

PARTICIPANT WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT

THESE ARE THE TERMS AND CONDITIONS OF THE LEGALLY BINDING CONTRACT BETWEEN YOU AND ALTOS PACIFIC LLC. THIS IS A CONTRACT WHICH AFFECTS YOUR LEGAL RIGHTS, INCLUDING LIMITS ON OUR LIABILITY AND YOUR RIGHT TO SUE OR ARBITRATE. THANK YOU FOR TAKING THE TIME TO FAMILIARIZE YOURSELF WITH THESE TERMS AND CONDITIONS.

For and in consideration of Altos Pacific LLC, dba Pacific Open Water Swim Co. (hereafter, "PacSwimCo") allowing me, the undersigned, to participate in any PacSwimCo event or activity, including but not limited to lake, river, bay or ocean passage; open water solo swims, open water group swims, open water marathon swims, swimming camps, clinics, and exhibitions; fitness and training programs (including dryland training); swim practices and workouts (for both pool and open water); and related activities (collectively hereafter "Event" or "Events"); I, for myself, and on behalf of my spouse, children, heirs and next of kin, and any legal and personal representatives, executors, administrators, successors, and assigns, hereby agree to and make the following contractual representations pursuant to this Waiver and Release of Liability, Assumption of Risk and Indemnity Agreement (the "Agreement");

1. I hereby certify and represent that (i) I am in good health and in proper physical condition to participate in the Events; and (ii) I have not been advised of any medical conditions that would impair my ability to safely participate in the Events. **I AGREE THAT IT IS MY SOLE RESPONSIBILITY TO DETERMINE WHETHER I AM SUFFICIENTLY EXPERIENCED, FIT AND HEALTHY ENOUGH TO PARTICIPATE IN THE EVENT.**
2. I acknowledge and appreciate the inherent risks associated with the sport of swimming and Events of the nature I am participating in. **I UNDERSTAND THAT MY PARTICIPATION INVOLVES RISKS AND DANGERS, WHICH INCLUDE, WITHOUT LIMITATION, THE POTENTIAL FOR EMOTIONAL DISTRESS, SERIOUS BODILY INJURY, SICKNESS AND DISEASE, PERMANENT DISABILITY, PARALYSIS OR DEATH (FROM DROWNING OR OTHER CAUSES);** loss of or damage to personal property and equipment; exposure to extreme conditions and circumstances; accidents involving other participants, Event staff, volunteers or spectators; contact or collision with natural or manmade objects; dangers arising from adverse weather conditions; imperfect water conditions; water and surface hazards; facility issues; equipment failure; inadequate safety measures; participants of varying skill levels; situations beyond the immediate control of the Event organizers; and other undefined, not readily foreseeable and presently unknown risks and dangers ("Risks"). I understand that these Risks may be caused in whole or in part by my own actions or inactions, the actions or inactions of others participating in the Events, or the negligent acts or omissions of the Released Parties defined below, and I hereby expressly assume all such Risks below and responsibility for any damages, liabilities, losses or expenses that I incur as a result of my participation in any Events.
3. While particular rules, equipment, preparation, physical conditioning, observers, oversight, and personal discipline may reduce the possibility of the Risks in Section 2 above, **I ACKNOWLEDGE, UNDERSTAND AND APPRECIATE THAT PARTICIPATION IN OPEN WATER SWIMMING EVENTS INVOLVE ADDITIONAL, ELEVATED RISKS AND DANGERS WHICH, INCLUDE, WITHOUT LIMITATION, EMOTIONAL DISTRESS, CUTS/ABRASIONS, HEMATOMAS, SPRAINS, DENTAL INJURIES, BROKEN BONES, EMOTIONAL DISTRESS, SERIOUS BODILY INJURY, SICKNESS AND DISEASE, PERMANENT DISABILITY, PARALYSIS, COMA OR DEATH (FROM DROWNING OR OTHER CAUSES) DUE TO THE (1) PHYSICAL, MENTAL AND EMOTIONAL CHALLENGES OF THE EVENTS; (2) IMPERFECT CONDITIONS OF THE ELEMENTS OF NATURE; (3) PROBLEMATIC ENVIRONS; (4) FORCE MAJEUR; OR (5) OTHER UNDEFINED, NOT READILY FORESEEABLE AND PRESENTLY UNKNOWN ELEVATED RISKS AND DANGERS.** I understand that people participating in Events and activities similar to and in the nature of those I am participating: (i) Have been injured and killed in all types of waters and conditions by a multitude of causes; (ii) Have been swept off course by tidal, wind or ocean currents more powerful than the strongest swimmer causing injury or drowning; (iii) Have been struck, injured, and killed by power, sail, and oar driven vessels; (iv) Have been injured by objects in the water, both floating

