

GENERAL BOOKING TERMS OF SERVICE

Altos Pacific, LLC, dba Pacific Open Water Swim Co.

Last Updated: August 24, 2024

These are the legally binding terms and conditions that govern your use of Pacific Open Water Swim Co's services. By participating in any services offered by Pacific Swim Co, you agree to be bound by these terms and conditions.

Pacific Open Water Swim Co's is a California Limited Liability Company, also known as Altos Pacific, LLC.

To make these terms and conditions easier to understand, we have broken them down into smaller sections. Please take the time to read and understand each section, as they contain important information about your rights and obligations when using our services.

By agreeing to these terms and conditions, you are agreeing to resolve any disputes with Pacific Swim Co through binding arbitration, to conduct transactions electronically, and to limit Pacific Swim Co's liability for damages and remedies. We have chosen to apply the general maritime law of the United States to govern this agreement. Please read this agreement carefully, as we are both bound by it.

ATTENTION: THIS IS AN AGREEMENT THAT AFFECTS YOUR LEGAL RIGHTS, PARTICULARLY CLAUSES TITLED 'Waiver and Release' AND 'Covenant Not to Sue', LIMITING OUR LIABILITY AND YOUR RIGHT TO SUE OR ARBITRATE. THE COVENANT NOT TO SUE IS A PROVISION THAT, AS FURTHER SET FORTH IN CLAUSE BELOW TITLED 'Covenant Not to Sue', BARS THE USE OF A LAWSUIT TO RESOLVE DISPUTES. THIS MEANS THAT YOU AGREE NOT TO SUE PACIFIC SWIM CO (AS DEFINED BELOW) IN COURT OR IN CLASS ACTIONS OF ANY KIND.

ATTENTION: THESE TERMS CONTAIN ALSO CONTAIN A MANDATORY ARBITRATION PROVISION THAT, AS FURTHER SET OUT IN CLAUSE TITLED 'Forum for Disputes' BELOW, REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES. THIS MEANS YOU AND PACIFIC SWIM CO (AS DEFINED BELOW) ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT OR IN CLASS ACTIONS OF ANY KIND. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.

ATTENTION: THIS AGREEMENT ALSO CONTAINS SUBSTANTIAL PENALTIES FOR CANCELLATION AND CERTAIN LIMITATIONS AND FEES FOR SWIM MODIFICATIONS.

IMPORTANT: WE STRONGLY RECOMMEND YOU SEEK YOUR OWN LEGAL COUNSEL TO REVIEW THE TERMS, CONDITIONS, LIMITS, RIGHTS AND EXCLUSIONS BELOW BEFORE ENTERING INTO THIS CONTRACT.

All headings and titles set forth in this Agreement are for convenience only and have no separate meaning or effect.

- 1. Definitions.** The following terms or phrases have the following meanings unless the context requires otherwise: a) The terms "Pacific Swim Co," "we," "us," or "our" mean the Altos Pacific, LLC dba Pacific Open Water Swim Co. and, where applicable, its agents, representatives, officers, directors, partners, vessel captains or crew, employees, contractors, or volunteers; b) "Swimmer" refers to the individual who registers or purchases the service and intends to participate as a passenger of the charter vessel on an agreed-upon course with the possibility of exiting the vessel to swim in the waters while the charter vessel escorts them on an agreed upon course, "Guest" refers to those invited or accompanied by the Swimmer, who participate in the charter service only and do not intend to swim; "Sponsored Swimmer" refers to other individuals for whom the Swimmer has paid, who engage in the same activities as the Swimmer but do not pay for their participation; c) "Participant" or "Attendee" refers to any individual accessing or using the Service, including but not limited to Swimmers, Guests, and Sponsored Swimmers, whether named or unnamed at the time of booking, who you bring or have join you for the Swim (as defined below); d) The use of the singular form of any word includes the plural and vice versa; e) "Third-Party Provider" refers to any external service providers, suppliers, or partners who are involved in providing the Service or related activities, but are not directly employed or contracted by Pacific Swim Co.; and f) Throughout this document, the terms 'you', 'your', 'they', and 'their' are used to refer to the party or parties identified in the relevant section or clause of this agreement. The use of these terms is intended to simplify and clarify the language of this document and to avoid repetitive use of the party's name or title. 'You' and 'your' refer to the party or parties who are entering into this agreement or who are bound

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by its terms, while 'they' and 'their' may refer to third parties or other entities referenced in this document. Unless otherwise specified, the use of 'you', 'your', 'they', and 'their' shall be construed to refer to the party or parties in the relevant context."

- Booking Contract.** By registering for, booking, or participating in activities, services, or products referred to herein as a "Swim," either sold by, offered, or conducted through Altos Pacific, LLC, both Pacific Swim Co and the Swimmer, their Guests, and any Sponsored Swimmers, hereby agree that they have read, understand and shall be bound by these terms and conditions ("Terms"). Such Terms shall form the basis of Swimmer's or Participant's agreement ("Booking Contract" or "Agreement") with Pacific Swim Co. Pacific Swim Co and Swimmer or Pacific Swim Co and Participant, as the case may be, depending on the context, may hereafter be referred to individually as a "Party" or collectively as the "Parties."

A contract between the Participant and Pacific Swim Co shall come into effect once the Participant signs and executes the document, or when Pacific Swim Co receives payment for the invoice in which the Swim is detailed ("Booking"), or when a Participant is allowed to join the Swim with or without payment at the sole discretion of Pacific Swim Co.

The Booking contains the complete and final list of services and products included in the Swim, along with detailed pricing. In the event that the charter portion of the Swim is solely identified by a descriptive course name, date, and price, while other optional services or products, if any, are detailed within the registration, the standard services outlined in these terms and conditions under the clause below titled '**Standard Services**' shall apply and be considered as part of the Booking for the charter portion. Swimmer agrees that any services or products not listed in the registration or identified as standard services in the "Standard Services" clause of these terms and conditions are not included in the charter portion of the Swim. The Swim date, meeting time, and meeting location, and pre-swim instructions will be forwarded under separate cover and at a later date, but prior to the Swim.

Both Parties represent and warrant that they have the legal capacity to enter into this Agreement and that the Agreement is for a lawful purpose and does not violate any applicable laws or regulations. The Parties agree to exchange consideration, including but not limited to payment for the Swim by the Swimmer and the provision of the Swim by Pacific Swim Co. Swimmer must be at least 18 years of age to make a Booking. The Swim is valid only for the Swimmer named in the Booking confirmation. The Swim may not be sold or transferred without the written approval of Pacific Swim Co. If a request for modification of the Swim is approved, payment of the Modification Fee as detailed in the clause below titled '**Swim Modifications**' is also required for the modification to be fully authorized.

An electronic version of this Agreement, including any electronic signature, shall be considered an original for all purposes and shall have the same legal effect, validity, and enforceability as a paper agreement. The Parties acknowledge and agree that an electronic version of this Agreement shall be deemed to be "in writing" and to have been signed and delivered for all purposes. The Parties further agree that this Agreement and any related documents may be electronically signed, transmitted, and stored and that such electronic signatures shall be as valid and binding as handwritten signatures. The Parties also agree that any printouts or reproductions of this Agreement and any related documents made from electronic files shall be considered to have the same validity and enforceability as the original documents.

If Pacific Swim Co modifies your Swim, either by mutual agreement or unilaterally, the terms and conditions of this Agreement will still apply to the substituted or modified Swim, service(s), or product(s).

- Information Needed for Facilitation of Booking.** In order for Pacific Swim Co to facilitate the Booking of a Swim, Participant shall register for their Swim and provide Pacific Swim Co with all requested personal details (including but not limited to Participant's date of birth, citizenship, etc.), factual details, the Swim date agreed upon by the Parties, and your open water swimming history, all of which are essential to the Booking of a Swim in a timely, complete, and truthful manner.

Any additional information and/or documents required by Pacific Swim Co will vary by Swim and will be communicated to Swimmer prior to the Swim. If Swimmer fails to supply the information and/or documents required by Pacific Swim Co by the deadline given by Pacific Swim Co, Swimmer will be liable for any costs, fees, or losses, including, without limitation, any liability of Pacific Swim Co arising out of or related to its failure to obtain or provide that inclusion. In the event that Swimmer fails to supply information and/or documents required by Pacific Swim Co, Pacific Swim Co also reserves the right to

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treat Swimmer's Booking (or the relevant component of Swimmer's Booking) as canceled and levy any cancellation fees deemed reasonable by Pacific Swim Co per the clause below titled '**Conditions for Cancellation of Swim Booking**'.

