

ALTOS PACIFIC, LLC [PACIFIC OPEN WATER SWIM Co.]

Participant Waiver & Indemnity Agreement



WARNING: OPEN WATER SWIMMING IN SAN FRANCISCO BAY IS AN INHERENTLY HAZARDOUS RECREATIONAL ACTIVITY, UNDERTAKEN VOLUNTARILY AT YOUR OWN RISK.

Upon departing our charter vessel to swim, you are required to maintain situational awareness and continuously evaluate your capability to proceed in the face of both natural conditions and maritime traffic and operational hazards, encompassing both foreseeable and unforeseeable risks and dangers.

You are also expected to be mindful of and adhere to all rules, procedures, and policies established by us, which are designed to enhance the comfort, safety, and security of the event. Failure to follow these guidelines may exacerbate risks.

Should conditions surpass your level of experience, preparation, ability, comfort, or physical conditioning, it is imperative that you immediately remove yourself from the activity by alerting the captain and requesting assistance as soon as safely possible.

Be explicitly aware that the escort vessel provides limited support specifically to the group/individuals swimming; it does not, in any way, absolve you of personal responsibility nor mitigate the inherent risks posed by the natural environment, busy shipping lanes, and maritime hazards.

Engaging in this activity signifies your explicit acknowledgment and acceptance of these substantial risks. Ignoring or underestimating these warnings could result in significant loss, severe injury, or fatality.

Notice: Important Information Before You Proceed

We want to stress that the Participation Waiver and Release Agreement associated with Pacific Open Water Swim Co. events is unlike typical legal documents. It includes specific terms and conditions that are vital for your understanding and safety.

Your participation and safety during our events hinge on this agreement.

We strongly urge you to take the time to thoroughly read and understand this agreement before agreeing or signing it. It addresses essential aspects, such as your health, skill level, risk acknowledgment, emergency medical treatment, adherence to safety rules, your legal rights, arbitration procedures, and other significant legal matters.

We greatly appreciate your participation, and your safety is our top priority. If you have any questions or need clarification on any points, please consult a professional. Please remember that by signing, you are legally bound to its terms.

PARTICIPANT WAIVER AND INDEMNITY AGREEMENT

ATTENTION: THIS IS AN AGREEMENT THAT AFFECTS YOUR LEGAL RIGHTS, PARTICULARLY CLAUSES TITLED 'WAIVER, RELEASE, AND INDEMNIFICATION', 'COMPREHENSIVE COVENANT NOT TO SUE' and 'BINDING ARBITRATION FOR DISPUTES, GROSS NEGLIGENCE, AND INTENTIONAL MISCONDUCT STANDARD', LIMITING OUR LIABILITY AND YOUR RIGHT TO SUE. THE COVENANT NOT TO SUE IS A PROVISION THAT, AS FURTHER SET FORTH BELOW, BARS THE USE OF A LAWSUIT OR ARBITRATION TO RESOLVE DISPUTES. THIS MEANS THAT YOU AGREE NOT TO ARBITRATE OR SUE PACIFIC SWIM CO IN COURT OR IN CLASS ACTIONS OF ANY KIND.

Headings and titles in this Agreement are for convenience only and do not alter the meaning or interpretation of the content. In case of any discrepancy between a title and the content, the content prevails. Singular and plural forms of words are interchangeable.

1. **Parties:** These are the terms and conditions of the legally binding contract between me, the undersigned, and Altos Pacific, LLC, dba Pacific Open Water Swim Co. (hereafter "Pacific Swim Co", or "PacSwimCo"), a California Limited Liability Company. Please read this agreement carefully, as we are both bound by it.
2. **Standard Services:** Pacific Swim Co offers a diverse array of maritime services conducted in the navigable federal waters in and around San Francisco Bay. These services encompass a wide range of activities, including but not limited to passage, cruises, tours, transportation, and the facilitation of various voluntary, water-based recreational activities. Among these activities is the provision of open water swimming opportunities in the vicinity of our service vessels, complemented by specialized escort services tailored for swimmers. Collectively, all these activities, services, and any other related maritime operations, whether explicitly mentioned or not, constitute the 'Service' as referred to in this agreement. This definition is intended to be comprehensive, aligning with our operational capabilities, regulatory compliance, and liability considerations. By entering into this agreement, I, the undersigned, am making a conscious acknowledgment of the terms and conditions herein. Moreover, by affixing my signature, I am declaring my awareness of the voluntary nature of participating in the PacSwimCo Service, doing so entirely at my own discretion and risk. The PacSwimCo Service begins as a charter operation, providing a seaworthy vessel, equipped in compliance with the stringent standards of the United States Coast Guard (USCG). This includes a licensed captain for operational oversight and meticulous adherence to prevailing navigation rules. Our service encompasses a detailed safety overview prior to embarkation, ensuring that participants are aware of the safety protocols and the nature of the activities they will engage in. As part of our Service, participants can expect comprehensive guidance on the pre-determined course, augmented by escort and assistance from your captain and any included crew. This includes continual communication coordinated with the USCG Vessel Traffic Service (VTS), periodic updates to the VTS, and coordination with other marine vessels to ensure a coordinated, informed experience. Additionally, we ensure a sufficient fuel supply to match the service duration. While engaging in these activities, particularly in open water swimming, participants should be aware that they may encounter various inherent risks and dangers, including variable water conditions and environmental challenges, especially in areas like San Francisco Bay, which are fully identified and discussed below.
3. **Charter to Escort Transition:** Upon the commencement of swimming activities, when participants depart from the charter vessel, our service role transitions from a charter to an escort. This significant shift marks a change in our operational focus from ensuring passenger comfort aboard the vessel to providing specialized navigational and logistical support tailored for open-water swimmers. As an

escort service, our role is to offer guidance and assistance in navigating the swim course, while the responsibility for personal safety in the water primarily rests with the participant. This transition is a crucial aspect of our service, designed to support the unique demands of open-water swimming. While our escort vessel and crew endeavor to facilitate the swim attempt, it's crucial to acknowledge that open-water swimming is a hazardous, voluntary recreational activity, and its unpredictable nature presents significant, inherent risks that are often unmitigable. These risks, which the participant assumes upon entering the water, include but are not limited to, changing water conditions, weather variability, encounters with marine traffic, potential for injury, hypothermia, drowning, coma, death, and physical or psychological stress related to open water swimming or the environment.