PARTICIPANT WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT

and fixed; (v) Have experienced dehydration, thermal shock, swimming failure, post-rescue collapse, physiological damage, heart attacks, hypothermia, pulmonary edema, and other medical emergencies; (vi) Have become hypothermic which can affect thinking, reasoning and result in exhaustion, loss of consciousness, coma, or death; (vii) Have encountered sea life and wildlife, including but not limited to whales, sharks, seals, sea lions, fish, invertebrates, land animals, and others which pose a significant threat to people and have caused illness, injury, paralysis, and death; (viii) Have encountered poor air and water quality which have proven to be significant health hazards and caused illness, injury, or death; (ix) Have been sickened by pollution, contaminants, microorganisms, and pathogens including but not limited to bacteria, viruses, fungi, protozoa, helminths, and prions through a variety of modes of transmission; (x) Are often isolated by time and distance from medical facilities and first-responders who can render first aid because they are at remote sites and, nevertheless, choose to participate in Events despite the absence of medical facilities and first responders; (xi) Are greatly exposed to the elements of nature and significant force majeure events; (xii) If ill, or have a mental or physical disability or impairment have additional and significant risk of injury or death; (xiii) Are exposed to hazards and dangers that occur during travel or passage aboard vessels including, but not limited to, slipping or falling while on board, being cut or struck by a boat while in the water, injuries occurring while getting on or off a vessel, and other perils of the sea; and (xiv) Are exposed to other risks, hazards, and dangers which are not identified herein, not readily foreseeable and presently unknown (“Elevated Risks”). I further understand that these Elevated Risks may be caused in whole or in part by my own actions or inactions, the actions or inactions of others participating in the Events, or the negligent acts or omissions of the Released Parties defined below, and I hereby expressly assume without limitation all such Elevated Risks as defined above and responsibility for any damages, liabilities, losses or expenses that I incur as a result of my participation in any Events.

4. I acknowledge, appreciate, and understand that my participation includes possible exposure to and illness from infectious diseases including but not limited to influenza, SARS, MRSA, and COVID-19. While particular rules, protocols, policies, and personal discipline may reduce this risk, the risk of serious illness and death does exist and I knowingly and freely assume all such risks, both known and unknown, even if arising from the negligence of the Released Parties defined below or others, and assume full responsibility for my participation. I further agree, if I observe any unusual, unsafe, or significant hazard during my presence or participation, that I will remove myself from participation and advise the Master of the vessel (“Captain”) or Event organizer immediately.
5. I agree to be familiar with and to abide by the Rules and Regulations established by PacSwimCo, including any safety regulations and will abide by the instructions of the Captain, Event organizer or any person who acts under his/her authority. I accept sole responsibility for my own conduct and actions while participating in Events. I understand that while participating in Events, it is my sole responsibility to communicate my want or need of assistance to the crew or Captain of the boat by waving both arms above the water and yelling loudly to garner attention.
6. **I HEREBY RELEASE, WAIVE AND COVENANT NOT TO SUE, AND FURTHER AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE FOLLOWING PARTIES TO THE FULLEST EXTENT PERMITTED BY LAW:** PacSwimCo, its owners, partners, shareholders, agents, employees, members, workout groups, Event hosts, and volunteers (including, but not limited to, Event directors, coaches, officials, judges, timers, observers, safety marshals, lifeguards, and support boat owners and operators); the Event organizers and promoters, sponsors and advertisers; pool facility, marina or dock owners or operators, lake and property owners or operators hosting the Events; Event sanctioning organizations; law enforcement agencies and other public entities providing support for the Events; and each of their respective parent, subsidiary and affiliated companies, officers, directors, partners, shareholders, members, agents, employees, and volunteers (individually and collectively, the “Released Parties”), with respect to any liability, claim(s), demand(s), cause(s) of action, damage(s), loss or expense (including court costs and reasonable attorneys’ fees) of any kind or nature (“Liability”) which may arise out of, result from,

**PARTICIPANT WAIVER AND RELEASE OF LIABILITY,
ASSUMPTION OF RISK AND INDEMNITY AGREEMENT**

or relate in any way to my participation in the Events, including claims for Liability caused in whole or in part by the negligent acts or omissions of the Released Parties.

7. I agree that, except as otherwise expressly provided herein, any and all disputes whatsoever arising out or relating to this Agreement, as well as the interpretation, applicability, and enforcement of this Agreement shall be governed exclusively by the general maritime law of the United States, without regard to choice of law rules, which replaces, supersedes and preempts any provision of law of any state or nation to the contrary.
8. I agree irrevocably that any dispute arising out of, in connection with or incident to this Event including any claim for personal injury, shall be litigated, if at all, before the United States District Court for the Northern District of California in San Francisco, or as to those lawsuits over which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in San Francisco County, California, to the exclusion of the courts of any other county, state or country.
9. I further agree that if, despite this Agreement, I, or anyone on my behalf, makes a claim for Liability against any of the Released Parties, I will indemnify, defend and hold harmless each of the Released Parties from any such Liabilities which any may be incurred as the result of such claim.
10. I hereby warrant that I am of legal age and competent to enter into this Agreement that I have read this Agreement carefully, understand its terms and conditions, acknowledge that I will be giving up substantial legal rights by signing it (including the rights of my spouse, children, heirs and next of kin, and any legal and personal representatives, executors, administrators, successors, and assigns), acknowledge that I have signed this agreement without any inducement, assurance, or guarantee, and intend for my signature to serve as confirmation of my complete and unconditional acceptance of the terms, conditions and provisions of this Agreement. This Agreement represents the complete understanding between the parties regarding these issues and no oral representations, statements, or inducements have been made apart from this Agreement. If any provision of this Agreement is held to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.
11. I agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Participant Signature: _____

Date Signed: _____

Full Legal Name: _____

Date of Birth: _____

Email Address: _____

Home Address: _____