4. **Booking on Behalf of Others.**

SWIMMER BOOKING A SWIM FOR GUESTS OR SPONSORED SWIMMERS HEREBY REPRESENTS, WARRANTS AND GUARANTEES THAT SWIMMER HOLDS THE PROPER AUTHORITY TO ACCEPT THESE TERMS ON BEHALF OF ALL PARTICIPANTS IN SWIMMER'S PARTY, KNOWN OR UNKNOWN AT THE TIME OF BOOKING AND THAT THEY WILL COMMUNICATE OR SHARE THESE TERMS AND CONDITIONS TO ALL PARTICIPANTS IN THEIR PARTY TO ENSURE THEY UNDERSTAND THE AGREEMENT AND AGREE TO BE BOUND BY THEM.

By Booking on behalf of other Participants, Swimmer is deemed to be the designated contact person for every Participant included in the Booking. Thus, Swimmer understands they are responsible for making all payments due in connection with his or her Booking, including payment for Participants on whose behalf Swimmer booked a Swim. Swimmer is responsible for keeping the other Participants in his or her group informed of all Swim-related matters and sharing information obtained from Pacific Swim Co.

Swimmer acknowledges that he or she is responsible for verifying that any information provided on behalf of any other Participants is complete and accurate. Swimmer shall notify Pacific Swim Co immediately of any requested modifications or cancellations.

5. **Medical Information.** Participants must provide any medical information reasonably requested by Pacific Swim Co. Participants agree to disclose all relevant medical information fully and accurately. Pacific Swim Co will maintain the information in strict confidence and shall not disseminate such information unless required to do by law or as needed in the event of a medical emergency. Pacific Swim Co reserves the right to request further information or professional medical opinions where necessary, as determined in its sole discretion, for a Participant's safety or the safe operation of a Swim.

Pregnant women participating in your Swim shall inform Pacific Swim Co regarding their condition, even if it is not evident, and their pregnancy status no later than the twelfth (12th) week of pregnancy. Pregnant women shall also sign a separate liability exoneration letter in favor of Pacific Swim Co, in which they accept that they are participating in the Swim under their own responsibility and risk regarding their pregnancy. Generally, Swim participation of pregnant women in good health condition is authorized provided that the Terms of this Agreement are complied with. Women with more than twenty-four (24) weeks of pregnancy on the date of your Swim shall submit a letter/certificate of approval by their treating physician clearly indicating that they may participate in your Swim and that said Swim or activities related to the Swim do not pose a risk to the woman or her fetus, the stage of her pregnancy (e.g., number of weeks) on the scheduled Swim date, the probable date of birth and the certificate's date of issuance.

If Participant does not provide the medical information reasonably required by Pacific Swim Co, for any reason, by the deadline given by Pacific Swim Co, Pacific Swim Co reserves the right to cancel Swimmer's Booking and all applicable cancellation fees, as detailed in clause below titled '**Conditions for Cancellation of Swim Booking**' will apply.

Pacific Swim Co may share medical, training, nutrition, or hydration-related information ("Medical Content") for informational purposes only. This content is not a substitute for professional medical advice, diagnosis, or treatment. Always consult your physician or qualified health provider for any medical concerns or questions. Do not disregard professional advice or delay seeking it due to information received from Pacific Swim Co. In case of a medical emergency during a Swim, contact your doctor, call 911, or ask Pacific Swim Co for assistance. Pacific Swim Co does not endorse specific tests, physicians, products, procedures, or opinions mentioned in the Medical Content. Relying on this information is solely at your own risk. Pacific Swim Co shall not be liable for any complications arising from a Participant's medical condition before, during, or after the Swim.

6. **Participant's Responsibilities and Fitness for Participation.** It is the Participant's responsibility to assess the risks and requirements of each aspect of the Swim based on their own unique circumstances, limitations, fitness level, experience, and medical requirements to determine if they are fit for a particular Swim. Participants should always rely on their own judgment and the advice of qualified professionals,

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such as their swimming coach, physical therapist, physician or other qualified individuals. Determining a Participant's competence or experience for a particular Swim through discussions with Pacific Swim Co, either before or during the Swim, or even observing a Participant in prior swims, may not provide a reliable indication of true abilities, as the evaluations are reliant on spoken communication, personal discernment, and potentially inconsistent performance.

Condition of Health: Participants represent that they are in excellent health, properly acclimated, experienced, and in the physical condition necessary to safely participate in the Swim, any swimming or water-based activity, and will notify Pacific Swim Co in writing if this changes before the date of the Swim. Participants also represent that they do not have any medical or health conditions, including but not limited to heart or respiratory conditions, epilepsy, diabetes, or any other condition that would pose a safety risk or prevent them from safely participating in the Swim or any related activities where the Swim occurs and in the environmental conditions expected during the Swim. If Participant is unsure about what environmental conditions are expected, we request you contact us in writing prior to the Swim.

Ensure Your Capability: It is always recommended for Swimmers to consult with their primary care physician and/or other relevant medical professionals to ensure that they are physically and mentally capable of completing the Swim safely. Swimmers may also want to consult with a swimming coach or trainer to assess their swimming skills and receive advice on how to improve their technique and endurance. Ultimately, it is up to each individual Swimmer to take responsibility for their own health and safety when participating in any Swim activities. Participants acknowledge and agree that Pacific Swim Co does not provide any medical, nutrition, or hydration advice, and that any discussions, recommendations, or suggestions regarding these topics, including but not limited to nutrition, dietary supplements or hydration based on Pacific Swim Co's experience or the experience of other swimmers, are for informational purposes only and should not be relied upon. Participants understand and agree that they are solely responsible for their own health and safety when participating in any Swim activities. Pacific Swim Co will not be held liable for any information or advice related to medical, nutrition, or hydration, and Participants assume all risks associated with following such advice. Participants are encouraged to consult their own medical professionals for any advice or recommendations related to their unique health needs and requirements.

Confirm Your Preparation: It is the Participant's responsibility to ensure that they are prepared and approved for swimming in San Francisco Bay's varying water temperatures throughout the year: Winter (48°F - 54°F / 8.9°C - 12.2°C), Spring (52°F - 56°F / 11.1°C - 13.3°C), Summer (54°F - 64°F / 12.2°C - 17.8°C), and Fall (56°F - 64°F / 13.3°C - 17.8°C). Swimmers and Sponsored Swimmers must obtain approval from their physicians and ensure that their experience and ability align with the challenges of swimming in these temperatures. By taking these precautions, swimmers prioritize their personal safety and the overall success of their Swim.

Dress Appropriately: Participants acknowledge that their decision to use (or not use) thermal insulating swimwear, vision corrected swimming goggles, increased visibility accessories or other swimming accessories designed to assist or aid the Participant with the swimming goals, personal safety, personal ability or safety or accessories other for other purposes is at their own free will and decision and such decisions are at their own risk. Participant agrees and acknowledges that Pacific Swim Co does not have any liability with respect to the choice and use of your swimwear or swimwear accessories, or any loss or injury resulting from such use or non-use. Participant acknowledges their swimwear and accessory choices are appropriate given their own personal experience, abilities, goals, location and conditions on the date of their Swim. Thermal insulating swimwear can include, but are not limited to full body wetsuits, wetsuit booties, neoprene gloves, neoprene caps or similar garments.

Wear Appropriate Safety Gear: Participants agree to use appropriate safety gear, including but not limited to, a brightly colored swim cap, goggles, and optionally, a personal flotation device. Participants also agree to follow all communication protocols established by Pacific Swim Co and to abide by any instructions provided by Pacific Swim Co staff, including the vessel's captain, crew, and support personnel.

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Freestyle Swimming Only: Participants acknowledge and represent that they are capable of and shall use the front/forward crawl swim stroke ("freestyle") confidently, without assistance, and non-stop at least ninety-eight percent [98%] of the time that they swim in the waters of San Francisco Bay, unless an alternate stroke Swim has been agreed to by Pacific Swim Co, in writing prior to the Swim. In the event that a Participant cannot maintain or exceed the conditions of swimming ability identified above, Pacific Swim Co reserves the right to require said Participant to board the escort vessel, terminate the Swim, consider their Swim complete.

Required Lighting: Swimming during periods of restricted visibility or low visibility, such as dusk, pre-dawn, or nighttime, necessitates the use of two distinct forms of illumination in two different colors for safety purposes. One light shall be placed on the back of the Participant's head, while the second light should be secured around the waist. These lights must be highly water-resistant and provided by the Participant themselves. It is essential to use these lights throughout the entire duration of the Swim taking place under such lighting conditions, ensuring the Participant always remains visible and safe. Swimmers should be aware that if they do not have the appropriate lighting, they may need to purchase them from Pacific Swim Co, if available, or face the termination of the Swim without any credit, refund, or further obligation from Pacific Swim Co.