PACSWIMCO'S LIABILITY IS STRICTLY LIMITED TO THE PROVISION OF CHARTER AND ESCORT SERVICES AS DEFINED HEREIN. WE DO NOT ENCOMPASS ANY GUARANTEES OF SAFETY, ACKNOWLEDGING THE INHERENT CHALLENGES OF OPEN WATER SWIMMING IN AND PRESENTED BY SAN FRANCISCO BAY AND SURROUNDING WATERS. OUR SERVICES ARE OFTEN CONDUCTED IN LOCATIONS THAT ARE REMOTE, WITH SIGNIFICANT TIME AND DISTANCE SEPARATING PARTICIPANTS FROM ACCESS TO EMERGENCY SERVICES. PACSWIMCO DOES NOT PROVIDE LIFEGUARD, MEDICAL, OR FIRST RESPONDER SERVICES ON OUR VESSELS. PARTICIPANTS ARE RESPONSIBLE FOR THEIR OWN SAFETY AND WELLBEING AND ARE ENCOURAGED TO INCLUDE SUCH QUALIFIED PROFESSIONALS IN THEIR SUPPORT CREW OR AS GUESTS WHEN DEEMED NECESSARY.

BY ENGAGING IN PACSWIMCO'S SERVICES, PARTICIPANTS ACKNOWLEDGE THESE LIMITATIONS, INHERENT UNCERTAINTIES, AND THE ASSUMPTION OF ANY ASSOCIATED RISKS. THIS INCLUDES THE RISKS POSED BY COMMERCIAL AND RECREATIONAL VESSEL TRAFFIC IN THE WATERS WHERE WE OPERATE, OVER WHICH WE HAVE NO CONTROL AND OTHER RISKS DETAILED BELOW. PARTICIPANTS MUST BE AWARE OF AND ADEQUATELY ASSESS AND MITIGATE ALL OF THE RISKS ASSOCIATED. IT IS CRUCIAL THAT PARTICIPANTS EXERCISE CAUTION, FOLLOW INSTRUCTIONS, AND REMAIN VIGILANT AT ALL TIMES.

PACSWIMCO IS DEDICATED TO ENSURING THE HIGHEST STANDARDS OF SAFETY THROUGH METICULOUS PREPARATION AND STRICT ADHERENCE TO MARITIME SAFETY PROTOCOLS. DESPITE OUR BEST EFFORTS TO MINIMIZE RISKS THROUGH OUR KNOWLEDGE AND EXPERIENCE, THE DYNAMIC AND UNPREDICTABLE NATURE OF OPEN-WATER ENVIRONMENTS MEANS THAT WE CANNOT PROVIDE AN ABSOLUTE GUARANTEE OF SAFETY. IN SOME SITUATIONS, OUR PROTOCOLS, TECHNIQUES, AND PROCEDURES MAY BE INAPPROPRIATE, INSUFFICIENT, OR INCORRECT.

THEREFORE, THE SUCCESS AND SAFETY OF A PARTICIPANT'S SWIM ARE DEPENDENT NOT ONLY ON THEIR OWN PREPAREDNESS, SITUATIONAL AWARENESS, AND EXPERIENCE BUT ALSO ON THE SKILL, CAPABILITIES, AND AWARENESS OF THEIR SUPPORT CREW, WHICH MAY INCLUDE OTHER SWIMMERS PARTICIPATING IN THE EVENT, IF ELECTED OR BROUGHT BY THE PARTICIPANT. PARTICIPANTS ARE STRONGLY ADVISED TO POSSESS THE NECESSARY SKILLS AND EXPERIENCE FOR NAVIGATING CHALLENGING ENVIRONMENTS AND TO ENSURE THAT THEIR SUPPORT CREW, IF INCLUDED, IS WELL-INFORMED AND CAPABLE OF EFFECTIVELY ASSISTING IN SAFE NAVIGATION. THIS ALLOWS THE CAPTAIN OF THE VESSEL TO FOCUS ON CRITICAL TASKS INCLUDING NAVIGATION, OVERALL SWIM GROUP SUPPORT, MONITORING VESSEL TRAFFIC, MONITORING WEATHER

AND SEA CONDITIONS, COMMUNICATING WITH MARITIME AUTHORITIES, OVERSEEING VESSEL OPERATIONS, EMERGENCY PREPAREDNESS, COORDINATION WITH OTHER VESSELS, ENSURING COMPLIANCE WITH MARITIME LAWS, AND OTHER CRITICAL SERVICE-RELATED ISSUES.

4. **Exposure to Significant Risks of Loss, Damage, Illness, Injury and Death:** I understand and acknowledge that participation in the Service, any activities incidental thereto such as onboard activities, offboard activities, and swimming in the waters where the Service is offered inherently exposes me to known and unknown risks of loss, damage, illness, injury, and death (referred to collectively as "Risks"). These Risks include but are not limited to the potential for emotional distress, sickness or disease, moderate to severe bodily injury, permanent disability, paralysis or loss of limb, traumatic brain or spinal cord injury, coma, heart attack, medical emergency or death; hypothermia or hyperthermia from variable water temperatures; financial or material property damage or loss; damage to or loss of personal possessions. The Risks also encompass unforeseeable incidents yet to be known or anticipated by Pacific Swim Co that could result in harms as drastic as wrongful death. I acknowledge these inherently dangerous recreational activities may result in harms ranging in severity from minor and temporary to catastrophic and permanently life-changing or fatal. By choosing to participate in this Service, I understand and voluntarily assume these Risks, as well as responsibility for any resulting injury, loss or harm.

