneven terrain, rock falls, lightning strikes, earthquakes, wildlife attacks, trained/domesticated/maintained animals, including but not limited to horses and dogs, contact with poisonous or irritant containing plants, marine life and/or ticks or other insects).

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, strains, muscle tension and soreness, nausea, cuts, sunburn, abrasions, grazes, lacerations, and contusions. Serious injuries are less common, but do sometimes occur. They include but are not limited to property loss or damage, broken bones, fractures, torn or strained ligaments and tendons, concussions, exposure, dehydration, heat exhaustion and other heat-related illnesses, mental stress or exhaustion, infection, vomiting, dislocations, hyperthermia, hypothermia, anemia, electrolyte imbalance, loss of consciousness, syncope, dizziness, fainting, seizures, electric shock and/or injury, near drowning and neurological disorders/pain. Catastrophic injuries are rare; however, our participants should be aware of the possibility of their occurrence. These injuries can include, but are not limited to, permanent disabilities, stroke, single or multiple organ failure or dysfunction, physical damage to organs, spinal injuries, paralysis, heart attack, heart failure, blood cell disorder, brain swelling, drowning and death.

I also understand that it is my responsibility to consult with my personal physician prior to participating in the G&W 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 G&W Event, I am acknowledging that I have found the course, facilities, equipment, and areas to be used to be safe and acceptable for participation in the G&W Event. I accept full and sole responsibility for the condition and adequacy of all of my own clothing and equipment.

I understand fully the inherent risks of participating in the G&W Event and assert that I am knowingly, willingly, purposefully, freely and voluntarily participating in the G&W Event. I have read the preceding paragraphs and acknowledge that 1) I know and understand the nature of the G&W 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 G&W Event. I hereby assert that I knowingly, willingly, purposefully, freely and voluntarily assume all of the inherent risks of the activity and take full responsibility for any and all damages, liabilities, losses, or expenses that I may incur and/or cause as a result of participating in the G&W Event.

Initial Release and Waiver of Liability for Negligence: In consideration of being permitted to participate in the G&W Event, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I (on my own behalf and on behalf of the Releasing Parties) hereby forever waive, release, covenant not to sue, and discharge Grit & Wit and the other Released Parties from any and all claims resulting from the Inherent Risks of the G&W Event and negligence of Grit & Wit (and other Released Parties) that I may have arising out of or relating to my participation in the G&W Event.

This Agreement applies to 1) personal injury (including injury, sickness and/or death) from incidents or illnesses arising from the G&W Event participation, which includes injury during course inspection, observation, practice runs, the G&W Event, medical treatment, and while on the premises where the G&W Event is being held (including, but not limited to base area, stands, sidewalks, parking areas, sponsor promotions, restrooms, first-aid tents, and dressing facilities); and 2) any and all claims resulting from damage to, loss of, or theft of property. Grit & Wit and/or other vendors may sell clothing, mementos and other merchandise, and Releasing Parties hereby acknowledge that this Agreement applies fully to any and all purchases by Releasing Parties of such clothing, mementos, and merchandise. This Release and Waiver shall survive the expiration of the G&W Event.

Initial Defense, Indemnification and Hold Harmless Agreement: In consideration of being permitted to participate in the G&W Event and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I hereby agree to defend, indemnify and hold harmless Grit & Wit (and the other Released Parties) from and against: 1) Any and all claims made by me (or any Releasing Party) arising from injury, sickness, death or loss due to or arising from or related to my participation in the G&W Event; and 2) Any and all claims of co-participants, rescuers, and others due to or arising from or related to my conduct before, during and after my participation in the G&W Event. For the purposes hereof, "claims" includes all actions and causes of action, claims, demands, losses (economic and non-economic), costs, expenses and damages (including but not limited to direct, indirect, incidental, special and/or consequential), including legal fees and related expenses. This defense, indemnity, and hold harmless shall survive the expiration of the G&W Event.

Severability: I understand and agree that this Agreement is intended to be as broad and inclusive as is permitted by New York 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 Grit & Wit and cannot be modified or changed in any way by representations or statements by any agent or employee of Grit & Wit. 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 arising from or related to this Agreement or the G&W Event, 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 or related to my participation in the G&W Event and/or this Agreement shall be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect in and for New York. The cost of such action shall be shared equally by the parties.

Class Actions: I agree that any arbitration, mediation or legal action arising from or related to this Agreement or the G&W Event shall proceed solely on an individual basis without the right for any claims to be mediated, arbitrated or litigated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. Claims may not be joined or consolidated unless agreed to in writing by all 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 G&W Event. I certify that I have no known or knowable physical or mental conditions that would affect my ability to safely participate in the G&W Event, or that would result in my participation creating a risk of danger to myself or to others.
- I represent and warrant that I am in full command of my faculties and am not under the influence of alcohol or drugs.
- I agree not to participate in the G&W Event while under the influence of alcohol and/or drugs.
- I acknowledge that Grit & Wit recommends and encourages each participant to get medical clearance from

his/her personal physician prior to participation.