Safety First – The Propellers May Kill or Injure You: It is essential that all swimmers on board our charter vessel understand and follow all the proper safety procedures while aboard our vessels and before exiting the vessel to swim in the water. Our agreed upon physical signal, the "shaka", and verbal "Is the boat in neutral?" procedure are designed to ensure the safety of all passengers. This procedure is covered in detail during our safety briefing prior to your Swim.

To ensure safety, it is imperative that Participants do not swim behind any vessel, including ours, while it is in motion or making way. Doing so poses a significant risk of injury or even death from being struck by the vessel's propeller or being impacted by the vessel itself. This rule is non-negotiable and must be strictly always followed, without any exceptions.

Exiting the Vessel Procedure: To exit the charter vessel and enter the water safely, swimmers should perform the following steps: 1) Signal your intention to swim by making the "shaka" hand gesture while confirming with the captain that the vessel is in neutral by asking the question: "*Is the boat in neutral?*"; then 2) Once the captain confirms that the vessel is in neutral by making the "shaka" hand gesture response and stating clearly that the vessel is in neutral, you may carefully exit the vessel, taking care not to land on other swimmers and by jumping clear of the swim platform and other components of the vessel. By following these safety procedures and never swimming behind the vessel while it is making way, all swimmers can enjoy a safe and enjoyable experience on board our charter vessel.

Reboarding the Vessel Procedure: To safely reboard the escort vessel, follow these steps: 1) Keep a safe distance from the stern of the vessel and position yourself at either the [port quarter or starboard quarter](#). Then, make the "shaka" hand gesture to signal your intention to reboard and confirm with the captain that the vessel is in neutral by asking "Is the boat in neutral?"; 2) After the captain confirms the vessel is in neutral by making the "shaka" hand gesture and verbally confirming it, you may approach the vessel astern carefully and use the ladder attached to the swim platform to reboard. Be mindful of other swimmers and avoid interfering with the engines, propellers, or other components of the vessel since they may cause harm or be dangerous. Please reboard the vessel promptly and efficiently while prioritizing safety.

Know the Signs of SIPE: Participant acknowledges and understands that there is a risk of swimming-induced pulmonary edema ("SIPE") occurring during or after open water swimming and periods of heavy exercise in water. SIPE is an unusual complication that occurs when fluid accumulates in the lungs in the absence of water aspiration. SIPE often produces acute shortness of breath and a cough with clear or blood-tinged sputum. It is often misdiagnosed and can rapidly deteriorate into life-threatening situations. Prior to the Swim, Participants agree to independently research, familiarize themselves, and educate yourself, your crew, Participants, and guests about the symptoms, characteristics, and risks of SIPE. Furthermore, Participant agrees to seek immediate professional medical diagnosis as soon as the Participant or your associates believe there is a risk of SIPE occurrence during or after a Swim.

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Participants are 100% Responsible for Breaking or Damaging Stuff: Swimmers and Participants are fully responsible for any loss, damage, or destruction of Pacific Swim Co's property or a Third-Party's property, including but not limited to the vessel, vessel components (such as fittings, machinery, and equipment), and other gear caused by their acts, omissions, or negligence before, during, or after a Swim. In the event of any lost, damaged, or destroyed property of Pacific Swim Co, the reimbursement amount will be for the full replacement cost of new, functionally equivalent property chosen by Pacific Swim Co, including any applicable shipping, taxes, and, if necessary, professional installation. Replacement cost shall not be adjusted for wear and tear or depreciation. Pacific Swim Co will present a receipt for the remedy(s) to the Swimmers and Participants, and they shall reimburse Pacific Swim Co in full when receipts are submitted until such time as any such loss, damage, or destruction is resolved, repaired or replaced.

7. **Special Requirements.** Swimmers must notify Pacific Swim Co of any special requirements or restrictions for themselves, Guests, or Sponsored Swimmers at the time of Booking. These may include, but are not limited to, mobility concerns, physical impairments, dietary restrictions, allergies, intolerances, visual or hearing impairments, cognitive or developmental disabilities, mental health concerns, medical conditions, or any other unique circumstances that may affect their participation in the Swim. Some activities may be inaccessible or challenging for individuals with certain limitations or special needs.

Pacific Swim Co will make reasonable efforts to accommodate special requirements or requests, within the bounds of safety, feasibility, and practicality. However, Swimmers understand and acknowledge that accommodations cannot always be made, and that Pacific Swim Co reserves the right to decline requests if they impose an undue burden, compromise the safety or enjoyment of other Participants, or are otherwise not feasible.

Swimmers are responsible for ensuring the accuracy of all information provided to Pacific Swim Co, and understand that failure to disclose relevant information may result in limitations to their participation, changes to the Swim itinerary, or additional costs. Pacific Swim Co shall not be held liable for any issues arising from inaccurate or incomplete information provided by Swimmers.

PACIFIC SWIM CO SHALL NOT HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO ANY FAILURE OF PACIFIC SWIM CO TO ACCOMMODATE OR FULFILL SUCH REQUESTS.

8. **Age Requirements.** Anyone under the age of eighteen (18) on the date of the Swim is considered a minor ("Participant-Minor"). All bookings with Participant-Minors require Pacific Swim Co's review and approval prior to registration.

Unless otherwise indicated in the Swim Booking confirmation, the minimum age for Participant-Minors is sixteen (16) years old. All Participant-minors must have a parent or legal guardian aboard the vessel in a supervisory role during a Swim. Each adult Participant with a minor or minors assumes joint and several responsibilities for their behavior, wellbeing, supervision, and monitoring. Adult Participants accept these Terms on behalf of any Participant-Minor(s) in the Booking, including all risk assumptions and liability limitations. Pacific Swim Co does not provide care services for minors and disclaims any responsibility for chaperoning or controlling Participant-Minor(s).

FAILURE TO DISCLOSE PARTICIPANT-MINORS FOR REVIEW AND APPROVAL MAY RESULT IN SWIM CANCELLATION WITHOUT REFUND, COMPENSATION, OR CREDIT.

9. **Participant's Warranties and Obligations.** Swimmer warrants that Participants are physically, emotionally, and otherwise suitably fit to undertake and participate in the Swim. Swimmer warrants that all Participants have received all medical evaluations necessary for their safety and activities during the Swim; that Participants accept sole responsibility for their conduct and actions while participating in the Swim; that Participants will, at all times, comply with Pacific Swim Co's rules and regulations, safety procedures, policies, orders and directions of Pacific Swim Co, the vessel's captain, crew, and staff; and that your conduct will not impair the safety of the boat or jeopardize or inconvenience yourself or other Participants.

Pacific Swim Co provides a comfortable Swim experience for all. Pacific Swim Co does not discriminate against any person based on disability and shall make every effort to accommodate the needs of persons with disabilities. All Participants acknowledge and understand that certain local safety requirements,

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standards, and/or applicable regulations involving design, construction or operation of the vessel, docks, gangways, anchorages or other facilities on or off the vessel may restrict access to facilities or activities for persons with mobility, communication or other impairments or special needs. In the event of an emergency, Participants must be fully mobile and able to exit our vessel safely. If you or all Participants are unable to meet the minimum safety requirements, even when provided with appropriate auxiliary aids and/or services, Pacific Swim Co may find it necessary to ask a Participant to make alternative travel arrangements.

CRITICAL MARIJUANA INFORMATION: The use and possession of marijuana is illegal aboard Pacific Swim Co vessels. As a licensed operator under the United States Coast Guard, we are obligated to comply with federal laws and regulations, wherein California marijuana laws do not apply. Any violation of this policy will result in immediate termination of the Swim and forfeiture of all fees paid.

Smoking or Vaping Policy: Smoking or vaping is not permitted during a Swim. You and all Participants must observe the non-smoking policy. If there is a violation of the non-smoking policy, Pacific Swim Co will abort the Swim and debark you and all Participants without a refund, compensation, or credit whatsoever.

Alcohol and Drug Policy: Swimmers and Participants must not consume alcohol eight (8) hours before or during the Swim or use illegal drugs before or during the Swim. Pacific Swim Co reserves the right to refuse participation, disembark, or terminate the Swim of any individual under the influence of alcohol or drugs that may pose a risk to themselves or others, without any refund, compensation, or credit.

Environmental Responsibility: Swimmers and Participants must respect the environment and marine life, adhering to any guidelines provided by Pacific Swim Co, local authorities, or conservation organizations. This includes not littering, not touching or disturbing wildlife, and being mindful of noise levels.

Respect for Others: Swimmers and Participants must treat fellow Participants, Pacific Swim Co staff, and any third parties encountered during the Swim with respect and courtesy. Harassment, discrimination, or any form of aggressive or inappropriate behavior will not be tolerated and may result in removal from the Swim without any refund, compensation, or credit.