5. **Potential Sources of Risks Inherent to the Activities:** I understand and acknowledge that the Risks and potential dangers associated with participating in the Service, any onboard or offboard activities incidental thereto, or swimming where the Service is offered, may arise or stem from a diversity of potential sources. These potential sources include, but are not limited to: exposure to variable and unpredictable environmental conditions during onboard, offboard or water-based activities; contact, collision or allision with objects whether natural or manmade, fixed or floating during any onboard, offboard or water-based activities; issues relating to equipment, including defects or failures of any gear, vessels or vehicles being utilized during onboard or offboard activities; improper instruction, supervision or oversight during onboard or offboard activities; lack of applicable safety protocols during onboard or offboard activities; negligence of any involved party during onboard or offboard activities; pre-existing medical conditions whether known or unknown; and other circumstances beyond the control of Pacific Swim Co that could contribute to an unexpected outcome during onboard or offboard activities. I recognize it is not feasible to anticipate or prevent every possible risk-triggering scenario during onboard or offboard activities. By choosing to partake in this activity, I acknowledge the realistic possibility that uncontrollable or unavoidable events, including unknown elevated hazards, may occur from a wide spectrum of potential sources during any onboard or offboard activities, and I agree to accept this as inherent to recreational activities conducted in a natural outdoor environment.

6. **Acknowledgment that Inherent Risks Persist Despite Precautions:** I, THE UNDERSIGNED, ACKNOWLEDGE THAT WHILE PREPARATION, PHYSICAL CONDITIONING, PERSONAL DISCIPLINE, OVERSIGHT, SAFETY PROTOCOLS, PREVIOUS EXPERIENCE, RULES, AND REGULATIONS, AND EQUIPMENT MAY HELP REDUCE RISKS AND DANGERS, PARTICIPATION IN THE SERVICE ENTAILS ENGAGING IN VARIOUS ACTIVITIES INCLUDING, BUT NOT LIMITED TO, OPEN WATER SWIMMING (AGAIN, IDENTIFIED AS A HAZARDOUS ACTIVITY), INCIDENTAL ACTIVITIES BOTH ONBOARD AND OFFBOARD, LAND-BASED ACTIVITIES, SPONTANEOUS OR UNORGANIZED ACTIVITIES UNDERTAKEN BY INDIVIDUALS, INTERACTIONS WITH THIRD-PARTY SERVICES, AND OTHER SIMILAR ACTIVITIES. THIS ACKNOWLEDGEMENT EXTENDS TO INCLUDE TRANSPORTATION TO AND FROM THE SERVICE LOCATION, PARTICIPATION IN NON-PHYSICAL

ACTIVITIES RELATED TO THE SERVICE, AND EMERGENCY SITUATIONS OR EVACUATIONS THAT MAY OCCUR DURING THE SERVICE HAVE EXPERIENCED OR BEEN EXPOSED TO NUMEROUS DANGERS AND RISKS. THESE INCLUDE BUT ARE NOT LIMITED TO: (I) INJURIES AND DEATHS IN ALL TYPES OF WATERS DUE TO VARIOUS CAUSES; (II) BEING SWEEPED OFF COURSE BY TIDAL, WIND, AND OCEAN CURRENTS THAT ARE STRONGER THAN EVEN THE MOST EXPERIENCED SWIMMERS, LEADING TO LOSS, INJURY, OR DROWNING; (III) BEING STRUCK, INJURED, OR KILLED BY POWER, SAIL, OR OAR DRIVEN VESSELS; (IV) BEING INJURED BY OBJECTS IN THE WATER, BOTH FLOATING AND FIXED; (V) EXPERIENCING DEHYDRATION, THERMAL SHOCK, IMPROPER NUTRITION, SWIMMING FAILURE, POST-RESCUE COLLAPSE, PHYSIOLOGICAL DAMAGE, HEART ATTACKS, HYPOTHERMIA, RHABDOMYOLYSIS, PULMONARY EDEMA, AND OTHER MEDICAL EMERGENCIES OR CONDITIONS RESULTING FROM INADEQUATE FUELING, HYDRATION, NUTRIENTS, STIMULANTS, SUPPLEMENTS OR OTHER FACTORS AFFECTING DIET, MEDICATIONS, SUBSTANCE USE, OR PHYSIOLOGY; (VI) BECOMING HYPOTHERMIC, WHICH CAN RESULT IN EXHAUSTION, LOSS OF CONSCIOUSNESS, COMA, AND DEATH; (VII) ENCOUNTERING SEA LIFE AND WILDLIFE THAT POSE SIGNIFICANT THREATS TO PEOPLE, INCLUDING WHALES, SHARKS, SEALS, SEA LIONS, RIVER OTTERS, FISH, INVERTEBRATES, LAND ANIMALS, AND OTHERS, THAT HAVE CAUSED ILLNESS, INJURY, PARALYSIS, AND DEATH; (VIII) ENCOUNTERING POOR AIR AND WATER QUALITY THAT HAVE LED TO ILLNESS, INJURY, AND DEATH; (IX) BEING SICKENED BY POLLUTION, CONTAMINANTS, MICROORGANISMS, AND PATHOGENS, INCLUDING BACTERIA, VIRUSES, FUNGI, PROTOZOA, HELMINTHS, AND PRIONS THROUGH VARIOUS MODES OF TRANSMISSION; (X) BEING ISOLATED BY TIME AND DISTANCE FROM MEDICAL FACILITIES AND FIRST-RESPONDERS WHO CAN RENDER FIRST AID DUE TO BEING AT REMOTE SITES; (XI) HAVING A HIGHER RISK OF INJURY OR MEDICAL COMPLICATIONS IF AFFECTED BY KNOWN OR UNKNOWN PRE-EXISTING MEDICAL CONDITIONS, ILLNESSES OR INJURIES; (XII) ENCOUNTERING ADDITIONAL DANGERS INHERENT TO OPEN-WATER, COASTAL OR MARINE SETTINGS BEYOND THOSE COMMONLY EXPERIENCED; (XIII) HIGHER RISKS OF INJURY OR ILLNESS FOR THOSE WITH PRE-EXISTING OR EMERGENT MEDICAL CONDITIONS, DISABILITIES OR SPECIAL NEEDS; OR (XIV) FOR THOSE REACHING CERTAIN AGE THRESHOLDS, THE GENERAL INCREASED RISKS OF INJURY, ILLNESS, OR COMPLICATIONS THAT COMMONLY ACCOMPANY THE NATURAL AGING PROCESS. THIS MAY INCLUDE WEAKER MUSCLES/BONES, DEVELOPING HEALTH CONDITIONS, AND ALSO COGNITIVE CHALLENGES, REDUCED EYESIGHT, OR HEARING DEFICIENCIES AMONGST OTHERS WHICH COULD COMPROMISE ONE'S ABILITY TO RESPOND SAFELY TO ENVIRONMENTAL CUES OR DIRECTIONS; OR (XII) BEING EXPOSED TO OTHER POSSIBLE SCENARIOS OR PERILS ASSOCIATED WITH VARIOUS ACTIVITIES, SUCH AS BOATING, DIVING, SNORKELING, SURFING, FISHING, ENDURANCE EVENTS, SWIMMING, OR OPEN WATER SWIMMING THAT COULD RESULT IN LOSS, INJURY, OR DEATH.

