

PROPERTY ACCESS AND USE AGREEMENT (INCLUDING AGREEMENT TO RELEASE, INDEMNIFY, AND ARBITRATE)

For, and in good and valuable consideration of, access to and use of the real property, facilities, equipment, and other property (collectively, "the Property") of the Foundation, the undersigned ("User") agrees to the following terms and conditions. As used in this Agreement, "Foundation" includes the Ed Rachal Foundation, its subsidiaries and other related entities, and the officers, representatives, agents, employees, contractors and/or lessees of the Ed Rachal Foundation, any of its subsidiaries, or any of its other related entities.

1. **Scope of Agreement.** The Foundation is providing User with the opportunity to access and use the Property for recreation activities, such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, off-road driving, nature study, flying, use of rail, caving, water sports, bicycling, dog walking, operation of radio controlled vehicles, and any other activity associated with sports, recreation, or with enjoying nature or the outdoors (collectively, "Recreation Activities").

This Agreement binds User and User's successors, personal representatives, heirs, beneficiaries, guardians, legal representatives, assigns, and anyone who may claim by, through, or under User.

2. **No warranty as to condition of the Property.** The Foundation has not made and does not make any representation, warranty, or inducement, and assumes no responsibility with regard to the condition of the Property or the fitness or suitability of the Property for any purpose. User accepts the Property, WITHOUT WARRANTY, in an AS IS, WHERE IS, condition.

3. **Acceptance of dangers, risks, and hazards.** User is aware that entry upon or use of the Property may expose User, User's guests, and other persons on the Property to conditions, risks, and hazards, including hazards that may not be open and obvious including COVID-19 and other communicable diseases and that may be unknown. Such conditions, risks, and hazards may include: falling, slipping, tripping, animal bites and other hazards arising from the presence or conduct of animals, diseases, bodily injuries (including partial or total incapacitation or paralysis, other serious bodily injuries, and death), natural and artificial obstacles and hazards (including, for example, blinds, tree stands, other structures, low-lying trees or branches, hazardous vegetation, mud, loose dirt and gravel, erosion, holes, ditches, ravines, and deep or running water), maintenance of or defects in the Property, conduct of other persons engaging in recreational activities, and other hazards associated with outdoor activities. **User hereby fully understands and expressly assumes all conditions, risks, and hazards associated with, arising out of, or in any way connected with (1) entry upon or use of the Property or (2) User's Recreation Activities and other activity or conduct on the Property by User or User's Guests.**

4. **Release and indemnity.** **USER AGREES THAT THE FOUNDATION SHALL NOT BE LIABLE TO THE USER OR ANY OTHER PERSON FOR ANY PERSONAL INJURY, DEATH, PROPERTY DAMAGE, OR OTHER DAMAGE OR LOSS ARISING FROM OR RELATED TO ENTRY UPON, USE OF, OR ACTIVITY OR CONDUCT ON THE PROPERTY OR ANY CONDITION ON THE PROPERTY, REGARDLESS OF WHETHER A RESULT OF CONDITIONS OR HAZARDS THAT ARE LATENT OR THAT ARE UNKNOWN TO THE FOUNDATION, USER, OR INJURED PERSON.**

USER HEREBY RELEASES, DISCHARGES, AND COVENANTS NOT TO SUE AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE FOUNDATION (WHICH, AS DEFINED ABOVE, INCLUDES THE ED RACHAL FOUNDATION, ITS SUBSIDIARIES AND OTHER RELATED ENTITIES, AND THE OFFICERS, REPRESENTATIVES, AGENTS, EMPLOYEES, CONTRACTORS AND/OR LESSEES OF THE ED RACHAL FOUNDATION, ANY OF ITS SUBSIDIARIES, OR ANY OF ITS OTHER RELATED ENTITIES) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES, DAMAGES, AND OTHER LOSSES (INCLUDING COSTS AND ATTORNEY'S FEES) THAT: (1) ARISE FROM OR ARE RELATED TO THE ENTRY UPON, USE OF, OR ANY ACTIVITY OR CONDUCT ON THE PROPERTY BY USER OR BY ANY OF USER'S GUESTS; OR (2) ARISE FROM OR ARE RELATED TO ANY CONDITION ON THE PROPERTY AFFECTING USER OR ANY OF USER'S GUESTS. THIS RELEASE, DISCHARGE, COVENANT NOT TO SUE AND OBLIGATION TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SHALL APPLY EVEN IF THE CLAIM, DEMAND, CAUSE OF ACTION, LIABILITY, DAMAGE, OR OTHER LOSS ARISES FROM OR IS RELATED TO NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, OR STATUTORY LIABILITY OF THE FOUNDATION OR ANY OTHER INDEMNITEE.