Adherence to Swim Schedule: Swimmers and Participants must adhere to the schedule and timeline provided by Pacific Swim Co to ensure the smooth operation of the Swim. Failure to arrive on time for activities or meet-up points may result in Participants being left behind without any refund, compensation, or credit.

Personal Belongings: Swimmers and Participants are responsible for their personal belongings during the Swim. Pacific Swim Co shall not be held liable for any loss, damage, or theft of personal items.

Emergency Response: Swimmers and Participants must follow any emergency procedures and instructions provided by Pacific Swim Co staff, the vessel's captain, crew, and staff during the Swim. Failure to comply with these procedures and instructions may result in removal from the Swim without any refund, compensation, or credit.

Insurance: Swimmers and Participants are responsible for obtaining appropriate travel, medical, and personal liability insurance coverage for the Swim. Pacific Swim Co shall not be held liable for any costs or expenses arising from injuries, illness, or any other incidents requiring medical attention or evacuation during the Swim.

Pacific Swim Co may, without liability for any refund, payment, compensation, or credit of any kind, refuse to embark, or may disembark or limit the activities during the passage at any time or at any port of any Participant whose presence, or that of any accompanying child, in the opinion of Pacific Swim Co, may be detrimental to the comfort, enjoyment, or safety of other persons, or who, in Pacific Swim Co's opinion, might create a risk of harm to himself/herself or any other person. In such cases, you shall not be entitled to any refund of your Swim or any payment, compensation, or credit whatsoever.

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By participating in the Swim, you and all Participants acknowledge and agree to these warranties and obligations and understand that failure to adhere to them may result in the termination of your Swim without any refund, compensation, or credit.

10. **Important Documents & Insurance.** During your Swim, it is crucial to be cautious with valuable objects, essential documents, and other personal belongings. If possible, refrain from bringing these items on our vessels. For crucial documents, consider using copies, provided they are acceptable. The possibility of theft, loss, or damage cannot be ruled out, and Swimmer assumes responsibility for any such occurrences. We strongly recommend securing comprehensive trip and travel insurance (if appropriate), along with relevant additional coverages (including trip cancellation, trip interruption, luggage, travel liability, health, protection against delays, personal protection, and medical evacuation), to ensure suitable coverage tailored to your needs.

Pacific Swim Co does not offer or endorse any specific insurance providers but urges you to research and purchase appropriate insurance for the periods before, during, and after your Swim. Please note that Pacific Swim Co is not responsible for any loss or damage to your personal belongings before, during, or after the Swim.

11. **Hazards and Elevated Dangers.** By participating in Swim activities, Participants accept that they will encounter inherent dangers and hazards, including but not limited to: a) Tripping and Falling Risks: Participants may be exposed to the risk of tripping, slipping, or falling due to poor lighting, uneven surfaces, wet or slippery decks, or inclement weather conditions; b) Laceration and Impact Risks: Participants may be at risk of being cut or struck by the vessel or its equipment during boarding, disembarking, or while on the vessel; c) Drowning Risk: There is a risk of drowning if a Participant falls into the water during boarding, disembarking, or while on the vessel; d) Participants, while both underway and making way on our vessels, face numerous hazards and dangers that must be acknowledged and understood, including: i) Weather Risks: Adverse weather conditions, extreme temperatures, high winds, and rough seas are common hazards that can pose risks to Participants; ii) Obstacle Risks: Natural or man-made obstacles such as rocks, reefs, and other vessels are potential hazards that Participants may encounter while underway; iii) Equipment Failure Risks: Although our vessels are well-maintained and checked regularly, there is always the risk of equipment failure or malfunction, which can put Participants at risk of injury or drowning; and iv) Collision Risks: Participants should be aware of the risk of collision within the confines of San Francisco Bay and related water ways, which have significant maritime traffic, can occur when our vessel comes into contact with another vessel. This can be caused by a variety of factors such as human error, mechanical failure, or adverse weather conditions which pose significant danger for Participants.

FOLLOW SAFETY GUIDELINES AND DIRECTIONS: PARTICIPANTS SHALL FOLLOW ALL SAFETY PROTOCOLS, GUIDELINES, DIRECTION, AND INSTRUCTION OF PACIFIC SWIM CO. PARTICIPANTS SHALL TAKE ALL NECESSARY PRECAUTIONS TO MINIMIZE THE RISK OF HARM AND ASSUME FULL RESPONSIBILITY FOR THEIR OWN SAFETY WHILE ON AND AROUND VESSELS AND ESPECIALLY DURING WATER-BASED ACTIVITIES.

IMPORTANT – SWIM AT YOUR OWN RISK: NO LIFEGUARDS WILL BE ON DUTY OR AVAILABLE TO YOU AT ANY TIME BEFORE, DURING OR AFTER YOUR SWIM. PACIFIC SWIM CO WILL ENDEAVOR TO EMPLOY ALL REQUIRED PRECAUTIONS TO HELP ENSURE PARTICIPANT SAFETY. YET, RISKS, HAZARDS, AND DANGERS ARE PRESENT AT ALL TIMES DURING EVERY SWIM. PARTICIPANTS UNDERSTAND, ACCEPT AND ACKNOWLEDGE THAT THEY ARE SOLELY AND ULTIMATELY RESPONSIBLE FOR THEIR OWN SAFETY DURING THE SWIM, ESPECIALLY DURING PASSAGE, WHILE DEPARTING THE ESCORT VESSEL TO SWIM, WHILE SWIMMING OR PARTICIPATING IN WATER-BASED ACTIVITIES IN SAN FRANCISCO BAY, WHILE REBOARDING THE ESCORT VESSEL AT THE END OF PARTICIPANT’S WATER-BASED ACTIVITIES AND WHILE DISEMBARKING.

ACCEPTANCE THAT THERE IS NO GUARANTEE OF SAFETY: PARTICIPANTS ACKNOWLEDGE, ACCEPT AND UNDERSTAND THAT PACIFIC SWIM CO'S SAFETY MEASURES ARE BASED ON THEIR TRAINING, EXPERIENCE, ABILITY, AND KNOWLEDGE ONLY. PARTICIPANTS RECOGNIZE AND APPRECIATE THAT NO LEVEL OF SAFETY CAN BE GUARANTEED DURING A SWIM AND

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THERE IS NO WAY FOR THE PARTIES TO BE PREPARED FOR ALL POSSIBLE RISKS OR CONDITIONS WHEREIN THE PARTIES EXPERIENCE WILL PREVENT INJURY OR LOSS. THEREFORE, IT IS IMPERATIVE THAT PARTICIPANTS ACKNOWLEDGE AND ACCEPT ALL THE RISKS INVOLVED, BOTH KNOWN AND UNKNOWN, DURING THE SWIM AND DURING ANY WATER-BASED ACTIVITIES, ASSUMING SOLE AND COMPLETE ACCOUNTABILITY FOR THEIR OWN SAFETY AT ALL TIMES.

ADDITIONAL HAZARDS: THE HAZARDS AND DANGERS FACED BY PARTICIPANTS DURING THE SWIM MAY RESULT, IN WHOLE OR IN PART, FROM THEIR OWN ACTIONS OR INACTIONS, THE ACTIONS OR INACTIONS OF OTHER PARTICIPANTS, OR THE NEGLIGENT ACTS OR OMISSIONS OF PACIFIC SWIM CO. BY PARTICIPATING IN THE SWIM, PARTICIPANTS SHALL EXPRESSLY ASSUME ALL SUCH RISKS AND SHALL BE RESPONSIBLE FOR ANY DAMAGES, LIABILITIES, LOSSES, OR EXPENSES INCURRED AS A RESULT OF THEIR PARTICIPATION IN THE SWIM, SWIMMING IN THE WATERS OF SAN FRANCISCO BAY, OR ANY SWIMMING-RELATED OR WATER-BASED ACTIVITIES.