I, THE UNDERSIGNED, ACKNOWLEDGE THAT DUE TO THE BROAD RANGE OF INHERENT AND UNPREDICTABLE RISKS, IT IS NOT FEASIBLE FOR PACIFIC SWIM CO TO WARRANT OR GUARANTEE SAFETY THROUGH COMPREHENSIVE VETTING, SAFETY ASSESSMENTS OR CONTINUOUS OVERSIGHT OF ALL ACTIVITIES AND CIRCUMSTANCES. FURTHERMORE, THERE REMAINS THE POSSIBILITY THAT OTHER UNDEFINED, UNFORESEEN AND PRESENTLY UNKNOWN ELEVATED HAZARDS OR DANGERS MAY ARISE AT SOME POINT.

- 7. VESSEL DEPARTURE, RISK ACCEPTANCE AND TERMINATION OF DUTIES: IF I CHOOSE TO DEPART FROM THE CHARTER VESSEL TO ENGAGE IN OPEN WATER SWIMMING AT THE SWIM COURSE, I UNDERSTAND AND ACKNOWLEDGE THAT THE CHARTER VESSEL THEN BECOMES AN ESCORT VESSEL, AND THE NATURE OF PACSWIMCO'S RESPONSIBILITIES**

CHANGES CONSEQUENTLY. WHILE THE CHARTER SERVICE IS RESPONSIBLE FOR SAFE TRANSPORTATION TO AND FROM THE SWIM COURSE, ONCE I ENTER THE WATER, THE RESPONSIBILITY AND CONTROL OF PACSWIMCO OVER MY SAFETY BECOME SIGNIFICANTLY REDUCED AND LIMITED. I RECOGNIZE THAT THE HAZARDOUS NATURE OF OPEN WATER SWIMMING AND THE UNCONTROLLABLE RISKS INHERENT IN SUCH AN ACTIVITY MEAN THAT UPON ENTERING THE WATER, MY SAFETY IS PRIMARILY MY OWN RESPONSIBILITY. BY CHOOSING TO SWIM, I CONFIRM THAT I HAVE INDEPENDENTLY EVALUATED AND UNDERSTOOD THESE RISKS, AND I ASSUME FULL LIABILITY FOR ANY HARM OR INJURY THAT MAY OCCUR FROM THAT POINT FORWARD, INCLUDING ANY RISKS DURING MY TIME IN THE WATER UNDER THE ESCORT OF THE VESSEL.

I UNDERSTAND THAT WHILE PACSWIMCO WILL CONTINUE TO PROVIDE ESCORT DUTIES OF NAVIGATION AND PRESENCE AS A SUPPORT PLATFORM, ANY DUTY TO PROTECT MY WELL-BEING CEASES ONCE I ENTER THE WATERS. FROM THEN ON, MY SAFETY IS MY SOLE PERSONAL OBLIGATION. BY VOLUNTARILY SWIMMING, I ACCEPT ALL INHERENT AND UNFORESEEABLE RISKS WITHOUT RECOURSE AGAINST PACSWIMCO.

I FURTHER UNDERSTAND AND ACCEPT THE RISKS, HAZARDS AND ADDITIONAL PERILS ASSOCIATED WITH OPEN WATER SWIMMING AS SET FORTH IN CLAUSES TITLED "EXPOSURE TO SIGNIFICANT RISKS OF LOSS, DAMAGE, ILLNESS, INJURY, AND DEATH", "POTENTIAL SOURCES OF RISKS INHERENT TO THE ACTIVITIES", AND "ACKNOWLEDGMENT THAT INHERENT RISKS PERSIST DESPITE PRECAUTIONS" WITHIN THIS AGREEMENT, WHETHER OR NOT FORESEEABLE. THIS ABSOLUTE ASSUMPTION OF RESPONSIBILITY AND RISKS IS BINDING FROM THE MOMENT I LEAVE THE PROTECTED ENVIRONMENT AND RESPONSIBILITIES OF THE SERVICE VESSEL.