THESE RELEASE AND INDEMNITY PROVISIONS WAIVE AND RELEASE ANY AND ALL LIABILITY OF THE FOUNDATION (INCLUDING CLAIMS FOR NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, OR STATUTORY LIABILITY) PAST, PRESENT, AND FUTURE.

AS USED IN THIS AGREEMENT, THE TERM "GUESTS" INCLUDES EMPLOYEES, CONTRACTORS, INVITEES, LICENSEES, MEMBERS, BUSINESS OR SOCIAL GUESTS, AND ANY OTHER PERSON WHO ENTERS OR REMAINS ON THE PROPERTY WITH USER'S CONSENT OR ACQUIESCENCE.

5. **Termination of rights.** The Foundation may terminate any right of access to or use of the Property with or without cause. If any such termination occurs, User shall have no claim or right against the Foundation arising from such termination. User hereby releases and waives any such claim or right.

6. **Reimbursement for damages to the Property.** User may not cause any material change to any part of the Property. User must remove any trash and debris arising from User's conduct or activities on the Property. User shall return all surfaces to as good and clean a condition as upon User's entry. User shall practice good safety, health, and sanitation practices while on the property, including following applicable governmental laws, regulations, and recommendations. User is responsible for any damage to the Property beyond normal wear and tear and will reimburse, pay, and indemnify the Foundation for any such damage to the Property.

7. **Copyright.** User agrees not to register a copyright for photographs, recordings, or other material depicting the Property or created as a result of entering or using the Property (collectively, "Copyrightable Material"). In any case where a registered copyright for Copyrightable Material is granted, the copyright will be issued only to, or will be immediately assigned to, the Ed Rachal Foundation.

8. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The place of arbitration shall be Corpus Christi, Texas. The arbitration shall be governed by the laws of the State of Texas. The arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including any claim that all or any part of this Agreement is void or voidable. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute.

9. **Choice of law; severability.** This Agreement shall be interpreted and governed by the laws of the State of Texas. **User agrees that the release and indemnity provisions of this Agreement are intended to be as broad and inclusive as permitted by the laws of the State of Texas.** Each provision of this Agreement shall be interpreted in such manner as to be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of any such provision shall to any extent be held invalid, illegal, or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect.

10. **Parents and legal guardians.** I give my permission and consent for my minor child or ward to participate in Recreation Activities on the Property. I agree, individually and on behalf of my minor child or ward, to all the terms and conditions in this Agreement, including the Release and Indemnity section above. I acknowledge that both myself and my minor child or ward shall be considered a "User" under this Agreement.

11. **Additional representations and warranties.** By signing in the space below, I acknowledge, represent, and warrant that: (1) I have read completely and understand fully all aspects of this release form and agree to its terms in their entirety; (2) I am aware of my right to consult with legal counsel before making this Agreement; and (3) if I am signing this Agreement on behalf of or for the benefit or use of another individual or any entity, I have the right and authority to do so.

Printed name of User: _____ Contact Telephone: _____

Address: _____ City: _____ State: _____ Zip Code: _____

Driver's License No.: _____ Issuing State: _____ **OR** Passport No.: _____ Issuing Country: _____

Name of minor child(ren) or ward(s) (if applicable): _____

Signature of User: _____ Date: _____