12. **Standard Services.** Pacific Swim Co offers a standard Swim package that includes a licensed US Coast Guard Captain, navigational guidance, vessel safety briefing, course overview, participant instructions, on-water event coordination, limited on-deck accommodations, and a seaworthy, documented or registered recreational vessel equipped with all required vessel safety equipment of a OUPV "Six-Pack" charter, as specified by the United States Coast Guard. The Swim also includes adherence to the Inland Navigation Rules, passage and navigation from the embarkation location to the swim course, swim course guidance, current and environmental observations, escorting and coordinating swimmers, and coordination with USCG Vessel Traffic Service and other commercial vessels. Additional services may be available for purchase through Pacific Swim Co's website event registration page, but only the services identified in the registration confirmation or separate invoice are provided.
 - a. **Charter Service Responsibility and Passenger Safety.** Pacific Swim Co. is committed to ensuring the safety and comfort of all passengers aboard our charter vessels. Our duty of care encompasses the provision of a seaworthy vessel, equipped in compliance with the stringent standards of the United States Coast Guard (USCG), including a licensed captain for operational oversight. We provide a detailed safety overview prior to embarkation, ensuring that participants are fully aware of the safety protocols and the nature of the activities they will engage in. Our service includes comprehensive guidance on the pre-determined course, augmented by escort and assistance from your captain and any included crew. This duty of care is designed to manage the safety and security of passengers aboard the vessel, with a focus on adherence to prevailing navigation rules and coordination with marine traffic to ensure a safe and informed experience.
 - b. **Swimming Escort Service Limitations and Participant Responsibilities.** Upon commencement of swimming activities, as participants transition from the charter vessel and into the water, there is a significant shift in the services provided by PacSwimCo. This shift marks a transition to an escort role that provides navigational support and logistical aid tailored for open-water swimming. While PacSwimCo is committed to safety and adheres to maritime safety protocols, our responsibility is limited to actions that can be reasonably managed by the escort vessel and crew given the complex nature of vessel swim and situational management. Participants bear exclusive responsibility for their personal safety, situational awareness, navigation, and adherence to the rules set forth by PacSwimCo. Engaging in swimming activities signifies participants' explicit acknowledgment and acceptance of the substantial risks involved, including the inherent risks posed by the natural environment, busy shipping lanes, and maritime hazards. PacSwimCo, as an escort, will exercise due diligence in its duties. However, the company does not guarantee swimmer safety and cannot eliminate all inherent risks of open-water swimming. The success and safety of a swim attempt hinge upon the participant's own preparation, skills, decision-making, and adherence to safety protocols.
13. **Standard Service Swims and Payment.** Registration for a Swim via our website will include the 'Standard Services' above plus any optional or additional products or services, paid for by you at the time of registration. We will send a summary of the Swim course/descriptive name, date, and pricing information.

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14. **Other Swims and Payment.** If your Swim is summarized and sent via invoice via our invoicing service, your Swim’s services offerings are included within that document exclusively, as well as the payment terms.
15. **Payments.** All payments made by you to us or any payment processor of Ours shall be made in the currency of the United States of America, are non-refundable except as specifically specified within this Agreement, and shall be retained by us. All charges for services and products provided before, during, or after your Swim must be settled in cash, Pacific Swim Co voucher, or charged to a credit/debit card acceptable to us before you disembark according to the schedule below. Any other expenses incurred by you or by us on your behalf shall be payable by you on demand.

Pacific Swim Co accepts no responsibility for wire transfer fees or credit card processing fees independently assessed by payment processors, issuing or receiving banks. None of these transaction fees separately charged accrues to the benefit of Pacific Swim Co.

Payments made to us will incur additional fees according to the following schedule:

BOOKING PAYMENT FEES

	Personal Check/Cash	Credit/Debit Card (US)	Credit/Debit Card (International)	Wire Transfer (US)	Wire Transfer (International)
Transaction Fees (Send or Receive)	No Transaction Fees	3.49% + \$0.49	4.99% + \$0.49	\$40	\$60
NSF/Returned Check Fee	\$65	N/A	N/A	N/A	N/A

16. **Vouchers.** Pacific Swim Co issues vouchers for use towards the payment of a Swim or any portion of a Swim at the time of Booking only. Vouchers have no cash value and are therefore not refundable under any circumstance. Vouchers are transferable by you to others, subject to the conditions set forth in this Agreement. To be considered valid, vouchers must meet the criteria set forth by Pacific Swim Co, which may include limitations on the types of vouchers that may be issued and the terms and conditions that apply to their use.

If Pacific Swim Co issues a voucher for a Swim that was postponed, delayed, terminated, partially canceled, or entirely canceled, Participants understand and agree that there is no guarantee that they will be able to apply the voucher toward a mutually agreeable Swim, service offering, course, or date/time in the future. Pacific Swim Co reserves the right to cancel or deem invalid any voucher that does not meet the criteria set forth by Pacific Swim Co or that is used in violation of the terms and conditions set forth in this Agreement.

Participants understand and agree that Pacific Swim Co is not responsible for any losses, damages, or other liabilities arising from the use or issuance of vouchers, and that Participants assume all risks and responsibilities associated with their use of vouchers. Participants waive any and all claims against Pacific Swim Co related to the use or issuance of vouchers and acknowledge that this waiver and release of claims is binding and enforceable under applicable law. Pacific Swim Co may modify or amend the terms and conditions related to vouchers at any time, and such modifications or amendments shall be binding and enforceable against Participants.

17. **Optional ‘Cancel for Any Reason’ Plan.** Pacific Swim Co looks forward to your attempt in San Francisco Bay but understands that sometimes the unexpected happens. Designed to provide peace of mind as you prepare for your Swim, our optional Cancel for Any Reason Plans offer several levels of refund flexibility at a reasonable, additional cost.

Full Money-Back Guarantee for Fog, Weather, or Sea-Related Delays. We understand the frustration of traveling to swim with us or joining us while you’re in the area on other business only to arrive for your Swim to find it’s fogged out or unsafe. For this reason, we have included a 100% refund for both levels of our **‘Cancel for Any Reason’** plan when this occurs. Please see the separate [Pacific Swim Co Cancel for Any Reason Terms and Conditions](#) for full details and the clause below titled **‘Postponement Due to Fog, Weather, or other Circumstances Prior to Departure’**.

POSTPONEMENT BY PACIFIC SWIM CO

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Postponement Reason	Standard Terms (Included with all Fares)	Cancel for Any Reason Base Plan	Cancel for Any Reason Premium Plan
Due to Fog, Weather, Unsafe Conditions of the Sea, etc.	Voucher	100% Refund	100% Refund

Partial Refunds for Swimmer Cancellation. You may benefit from these optional plans if you have to cancel your Swim for a variety of reasons, including injury, personal/work/family issues, travel related delays, insufficient preparation, inadequate training, or other unforeseen situations or schedule conflicts.

The '**Cancel for Any Reason**' protection plan is a cancellation fee waiver program with two service levels which, depending on when you cancel, offers you a partial refund full of the Swim Total Fare as detailed below. The refund amount is a percentage of the Base Fare, any Fare Options and any additional services/products included in the Booking (less any remaining payment(s) still owed). The '**Cancel for Any Reason**' plan fee, Swim modifications fees and banking/transaction fees are non-refundable. Please see the separate [Pacific Swim Co Cancel for Any Reason Terms and Conditions](#) for full details, terms and conditions.

The refund table below outlines this optional plan's and the standard Swim cancellation terms:

SWIMMER CANCELLED REFUNDS

Cancellation Date	Standard Cancellation Fees (Included with all Fares)	Cancel for Any Reason Base Plan (Canceled by Swimmer)	Cancel for Any Reason Premium Plan (Canceled by Swimmer)
>120 Days before Swim	100% Refund less \$65	100% Refund	100% Refund
91 - 120 Days before Swim	75% Refund	100% Refund	100% Refund
61 - 90 Days before Swim	50% Refund	80% Refund	90% Refund
31 - 60 Days before Swim	25% Refund	80% Refund	90% Refund
14 - 30 Days before Swim	No Refund	80% Refund	80% Refund
3 - 13 Days before Swim	No Refund	50% Refund	80% Refund
Two (2) days to 2:00 PM (PST) the day before your scheduled Swim	No Refund	25% Refund	50% Refund
After 2:00 PM (PST) the day before your scheduled Swim	No Refund	No Refund	No Refund

Here's how the refund is calculated:

Total Fare (Base Fare + Options) x Percentage Refunded – Any Remaining Payment/Fees due = Total Refund

18. **Changes Made by Swimmer.** If a Swimmer wishes to modify their Swim, they may do so with our approval only. However, please note that we reserve the right to refuse modifications, transfers, and/or assignments due to any number of reasons, so modifications are not guaranteed. The Swimmer is solely responsible for any additional costs, and it is important to note that modification may result in cancellation fees as outlined in the clause titled '**Conditions for Cancellation of Swim Booking**' below. Please be aware that modifying a Swim does not guarantee changes to the original booking in terms of availability, intent, or price.

For all revised non-marathon Swim bookings, an administrative fee of sixty-five dollars [US\$65] is required. For marathon and similar Swims, the administrative fee is one hundred twenty-five dollars [US\$125]. Only after this fee has been received will the revised booking be considered valid.