8. **Rules, Policies, and Compliance:** I acknowledge and agree to adhere to the rules, regulations, and safety policies established by Pacific Swim Co as included herein, in the Booking Contract linked below, or in the safety briefing and course overview presented prior to the Service. This includes compliance with any instructions provided by the service organizer, vessel captain, or individuals acting under their authority. As a participant, whether booking my own swim or attending as a guest, I am responsible for reviewing and understanding the terms and conditions outlined in the Booking Contract. I hereby commit to abiding by the Booking Contract as if I were the person who booked the service. The Booking Contract is accessible here: <https://www.pacificswim.co/booking-contract-terms-and-conditions/>
9. **Self-Removal:** I AGREE THAT I SHALL PROMPTLY NOTIFY THE CAPTAIN AND TAKE THE NECESSARY STEPS TO REMOVE MYSELF FROM THE SERVICE, SITUATION, OR ENVIRONMENT IF I FIND MYSELF IN A SITUATION WHERE I BELIEVE MY SAFETY OR WELL-BEING MAY BE COMPROMISED, OR IF I ENCOUNTER ANY CONDITION THAT GIVES ME CAUSE FOR CONCERN WHILE PARTICIPATING IN THE SERVICE. THIS MAY INCLUDE CONCERNS RELATED TO MY HEALTH, PHYSICAL ABILITY, EXPERIENCE, OR ANY OTHER FACTOR THAT AFFECTS MY COMFORT OR SAFETY. I ACKNOWLEDGE THAT SELF-REMOVAL IS BOTH MY RESPONSIBILITY AND MY RIGHT IN SUCH CIRCUMSTANCES.
10. **Garnering Attention:** I UNDERSTAND, AGREE, AND APPRECIATE THAT IT IS MY SOLE AND EXCLUSIVE RESPONSIBILITY, AT ALL TIMES, TO COMMUNICATE MY WANT OR NEED OF

ASSISTANCE TO THE CREW OR CAPTAIN OF THE BOAT BY WAVING ONE ARM ABOVE MY HEAD AND YELLING LOUDLY TO GARNER ATTENTION.

11. **Propeller Zone Safety Protocol, Recognition of Hazards:** As a participant, I fully acknowledge the extreme dangers present in the propeller zone of the escort vessel, particularly behind the boat. I understand that due to the severe risk of life-threatening injuries, engaging in any activity near the propellers is strictly prohibited. In commitment to my safety and that of others, I agree to adhere to the following propeller safety rules: I) **Implementation of the 'Shaka' Signal:** I will use the 'shaka' signal, accompanied by a verbal question, to confirm the vessel's engine status in situations like exiting the vessel, approaching the stern, or crossing behind it. This involves extending the thumb and pinky, wiggling the hand, and asking, "Is the engine in neutral?" or "Neutral?". This protocol is crucial as many swimmers use earplugs or due to environmental factors that may impede hearing; II) **Awaiting Operator's Response:** I will not proceed until receiving a return 'shaka' signal and a verbal response from the vessel operator. I understand that no other hand gestures or informal acknowledgments are acceptable substitutes; and III) **Exclusive Trust in Captain or Operator:** I recognize that only the captain or vessel operator can reliably confirm the state of the propellers. I will always maintain a minimum safety distance of 10 feet (about 3.3 meters) from the stern, except when given explicit permission by the captain or operator for specific actions such as disembarking, boarding, or crossing the stern. This adherence is essential for ensuring safety in the propeller zone.
12. **Equipment Recommendations:** For enhanced safety during open water swimming activities, it is recommended that all participants consider the use of the following equipment: I) **High Visibility Swim Caps:** These caps are essential for increasing swimmer visibility in open water. Their bright colors and reflective materials help in reducing the risk of collisions, making swimmers more noticeable to fellow participants, vessel operators, and rescue teams. Our experience is that bright pink is the most visible in the dark green waters here; II) **Tow Floats:** The use of tow floats is also recommended. These floats, often brightly colored for high visibility, provide an additional safety measure. They not only make swimmers more visible but also offer a resting point in case of fatigue. Tow floats should not be considered a life saving device and can be a hindrance in windy conditions; III) **Wetsuits:** For participants who are not acclimated to the typical water temperatures found in San Francisco Bay, the use of wetsuits is advised. Wetsuits provide thermal insulation, helping swimmers maintain body temperature in colder water conditions; and IV) **Replacement Goggles and Vision Corrected Goggles:** Clear vision is paramount for safe open water swims. Leaking or defective goggles can impair a participant's ability to sight and navigate effectively. Therefore, it is strongly recommended that all participants carry replacement goggles as backup. Additionally, participants with poor distance vision are advised to use vision-corrected goggles to ensure clear sight during the swim. Both clear and tinted goggles are recommended to accommodate varying light conditions and preferences.
13. **First Responder/Medical Staff Limitations:** I UNDERSTAND, APPRECIATE AND AGREE THAT NO LIFEGUARD, DOCTOR, NURSE, OR PERSONNEL TRAINED IN EMERGENCY MEDICAL CARE IS EMPLOYED OR PROVIDED BY PACIFIC SWIM CO ON THE ESCORT VESSEL OR ELSEWHERE OR AS PART OF THE SERVICE. I UNDERSTAND AND AGREE THAT ANY MEDICAL ATTENTION I MAY NEED OR WANT MUST BE SOUGHT FROM DISTANT FACILITIES OR, IF POSSIBLE, VIA EMERGENCY MEDICAL RESPONSE PROVIDERS.

Pacific Swim Co makes no representation or warranty that any such service is or will be available at any particular time or place. I understand and acknowledge that the Service and other activities incidental to it occur at remote sites that are isolated by time and distance from medical facilities and

first-responders who can render first aid. Pacific Swim Co shall have no liability for any cost of, or incurred in connection with, medical services, or for quality or any aspect of treatment I receive. I agree that I shall be responsible for all costs and expenses of medical services, treatment, medications and assistive devices. I agree and consent to receive treatment by medical professionals designated by Pacific Swim Co, and I agree to bear the cost of such treatment, in any circumstance in which I appear unable to request medical treatment and, the captain believes medical attention is necessary (even if such belief is incorrect). I shall be responsible for the payment of any medical expenses and other expenses in connection with medical debark and medical conditions incurred ashore. If I at any time, because of illness or other cause, should it become necessary, in the sole judgment of the captain, crew or onboard staff, or others to transfer me for medical reasons, the cost of such transfer shall be borne by me. I also authorize any physician or other medical provider or facility or emergency medical personnel to provide any emergency medical/surgical care, including, without limitation, anesthetics, and/or hospitalization to me which they determine necessary or advisable. I understand that PacSwimCo is not liable for the outcomes of such treatment, including any adverse results arising therefrom. I agree that upon debark and/or my transport to any such medical facility, Pacific Swim Co shall no longer have any responsibility for me. I hereby agree to indemnify, defend, and hold harmless Pacific Swim Co and the "Pacific Swim Co Indemnites" as defined below from and against any and all losses arising from or in connection with: (i) any medical care provided to me pursuant to this Section; and/or (ii) all costs related to the provision of such medical care and related transportation. Notwithstanding the foregoing, I acknowledge and agree that Pacific Swim Co is not under any legal obligation to render assistance to me.