- I assert that I have not been advised or cautioned against participating in the G&W Event by a medical practitioner.
- I understand that it is my responsibility to continuously monitor my own physical and mental condition while on the course while preparing for and while participating in the G&W Event, and I agree to withdraw immediately and 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—Policy # _____, Provider Name _____.
- In the event of an injury to me that renders me unconscious or incapable of making a medical decision, I authorize appropriate Grit & Wit personnel and emergency medical personnel at the G&W Event to make emergency medical decisions on my behalf (including, but not limited to CPR and AED); I authorize Grit & Wit to secure emergency medical care or transportation (i.e., EMS) when deemed necessary by Grit & Wit; and I agree to assume all costs of emergency medical care and transportation.
- I acknowledge that Grit & Wit has instituted its rules for the protection of the participants, co-participants, staff, volunteers, sponsors, spectators and others. I agree to familiarize myself with those rules and follow them throughout the Event. I also recognize the authority of Grit & Wit to halt my participation (and, if necessary, have me removed from the premises) if my participation, conduct, or presence endangers myself, my co-participants, or others associated with the G&W Event.

Entry and Participation Agreements:

Rules: I agree to become familiar with and abide by all written and/or posted rules of Grit & Wit, as well as all written and/or posted rules of the G & W Event. I further agree to comply with all directions, instructions and decisions of Grit & Wit and G&W Event personnel. I further agree not to challenge these rules, directions, instructions, or decisions on any basis at any time.

Emergency Delay or Cancellation: I acknowledge that Grit & Wit in its sole discretion may delay, modify, or cancel the G&W Event if conditions or natural or man-made emergencies make administering the G&W Event unreasonably difficult or unsafe. I agree that “emergency” is defined to mean any event beyond the reasonable control of Grit & Wit, including but not limited to: high wind, extreme rain or hail, hurricane, tornado, earthquake, flood, acts of terrorism, fire, threatened or actual strike, labor difficulty or work stoppage, insurrection, war, public disaster, and reasonably unavoidable casualty. In the event of a delay, modification, or cancellation of the G&W Event as described in this paragraph, I understand that I will not be entitled to a refund of my entry fee or any other costs incurred in connection with, relating to or arising from the G&W Event.

Govern Participation: I understand that Grit & Wit has the authority to issue instructions or directions relating to the manner of my safe participation in the G&W Event and Related Activities and the authority to halt my participation in the G&W Event and Related Activities at any time they deem it necessary to protect my safety or the safety and enjoyment of participants, spectators, volunteers and personnel; and/or promote fairness and the spirit of Grit & Wit.

Removal from Course: I understand that Grit & Wit and G&W Event personnel may immediately cause anyone who disobeys any rules, directions, instructions, decisions, or laws, or whose behavior endangers safety or negatively affects a person, facility, or property of any type or kind, to be removed from the course and/or the G&W Event and/or Related Activities.

Fee Refunds: I understand that all fees and associated costs (including optional product purchases, spectator tickets, and donations), paid in registration for this G&W Event are not refundable for any reason under any circumstances, including but not limited to injury, a scheduling conflict, and/or G&W Event cancellation.

Attitude and Behavior: I also agree to exhibit appropriate behavior at all times; demonstrate respect for all people, equipment, and facilities; and participate with a cooperative and positive attitude.

Alcohol & Drugs: I certify that I am not, and on the date of the G&W Event will not be, under the influence of alcohol or any non-prescription drugs that would in any way impair my ability to safely participate in the G&W Event. I further understand that the consumption of any alcohol and any illicit or illegal drugs or substances during the G&W Event is strictly prohibited. Grit & Wit will only allow the responsible consumption of alcohol after the G&W Event. The consumption of any illicit or illegal drugs or substances before, during, and after the G&W Event is strictly prohibited. I agree to take full responsibility for any alcohol consumption after the G&W Event and Related Activities.

Specific Rules: I specifically acknowledge and agree to abide by the following rules: 1) no urination or defecation is permitted outside of designated areas; 2) no wheeled conveyances or pets are allowed in the G&W Event at any time other than wheelchairs or service animals; 3) no clothing, props or equipment that pose an unnecessary risk to participants, spectators, volunteers or personnel are permitted; and 4) obey civil and criminal laws including traffic laws.

Photography: I understand that any and all photographs, motion pictures, recordings, and/or likenesses of me captured during the G&W Event by Grit & Wit, its affiliated entities or contractors, and/or the media become the sole property of Grit & Wit. I grant the right, permission and authority to Grit & Wit and its designees to use my name and any such photographs, motion pictures, recordings, and/or likenesses for any legitimate purpose, including but not limited to promoting, advertising, and marketing activities. I further understand that Grit & Wit and its designees have the full right to sell and/or profit from the commercial use of such photographs, motion pictures, recordings, and/or likenesses.

.... **Initial Majority Age:** I affirm that I am 18 years of age (or will have reached that age by the date of the G&W Event). If I am less than 18 years old by the date of the Event, my parent/legal guardian signing this Agreement affirms that I have permission to participate in this event.

.... **Initial Venue and Jurisdiction:** I understand that if Mediation and Arbitration or legal action to enforce same need to be commenced, the state or federal trial court in Massachusetts has the sole and exclusive jurisdiction and only the substantive laws of New York shall apply.

Acknowledgment of Understanding: I have read this Release, Assumption of Risk, Waiver of Liability, Defense, Indemnification and Hold Harmless Agreement and fully understand its terms. I have made representations herein that, if untrue, would void any rights I may otherwise have. I understand that I am giving up substantial rights, including my right to sue. I further acknowledge that I am knowingly, intelligently, purposefully, freely and voluntarily signing the Agreement and participating in the G&W Event, and intend my signature to be a complete and unconditional release of all liability due to the negligence of Grit & Wit (and other Released Parties) and the Inherent Risks of the activity, to the greatest extent allowed by the laws of New York.

Signature of Participant/Parent or Legal Guardian **Participant’s Name** **Date**

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