19. **Changes or Delays Made by Pacific Swim Co Near the Swim Date or During Swim.** In rare instances, circumstances beyond Pacific Swim Co's control may require deviation from the Swim's contractually agreed services or products. In such cases, Pacific Swim Co will make reasonable efforts to provide alternative arrangements of equivalent value or, if feasible, to compensate for any missed activities on another date or time. However, Pacific Swim Co will not be responsible for any indirect or consequential losses resulting from changes to Swim dates, times, or Bookings.
20. **Material Changes Made by Pacific Swim Co Prior to the Swim.** Pacific Swim Co reserves the right to modify your Swim where reasonably required in its sole discretion without notice or liability for refund, payment or compensation of any kind or credit except as provided herein. Such changes to the character of the Swim may occur under certain circumstances outside the control of Pacific Swim Co, including but not limited to, changing maritime conditions, schedule changes, vessel mechanical issues, staffing issues, extreme weather conditions, or other not readily foreseeable and presently unknown

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complications. If Pacific Swim Co makes a change that materially affects the character of a product or service in its entirety ("Material Change"), Pacific Swim Co will provide notice to Swimmer as soon as reasonably practicable, provided that there is sufficient time to do so before the Swim date. If we make any of the changes described herein, we will be responsible to you as follows in full and final settlement of all claims and liabilities of Pacific Swim Co in connection with such actions.

Pacific Swim Co may terminate the Agreement if we are unable to fulfill the contract due to extraordinary and unavoidable circumstances. If the Swim is terminated prematurely due to subsequent impossibility, reimbursement is only available for products or services that were not consumed.

Your Choices if Material Changes Are Made Before Embarkation. If Pacific Swim Co makes Material Changes to your Swim and advises you that this has occurred, Swimmer will be offered to choose a remedy typically including, but not limited to: a) Proceed with the amended product or service; b) Book another product or service of equal or greater value, paying any difference in price and non-refundable administrative/booking fees paid to third parties by Pacific Swim Co; c) Book another product or service of lesser value, receiving a refund for the difference in price, less any non-refundable administrative/booking fees; d) Cancel and receive a full refund, except in cases where a credit or voucher was used.

Swimmer must notify Pacific Swim Co of their choice within four (4) days of notice or at least twelve (12) hours before the Swim if notified within two (2) days of the Swim or the amended Swim will be automatically accepted.

21. **Postponement Due to Fog, Weather, or other Circumstances Prior to Departure.** Our goal is to ensure that our clients have a positive and enjoyable experience with us, and we will work with them to reschedule their Swim when unforeseeable circumstances arise.

POSTPONEMENT BY PACIFIC SWIM CO.

Postponement Reason	Standard Terms (Included with all Fares)	Cancel for Any Reason Base Plan	Cancel for Any Reason Premium Plan
Due to Fog, Weather, Unsafe Conditions of the Sea, etc.	Voucher	100% Refund	100% Refund
Due to Poor Air Quality	Voucher	100% Refund	100% Refund

Pacific Swim Co reserves the right to delay a charter under certain circumstances that may put its assets or operations at risk, as detailed below: 1) Vessel Safety: If unfavorable sea conditions, restricted visibility (fog, typically), mechanical issues, or damage to the vessel pose risks to its integrity and safety, a delay may be necessary to ensure the well-being of all parties involved; 2) Crew Safety: The safety of our crew is paramount, and in the event of inclement weather, hazardous sea conditions, or other safety concerns, a postponement may be required to protect their well-being; 3) Customer Safety: Pacific Swim Co prioritizes customer safety, and unforeseen events such as extreme weather, water conditions, or other hazards may necessitate a charter delay to ensure the utmost safety of our clients; 4) Environmental Risks: Should environmental factors like pollution or natural disasters pose risks to the company's operations, vessels, or resources, a postponement may be deemed necessary to mitigate potential damage and uphold our commitment to environmental stewardship; 5) Regulatory Compliance: Pacific Swim Co operates in compliance with all applicable regulations, permits, and maritime laws. In the event that changes in these regulations temporarily impact our ability to operate, a delay may be necessary to ensure full compliance; and 6) Security Threats: We take potential security threats or disruptions, such as acts of terrorism, piracy, or civil unrest, very seriously. If these threats put our assets and personnel at risk, Pacific Swim Co may choose to postpone a Swim to protect the well-being of all parties involved.

In cases where Pacific Swim Co decides to postpone a Swim due to safety concerns or risks to our vessel(s), crew, or other resources, we will strive to reschedule the Swim for an alternative, mutually agreeable date and time. If rescheduling is not possible, we will issue a non-expiring voucher equal to the amount paid for the Swim, excluding any transaction fees, services, and/or products already received. For clients who have used a voucher toward their postponed Swim, a new voucher will be reissued within 30 days of the postponement.

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100% Refund for Fog, Weather, or Sea-Related Postponement. With the optional '**Cancel for Any Reason**' plan, you can choose between accepting a mutually agreeable alternative swim date/time if one is available or receiving a 100% refund, as per the plan's [Terms and Conditions](#).

Postponement Due to Air Quality. Pacific Swim Co will assess PM2.5 AQI data at AirNow.gov before the scheduled Swim to determine if there is a significant risk of low air quality. A call will be made 24-36 hours before your Swim to discuss the current and 24-hour forecast PM2.5 AQI data. If the PM2.5 forecast 24 hours before your Swim is less than 150, the Swim will proceed, and the decision will be made during a pre-Swim meeting or at the Swim meeting time, following specific rules:

- a. If PM2.5 AQI forecast on your course is projected to be 100 or less, the Swim shall commence as planned.
- b. If the PM2.5 AQI forecast for the Swim and planned course is between 100 and 149, the Swim will proceed conditionally. Both Pacific Swim Co and the Swimmer must agree to commence based on their sensitivity to air quality. If either party decides not to commence, the Swim will be postponed.
- c. If the 24-hour AirNow.gov PM2.5 forecast for the Swim and planned course is 150 or higher, the Swim shall be postponed and the terms of the clause titled '**Postponement Due to Fog, Weather, or other Circumstances Prior to Departure**' above shall apply.

100% Refund for Air Quality Postponement. With the optional '**Cancel for Any Reason**' plan, you can choose between accepting a mutually agreeable alternative swim date/time if one is available or receiving a 100% refund, as per the plan's [Terms and Conditions](#).

22. **Conditions for Cancellation of Swim Booking.** We reserve the right to cancel your Swim and forfeit the applicable fare if any of the following events occur: a) you, all Attendees or other participants arrive more than 5 minutes late at your Swim's scheduled meeting time; b) you don't show up for your Swim; c) you do not use this Booking Contract for your Swim on the date, time, or location specified for your Booking; d) you only use this Booking Contract for part of the Swim for any reason, whether or not due to causes beyond your control; or e) you breach any term or condition of this Agreement.

23. **Cancellation by Pacific Swim Co.** If Pacific Swim Co must cancel your Swim before embarkation due to circumstances beyond our control, you will receive a full refund for the applicable product or service, minus any transaction fees. If you paid using a credit or voucher, we will issue a new voucher or credit within 30 days for the full amount paid, minus any products or services received or those that are not cancelled. Please note that refunds are not available for other products or services that are not subject to cancellation or have already been received by you.

If Pacific Swim Co must cancel your Swim after embarkation due to circumstances beyond our control, the Swim will be considered complete, and no refunds will be issued.

24. **Cancellation by Swimmer.** If you purchased the optional '**Cancel for Any Reason**' plan, Pacific Swim Co shall adhere to its terms and conditions. If you did not purchase this plan, you may cancel your Booking by notifying Pacific Swim Co via the specified notification method. The Standard Cancellation Fee will apply, which is based on the date Pacific Swim Co receives your cancellation notice. The fee is expressed as a percentage of the Total Fare of your Swim using the table below for the calculation, regardless of whether you paid in full or not. Before cancelling, please contact us to explore the possibility of transferring/selling your Swim to another person, as this may be more financially beneficial for you (refer to "Swim Modifications" clause).

Standard Cancellation Fees (Included with all Fares)

Date of Notification	Cancellation Fee
>120 Days before Swim	\$65 Administrative Fee
91 - 120 Days before Swim	25% of Total Fare
61 - 90 Days before Swim	50% of Total Fare
31 - 60 Days before Swim	75% of Total Fare
30 Days or less before Swim	100% of Total Fare

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Here's how the Cancellation Fee is calculated:

(Total Fare (Base Fare + Options) – Products/Services received by you) x Cancellation Fee Percentage = Total Fee

If Pacific Swim Co owes you a balance after cancellation fees and any outstanding payments are deducted, the balance will be returned by the original payment method within 30 days of cancellation notification. If you owe Pacific Swim Co for any reason, including unpaid Swim fees or cancellation fees, you agree to make payment within 7 days.