14. **Certification of Health:** I hereby certify and represent that: I) **Health and Physical Condition:** I affirm that I am in good health and in proper physical condition to participate in the PacSwimCo charter and escort services. This includes, but is not limited to, engaging in open water swimming and other related activities incidental to the service, in the waters where the service is offered; II) **Medical Evaluation Recommendation:** I UNDERSTAND AND AGREE THAT IT IS STRONGLY ADVISED TO UNDERGO A COMPLETE MEDICAL EVALUATION BY MY PHYSICIAN PRIOR TO PARTICIPATING IN THE PACSWIMCO SERVICE. This evaluation should include a review of the nature of the service, including both the charter and escort aspects provided by PacSwimCo, the service location, the expected environmental conditions, and the water temperatures anticipated. Furthermore, I acknowledge that it is my responsibility to inform my physician of my intent and voluntary decision to participate in activities incidental to the service, especially engaging in open water swimming and other related activities, in the waters where the service is offered; III) **Awareness of Medical Conditions:** I confirm that I am not aware of any medical conditions that would impair my ability to participate safely in the PacSwimCo charter and escort services, including engaging in open water swimming and other related activities, in the waters where the service is offered; and IV) **Personal Responsibility Assessment:** I AGREE THAT IT IS MY SOLE RESPONSIBILITY TO DETERMINE WHETHER I AM SUFFICIENTLY EXPERIENCED, CAPABLE, FIT, AND HEALTHY ENOUGH TO PARTICIPATE IN THE PACSWIMCO SERVICE. This includes, but is not limited to, the charter and escort services provided by PacSwimCo, as well as engaging in open water swimming and other incidental activities both onboard and offboard the vessel in the waters and conditions where the service is offered.

Furthermore, it is particularly important for participants over the age of 35, or those with pre-existing health conditions, to seek advice from healthcare professionals before participating in the PacSwimCo service. This consultation should specifically address the suitability of engaging in physically demanding activities, including but not limited to open water swimming, as part of both the charter and escort services provided. The healthcare professional should be informed of the

expected environmental conditions, water temperatures, and the nature of activities offered by PacSwimCo. This step is vital to ensure their safety and readiness for the unique challenges posed by the service environment, particularly the demands and risks associated with open water swimming.

15. **Nutrition and Hydration:** During the PacSwimCo Service or any activities incidental to the Service, I acknowledge that it is my responsibility to determine and provide any necessary nutrition or hydration, and that I must consult with a medical professional, provide all relevant medical information, and obtain approval and information on risks related to feeding strategy, dietary requirements, nutritional needs, caloric intake, feeding schedule, fluid intake, hydration plan, macronutrient balance, nutritional supplements, electrolyte balance, caffeine intake, dietary restrictions, food allergies or intolerances, digestive health, or pre/post event meals (“Feeds”). Any Feeds that I consume (or choose not to consume) before, during, or after the Service are entirely my choice and responsibility.
16. **Feed Plans:** I will provide a written Feed plan, diet, and diet regimen to those providing me with Feeds. I hereby assume all risks and responsibility for any harm or loss resulting from my diet, Feeds, or Feeds regimen, regardless of whether Pacific Swim Co or its staff directly or indirectly consult or assist me with my Feeds, and even if unforeseeable circumstances related to my dietary needs or restrictions that were not communicated to Pacific Swim Co or its staff prior to the Service arise. Furthermore, this clause does not cover any harm or loss resulting from my consumption of food or drink that was not provided by me or approved by my medical professional, or from my failure to follow my written Feed plan, diet, and regimen. I acknowledge that Pacific Swim Co and its staff are not qualified to prescribe or diagnose what a person eats, drinks, consumes, requires, or should avoid before, during, or after the Service.
17. **Infectious Disease:** I acknowledge 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 and their related variants. While particular rules, protocols, policies, and personal discipline may reduce this risk, the risk of severe illness and death does exist. Therefore, I knowingly and freely assume all such risks, both known and unknown, even if arising from the negligence of the "Pacific Swim Co Indemnitees" defined below or others and assume full responsibility for my participation in the Service. I further agree that if I observe any unusual, unsafe, or significant hazard during my presence or participation, I will immediately remove myself from participation and bring such to the captain's attention.
18. **STATE OF CALIFORNIA WARNING:** Operation of recreational marine vessels can expose you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust. For more information go to www.P65warnings.ca.gov/marine.

If you detect engine fumes in your vicinity on or around our vessel, please promptly inform the captain so that they can arrange an alternative, fume-free location.

19. **AGREEMENT EXECUTION: I, THE UNDERSIGNED, HEREBY EXECUTE THIS PARTICIPANT WAIVER AND INDEMNITY AGREEMENT (THE “AGREEMENT”) IN FAVOR OF PACIFIC SWIM CO, ITS PARTNERS, OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, VOLUNTEERS, WORKOUT GROUPS, COACHES, OBSERVERS, SPONSORS, POOL FACILITIES, MARINA OR DOCK OWNERS, MARINA OR**

DOCK OPERATORS, EVENT SANCTIONING ORGANIZATIONS, LESSORS, LESSEES, VESSEL OWNERS, AFFILIATED ORGANIZATIONS, AGENTS AND REPRESENTATIVES, INCLUDING BUT NOT LIMITED TO, CAPTAIN SYLVIA L MARINO, CAPTAIN BRYAN M TEMMERMAND, CAPTAIN KELLY M GENTRY, AND THEIR SUCCESSORS AND ASSIGNS (INDEPENDENTLY AND COLLECTIVELY THE “PACSWIMCO INDEMNITEES”), PURSUANT TO WHICH THE UNDERSIGNED FOR THEMSELVES, AND FOR AND ON BEHALF OF THEIR ESTATE, HEIRS, EXECUTORS, ADMINISTRATORS, OR ASSIGNS VOLUNTARILY RELEASES, DISCHARGES, WAVIES, AND RELINQUISHES ANY AND ALL CLAIMS, ACTIONS, OR CAUSES OF ACTION AGAINST THE PACSWIMCO INDEMNITEES FOR PERSONAL INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE, HOWSOEVER CAUSED AND REGARDLESS OF WILLFULLNESS OR INTENT, TO THE UNDERSIGNED ARISING OUT OF OR INCIDENT TO ENGAGING IN THE SERVICE, ANY ACTIVITIES INCIDENTAL THERETO, OR SWIMMING IN THE WATERS WHERE THE SERVICE IS OFFERED, WHEREEVER OR HOWEVER THE SAME MAY OCCUR AND FOR WHATEVER PERIOD THE SERVICE MAY CONTINUE.

20. **Grammatical and Formatting Correctness:** The language and formatting of this Agreement has been carefully reviewed for grammatical correctness, but any typographical errors, misspellings, or other mistakes shall not affect the validity of this document.
21. **Jurisdiction and Governing Law:** I hereby agree that, except as expressly stated in this Agreement, all disputes, controversies, or claims arising from or relating to this Agreement, including its interpretation, applicability, and enforcement, shall be governed and resolved exclusively under the general maritime law of the United States. This choice of law supersedes and preempts any contrary provisions of state or national laws. I understand that maritime law principles, which specifically apply to events and transactions on navigable waters, may differ from local or national laws of my jurisdiction. Should any part of this Agreement be deemed unenforceable, the remaining provisions will remain binding and in effect. This clause underscores the significance of maritime law in this Agreement and its applicability to the entirety of our engagement with Pacific Swim Co., reflecting the unique nature of maritime activities.
22. **Severability:** If any provision of these Terms is deemed to be so broad as to be unenforceable, such provision will be interpreted to be only so broad as is enforceable. The invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision of the Agreement. In the event that any legal action, arbitration, or other proceeding is initiated by me or any third party against Pacific Swim Co, and Pacific Swim Co incurs any costs, expenses, or attorneys' fees in connection with defending or responding to such action or proceeding, I agree to indemnify and hold Pacific Swim Co harmless from and against any and all such costs, expenses, and attorneys' fees.
23. **Subsequent Discoveries:** I acknowledge that there is a possibility that, after entering this Agreement, I will discover facts or incur or suffer claims which were unknown or unsuspected by me at the time this Agreement was executed, and which, if known or suspected by me at that time, may have materially affected my decision to enter into this Agreement. I acknowledge and agree that, according to this Agreement, I am unconditionally and irrevocably assuming all risk of such unknown and unsuspected facts and claims. I understand that this Agreement will constitute a full release of all claims, including all future, unknown and unsuspected claims, against Pacific Swim Co. I acknowledge and agree that this clause is an essential and material term of this Agreement, and without such terms, I would not have been permitted to participate in the Service. I understand and acknowledge the significance and consequence of this clause.

24. **Fully Binding, Contract Parties & Successors:** These terms will inure to the benefit of and be binding upon the undersigned and Pacific Swim Co, their respective affiliates, agents, and contractors, respective heirs, legal and personal representatives, executors, estate trustees, successors, and assigns. If any provision of this Agreement will be held to be invalid, illegal, or unenforceable, such provision will be curtailed and limited only to the minimum extent necessary to comply with applicable law, and the validity, legality, and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby.

25. **WAIVER, RELEASE, AND INDEMNIFICATION:** I, THE UNDERSIGNED, for myself, and on behalf of my estate, heirs, executors, administrators, or assigns, hereby assume full responsibility for and risk of any and all damages, injuries (including death), or losses that I may sustain or incur, if any, while attending, engaging, practicing, participating, or witnessing in the activities or events provided by or associated with PacSwimCo, whether occurring at the marina, within the waters of San Francisco Bay, on other similar federal waters, aboard PacSwimCo's vessels, or at any associated offsite locations. I expressly agree to defend, indemnify, and hold PacSwimCo, the PacSwimCo Indemnitees, and any other parties affiliated with it harmless from and against any and all claims, actions, causes of action, costs (including, but not limited to, attorney's fees, expert witness fees, and court costs, all of which shall be reimbursed as incurred), liabilities, obligations, damages, losses, or expenses, whatsoever caused, incurred, or sustained by me, my family, heirs, guests, or any third parties, which arise from, relate to, or are in any way connected with my presence at the marina, within the waters of San Francisco Bay, on PacSwimCo's vessels, or my participation in events or activities thereon, or the negligent acts or omissions of PacSwimCo, the PacSwimCo Indemnitees or any other third party. This release applies regardless of the cause or nature of the claimed liability, including if caused in whole or in part by the negligence (whether passive or active) of PacSwimCo, the PacSwimCo Indemnitees, or any of the aforementioned parties.

26. **COMPREHENSIVE COVENANT NOT TO SUE: I, THE UNDERSIGNED, FOR MYSELF, AND ON BEHALF OF MY ESTATE, HEIRS, EXECUTORS, ADMINISTRATORS, OR ASSIGNS, IN CONSIDERATION OF PARTICIPATING IN ACTIVITIES AND UTILIZING SERVICES PROVIDED BY PACIFIC SWIM CO, HEREBY IRREVOCABLY AGREE NOT TO INITIATE, ENGAGE IN, OR SUPPORT ANY LEGAL ACTION OR ARBITRATION AGAINST PACIFIC SWIM CO OR THE PACSWIMCO INDEMNITEES. THIS COVENANT APPLIES TO ALL CLAIMS ARISING FROM INJURIES, INADEQUATE SAFETY MEASURES, NEGLIGENCE, PERSONAL INJURY (BOTH PHYSICAL AND EMOTIONAL), WRONGFUL DEATH, BREACH OF CONTRACT, SERVICE QUALITY, MISREPRESENTATION, AND ALL OTHER NON-INJURY RELATED DISPUTES, IRRESPECTIVE OF THEIR CAUSE. HOWEVER, THIS COVENANT DOES NOT EXTEND TO CLAIMS ARISING FROM GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY PACSWIMCO OR THE PACSWIMCO INDEMNITEES. IT INCLUDES ALL KNOWN AND UNKNOWN CLAIMS, REPRESENTING A COMPREHENSIVE AND UNCONDITIONAL RELEASE OF LIABILITY FOR THESE SPECIFIC INCIDENTS, EXCEPT WHERE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT IS ALLEGED. BY ACCEPTING THIS COVENANT, I FOREGO ANY RIGHT TO LEGAL REDRESS IN THESE MATTERS, EXCEPT IN CASES OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, COMPLETELY RELEASING PACIFIC SWIM CO AND THE PACSWIMCO INDEMNITEES FROM ANY POTENTIAL LIABILITY IN ALL OTHER REGARDS.**