25. **Liquidated Damages Due to Cancellation:** In this agreement, Pacific Swim Co and the Swimmer acknowledge that determining damages upon termination of the Agreement or cancellation of a booked Swim can be difficult. Therefore, the cancellation fees listed in the Agreement are considered liquidated damages and not penalties. These fees are in addition to any other rights Pacific Swim Co may have.

Both Parties also recognize that estimating the exact amount of loss or damages that may occur is challenging. The percentages listed in the agreement are reasonable and directly related to the probable loss that Pacific Swim Co may incur due to the cancelling Swimmer's inability to attend their Swim. This includes the difficulty in finding another individual to fill the cancelled slot at the same rate or obtaining a refund for third parties contracted for the Swimmer's Swim.

26. **How to Cancel.** To cancel your Swim, you must submit a cancellation request via our website: <https://www.PacificSwim.co/cancel/>

Cancellation submissions via our website are typically confirmed via email within 24-hours. Pacific Swim Co does not guarantee the availability of www.PacificSwim.co or the functionality of the cancellation form on www.PacificSwim.co. In the event you do not receive a timely email confirmation of your Swim cancellation submission, or the service is unavailable, you are required to notify us of your cancellation in writing via the US Postal Service (“USPS”). If advising us of cancellation in writing, the date of notification shall be the stamped date applied upon a Certificate of Mailing by the USPS (or certified, equivalent proof of mailing if you do not reside in the United States) only. You may not cancel your swim via any other method (e.g., SMS text, telephone, email, etc.).

Swimmer understands and acknowledges that the date of cancellation is an important part of cancellation fees calculation and will endeavor to notify Pacific Swim Co in a timely manner consistent with the terms above.

27. **Responsibility for Fees or Losses Due to Changes.** Participants are responsible for any fees or losses incurred as a result of changes to a Swim, such as airline change or cancellation fees. Pacific Swim Co will not provide refunds, payments, compensation, or credit for any unused or partially used portions of the Swim, except as outlined specifically in this Agreement. It is important to note that any additional costs resulting from changes to the Swim are the responsibility of the Participants and not that of Pacific Swim Co.

28. **Meeting Time & Departure Date.** Participants are required to arrive at the designated meeting location at the specified time stated on their booking confirmation or invoice. If any changes are made to the time or date, Pacific Swim Co will notify the Swimmer via electronic messaging (SMS or email). It is the responsibility of Swimmer to advise all Participants of any modifications made by Pacific Swim Co.

At the specified meeting time and location, Participants are responsible for having all necessary equipment, food, feeds, potable water, beverages, medicines, and all other ancillary sundries required for the Swim before the scheduled meeting time. Our *Safety Briefing* and *Course Overview* will start at the meeting time, and it is required that all Participants be present. It's always a good idea to arrive early and we highly recommend it!

29. **Mandatory Safety Briefing.** Our safety briefing provides important information on emergency procedures, potential hazards, and necessary precautions to be taken during the Swim. By missing the briefing, a Participant may put themselves and others at risk and compromise the overall safety of the Swim. Missing the Swim safety briefing is not acceptable as it is a crucial part of ensuring the safety and well-being of all Participants.

Participants missing the Safety Briefing will be denied boarding for failing to comply with the requirements of this Booking Contract, Pacific Swim Co shall not be liable to refund any portion of the fare or for any

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other damages or expenses whatsoever. Swimmer's late arrival may also constitute cancellation according to the terms detailed in the clause titled ' **Conditions for Cancellation of Swim Booking**'.

30. **Call if You're Running Late!** If you're running late for your Swim and you, your Guest(s) and Sponsored Swimmer(s) are the only Participants of your Swim, Pacific Swim Co may be able to delay the start for a fee of \$225 per hour in whole hour increments. There are also other factors that might prevent a delayed start such as currents, weather, vessel traffic, and resource availability to consider but we will attempt to assist you and help make your swim a success, if possible. Call us as soon as possible before we cancel the swim for not showing up. Phone/SMS: +1-415-737-9870.

31. **Early Termination Due to Mechanical Failure.** If the Swim is terminated early due to an unresolved mechanical failure or caused by our crew, equipment, or vessel, Swimmer is entitled, at our option, to transportation to the Swim's scheduled port of disembarkation. Furthermore, we will issue you a non-expiring voucher equal to the portion of the amount you have paid toward your Swim after the full value of any transaction fees, services and/or products you have received from us has been subtracted. If you applied a voucher toward your terminated Swim, we will re-issue a new Voucher (within 30-days of termination).

In such cases, we will make every effort to reschedule the Swim for an alternative, mutually agreeable date and time or issue clients with a non-expiring voucher equal to a percentage of the amount they have paid toward their Swim, after subtracting the value of any transaction fees, services, and/or products they have already received. Vouchers shall be re-issued within 30 days of the cancellation for clients who have applied a voucher toward their postponed Swim.

Our goal is to ensure that our clients have a positive and enjoyable experience with us, and we will work with them to reschedule their Swim when unforeseeable circumstances arise.

32. **Termination After Embarkation Due to Force Majeure or Other Circumstances.** We will consider our obligation to you satisfied if we terminate the Swim early due to a Force Majeure event or circumstances beyond our control, including weather-related issues, water and atmospheric conditions, natural disasters, interference by authorities, requisitioning the vessel, fire, evacuation, or any other circumstances outside our control. Because these events are beyond our control, and as such they are part of the risks associated with open water swimming, we cannot offer vouchers, credits, refunds or other remedy.

33. **Swim Duration.** Your Swim has a maximum duration, whether it is published or not and regardless of whether you have been notified of it. Maximum Swim duration time is Pacific Swim Co.'s estimation of what it would take a swimmer with average open water experience and pace to complete your Swim course in average conditions. Average swimming conditions are winds less than 10-mph, partially cloudy, >0.5-mile visibility, >54°F water, >55°F air temperature). If the maximum duration time for your Swim is not published, displayed, or communicated, Swimmer may inquire about the maximum duration of their Swim by contacting us at any time before or during to their Swim.

There are occasions wherein swimmers cannot complete a Swim within this allotted duration due to any number of factors including but not limited to late departure, weather conditions, conditions of the sea, swimmer experience, swimmer ability, the experience or ability of other participants, vessel traffic, or other not readily foreseeable and presently unknown delays, complications or conditions.

Participants agree that if they choose to depart the charter vessel to swim in the waters of San Francisco Bay, a duration timer will begin and subsequently end you re-board the vessel or exit the water onto dry ground. If the duration of the swimming time exceeds our estimated maximum duration and upon our request, Participants agree to exit the water, reboard the escort vessel, return to the debark location, and consider the Swim complete and our obligation satisfied.

Optionally, and only with our mutual agreement, Participants may continue their Swim beyond the maximum duration time while incurring an additional pilotage fee in 1-hour increments and at a rate of \$225/hour. Swimmer agrees that any such additional accrued overage fees shall be paid to Pacific Swim Co in full prior to departing our vessel.

34. **Unused Services.** Open water swimming requires flexibility, patience, and understanding on the part of the Participants, as well as an understanding of the complexities associated with your Swim, weather,

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sea conditions, maritime operations, commercial shipping and logistics, staffing, and other maritime and vessel activities. Even though Pacific Swim Co makes every effort to fulfill all commitments, numerous variables and factors may adversely affect a Swim.

Participants acknowledge the possibility that certain goals of a particular Swim (e.g., completing a particular swim course) may not be achieved due to unforeseen changes which are outside the direct control of Pacific Swim Co. No reimbursements, discounts, or refunds will be issued for services that are missed or unused after departure due to no fault of Pacific Swim Co, including a Participant's removal from a Swim because of Participant's negligence or breach of the terms of this Agreement.

35. **Baggage and Property.** Swimmer may bring a reasonable amount of clothing and personal effects in one [1] soft-sided bags or equivalent per Participant aboard our vessel. No more than two [2] soft-sided, self-contained containers may be used for feeds. Water bottles for feeds must be 1-litre or smaller capacity. All baggage must be securely packed and distinctly labeled with the Participant's full name. It is strongly recommended that your belongings and bags be waterproof, be highly water-resistant, or enclosed in a plastic bag. It is not uncommon to have waves or spray wash over the sides of our boats soaking you or other Participants and your belongings.

IMPORTANT: HARD-SIDED LUGGAGE, RIGID STORAGE CONTAINERS OR COOLERS OF ANY SIZE ARE NOT ALLOWED ABOARD OUR VESSELS.