I UNDERSTAND THAT THIS CLAUSE PREVENTS ME FROM MAKING ANY CLAIMS COVERED BY THIS AGREEMENT. THIS CLAUSE CAN BE USED AS A COMPLETE DEFENSE AGAINST, OR AS GROUNDS FOR AN INJUNCTION TO STOP, ANY SUCH CLAIMS THAT I MIGHT ATTEMPT IN VIOLATION OF THIS AGREEMENT.

27. BINDING ARBITRATION FOR DISPUTES, GROSS NEGLIGENCE, AND INTENTIONAL MISCONDUCT STANDARD: I HEREBY AGREE THAT ANY DISPUTE NOT BARRED BY THE FOREGOING COVENANT, ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH THE SERVICE, ANY INCIDENTAL ACTIVITIES, OR SWIMMING IN THE RELEVANT WATERS, INCLUDING CLAIMS FOR PERSONAL INJURY OR RELATED TO THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION, OR VALIDITY OF THIS AGREEMENT, SHALL BE EXCLUSIVELY RESOLVED THROUGH BINDING ARBITRATION IN SAN FRANCISCO, CALIFORNIA. THIS ARBITRATION WILL BE CONDUCTED UNDER THE AUSPICES OF THE MARITIME ARBITRATION ASSOCIATION OF THE UNITED STATES, FOLLOWING ITS RULES.

FURTHERMORE, ANY CLAIM ALLEGING GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT MUST MEET AN EVIDENTIARY STANDARD OF CLEAR AND CONVINCING PROOF ESTABLISHING VIRTUAL CERTAINTY OF EGREGIOUS MISCONDUCT. THE ARBITRATOR SHALL APPLY A PRESUMPTION AGAINST SUCH CLAIMS UNLESS THE OPPOSING PARTY PRESENTS MULTIPLE EXPERT OPINIONS AND OBJECTIVE DOCUMENTATION CORROBORATING WILLFUL BEHAVIOR THAT CLEARLY FELL BELOW ESTABLISHED SAFETY PROTOCOLS AND PROCEDURES DESPITE OBVIOUS RISK OF SERIOUS HARM.

THE ARBITRAL DECISION SHALL BE FINAL AND BINDING, WITH JUDGMENT ON THE AWARD RENDERABLE IN ANY COURT POSSESSING JURISDICTION. BY AGREEING TO THIS CLAUSE, I WAIVE ANY RIGHT TO A JURY TRIAL. HOWEVER, THIS CLAUSE DOES NOT PREVENT EITHER PARTY FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT WITH APPROPRIATE JURISDICTION.

28. Participant Acknowledgment and 72-Hour Refund Option: We value your right to make informed decisions regarding your participation in our services. Should you choose not to accept the terms of this Agreement, you are entitled to a full refund of any fees or deposits paid, less any transaction fees, provided that you notify us within 72 hours of your initial registration and payment. This 72-hour window is designed to give you ample time to review the Agreement and ensure your comfort with its terms. This policy is part of our commitment to a fair, voluntary, and non-coercive agreement process, respecting your choice and autonomy as a participant. To cancel your registration, you must advise us via our website's Event Cancellation page: <https://www.pacificswim.co/cancel/> or, in the event there is an error with your submission or this service is unavailable, mail us a letter notifying us of your modification / cancellation at PO Box 566, Mill Valley, CA 94942. The date postmarked will be considered your date of notification. We recommend you request and save a Certificate of Mailing as proof of mailing.

29. I ACKNOWLEDGE THAT I HAVE HAD SUFFICIENT TIME TO REVIEW AND CONSIDER THE TERMS OF THIS AGREEMENT BEFORE SIGNING AND AGREEING TO ITS TERMS. FURTHERMORE, I ACKNOWLEDGE HAVING READ THIS ENTIRE AGREEMENT AND THAT: I) I HAVE BEEN FULLY AND COMPLETELY ADVISED OF THE RISKS, DANGERS, AND ADDITIONAL PERILS INCIDENT TO THE SERVICE, ANY INCIDENTAL ACTIVITIES THERETO, AND SWIMMING IN THE WATERS WHERE THE SERVICE IS OFFERED; II) MY VOLUNTARY DECISION TO PARTICIPATE IN THE SERVICE, ANY INCIDENTAL ACTIVITIES THERETO OR SWIMMING IN THE WATERS WHERE THE SERVICE IS OFFERED IS AT MY OWN RISK, AND I ACCEPT FULL RESPONSIBILITY FOR MY SAFETY AFTER DEPARTING THE ESCORT VESSEL; III) I HAVE BEEN AFFORDED THE OPPORTUNITY TO ASK ANY AND ALL QUESTIONS AND HAVE RECEIVED SATISFACTORY RESPONSES THERETO; AND IV) I AM FULLY AWARE OF THE LEGAL CONSEQUENCES ATTENDANT TO SIGNING THIS AGREEMENT.

30. Finally, 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: _____

Participant Legal Name: _____

Address: _____

Email: _____ Phone: _____

ALTOS PACIFIC, LLC, dba Pacific Open Water Swim Co.

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Website: www.pacificswim.co

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