You, all Participants and your guests must personally carry any baggage containing breakable items and valuables at all times or store them at your own risk during your Attempt. Guest should not give baggage containing breakable items or valuables to anyone, including Pacific Swim Co personnel, regardless of any assurances given to you that it is safe to do so. Do not request Pacific Swim Co or any other than your Participants or guests to use your electronic equipment on your behalf (e.g., cellular phones, cameras, trackers, etc.). Such baggage and electronics are always your full and sole personal responsibility. You are personally responsible for these items throughout the Swim and should personally ensure that your breakable items and valuables are stored in a safe location and manner. Pacific Swim Co is not responsible for loss of or damage to any such items under any circumstance. If Swimmer departs our vessels leaving behind any personal items, we will endeavor to return your item(s) at a mutually agreeable time and place or ship them to you at your own cost and at Pacific Swim Co's convenience. Shipping fees shall include proof of mailing fees and optionally, insurance.

You agree that Pacific Swim Co's liability, if any, for loss of or damage to such belongings is limited to a maximum of \$25 per guest, unless the Participant delivers to Pacific Swim Co, in writing and before embarkation, a declaration of the true value of the property and pay to Pacific Swim Co before embarkation a sum equal to fifteen percent [15%] of the excess of the agreed values set forth herein. In that event, the liability of Pacific Swim Co, if any, shall be limited to the actual damage sustained up to, but not exceeding such declared value. Third-party baggage insurance is strongly recommended. Personal belongings lost while unattended in public areas, whether on board the vessel or elsewhere, are not reimbursable. Losses or damages due to ordinary wear and tear, perils of the sea, acts of God, or any other cause beyond Pacific Swim Co's control are not reimbursable.

You agree and understand that weapons, ammunition, explosives, alcohol, cannabis in any form, hazardous substances, disabling, or illegal, or any other article that in the opinion of the Pacific Swim Co shall be deemed dangerous, are strictly prohibited aboard our vessels.

36. **Marathon Swimming and Long Swim Training Roles and Responsibilities:** The success and safety of marathon swim attempts and training swims rely on the unwavering commitment and vigilance of all participants, particularly the swimmer's crew. The following outlines the critical responsibilities that must be upheld by the participants of this type to ensure the swimmer's safety and the effective execution of these events, understand that swim Pacific Swim Co.'s liability is limited to providing charter and escort services. **The crew shares primary responsibility with the swimmer for safety during their swim.**

- i. **Swimmer Responsibilities:** Swimmers must pace themselves according to the conditions and their abilities, adhering to the strict guidelines always set forth by the Northern California Open Water Swimming Association (for marathon swim attempts) and those set by Pacific Swim Co. This includes the mandatory use of the front/forward crawl stroke unless otherwise approved and strict adherence to all safety protocols. Swimmers must consult healthcare providers to verify their fitness for all

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marathon swim attempts and long training swims (more than 2 hours), especially considering the Bay's fluctuating temperatures and the demanding nature of marathon swimming and training. Swimmers must arrive fully prepared with all essential equipment, feeds, and other necessary items. Pacific Swim Co. should not be expected to supply the swimmer or crew with any swimming or crew equipment, nutrition, medicines, or other supplies unless previously coordinated and approved in writing.

- ii. **Crew Responsibilities:** The crew's role is indispensable in marathon swims and long training swims. As the first line of support, the crew is solely responsible for continuously monitoring the swimmer's health, safety, and condition. They are tasked with executing the feed plan and ensuring that all equipment is appropriately organized and readily available, regardless of the time of day, night, or sea conditions. The crew must be well-versed in the feed schedule and possess all necessary items to meet the swimmer's needs. They must proactively make safety and needs assessments throughout the swim, always prioritizing the swimmer's well-being. Clear and timely communication with the swimmer is essential, particularly regarding safety protocols, propeller awareness, and emergency procedures. The crew's diligence, responsiveness, and situational awareness are crucial to the swimmer's success and safety.

Crew members must be at least 18 years old and possess the mental and physical acuity required to participate in marathon swim attempts under challenging maritime conditions, often for durations that significantly exceed the expected completion time. They should demonstrate sound judgment, responsible behavior, strong character, and leadership abilities. Crew members must understand the unique needs of a marathon swimmer, particularly on the most demanding courses and during significant challenges, such as night swims, and when the swimmer's emotional, physical, and endurance limits are being rigorously tested. Effective support requires a crew that can anticipate the swimmer's needs, make critical decisions under pressure, and consistently maintain the highest safety standards.

- iii. **Pacific Swim Co. Responsibilities:** Pacific Swim Co. is responsible for all items outlined in the Standard Service section, ensuring that every aspect of the service meets the high standards expected during marathon swim attempts and long swims. In addition to these responsibilities, Pacific Swim Co. is tasked with providing comprehensive safety oversight for all marathon swim attempts and extended swims. This includes navigating the course with precision and efficiency, taking into account critical factors such as currents, tides, weather conditions, and vessel traffic.

Pacific Swim Co. is committed to managing each event strategically, leveraging an in-depth understanding of the maritime environment to achieve the swim's objectives in the most expedient and effective manner possible. Compliance with USCG Inland Navigation Rules is rigorously maintained, ensuring that all escort vessels are coordinated seamlessly and that any necessary logistical support is provided without delay.

The captain's role is central to the success of each swim. They are responsible for maintaining operational efficiency, coordinating the vessel's movements, and ensuring the safety of all participants. In situations where emergencies arise, the captain is pivotal in providing immediate assistance, guiding the crew and swimmer through critical decisions to ensure the swim's safety and success.

Pacific Swim Co. will also assist the crew wherever possible and to the extent that resources are available. The captain and Pacific Swim Co. staff will actively coordinate and discuss evolving situations with the crew, prioritizing the swimmer's well-being and success. This collaboration further underscores the necessity of having a responsible and capable crew, as effective communication and joint decision-making are essential to managing the challenges that may arise during a marathon swim.

- iv. **Shared Responsibilities: Shared Responsibilities:** All participants share the critical responsibility of maintaining a high level of situational awareness, environmental stewardship, and preparedness for emergencies throughout the duration of the swim. Situational awareness involves being constantly mindful of the swimmer's condition, the crew's actions, and the surrounding environment, including weather conditions, marine traffic, and other potential hazards. Environmental stewardship requires

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all participants to minimize their impact on the natural surroundings, adhering to principles of leave-no-trace and respecting marine life and ecosystems.

Preparedness for emergencies is essential, and all participants must be ready to respond swiftly and effectively to any situation that may arise. This includes knowing the location and proper use of safety equipment, understanding emergency procedures, and being able to communicate clearly and promptly during critical moments.

Any hazards, safety concerns, or medical issues must be reported immediately to ensure the prompt and appropriate response from the crew and Pacific Swim Co. Addressing these issues early can prevent minor problems from escalating into serious threats. This shared vigilance and proactive communication are fundamental to the collective responsibility of ensuring a safe and successful marathon swim.

37. **Acceptance of Risk.** By entering into the Agreement and participating in a Swim, the Swimmer confirms that they, along with all Participants, have received, reviewed, and executed the separate "Release and Assumption of Risk" agreement provided by Pacific Swim Co. Participants acknowledge and agree that this is an essential and material term of the Agreement. Failure by Participant to agree to the conditions and terms therein and execute the "Release and Assumption of Risk" agreement will result in being denied permission to participate in the Swim.
38. **Indemnification.** Swimmer agrees to indemnify, defend, and hold Pacific Swim Co harmless from and against all penalties, fines, charges, losses, damages, legal fees, and expenses of any nature incurred or imposed upon Pacific Swim Co or the charter vessel by any act, omission, or violation of law by the Swimmer, Guests, Sponsored Swimmers, or any Participant, including but not limited to any claims arising out of or related to the Participants' participation in the Swim.
39. **Third-Party Performance.** Pacific Swim Co may provide other services or facilities as a convenience to you and your guests and are not responsible for the services, treatments and/or attendance provided, or supplies were given by Pacific Swim Co, vessel personnel, coaches, crew, observers, and/or any other concessionaire or other persons providing services to you. Such services are provided directly to you and the service providers shall not be acting under the control or supervision of Pacific Swim Co. Should you avail yourself of the services which Pacific Swim Co or others may furnish as independent contractors upon request, you shall do so at your sole risk and expense.

Pacific Swim Co shall not be liable for the consequences of any examination, advice, diagnosis, medication or treatment thus furnished. Charges for such medical and other professional and personal services which you request will be your sole responsibility. Similarly, and without limitation, all coaches, crew, observers, and other service personnel shall be considered independent contractors who work directly for you.

Participants also understand and agree that Pacific Swim Co shall have no obligation or liability of any kind to you for the acts, performance, lack of performance, absence or omissions of the Northern California Open Water Swimming Association or their representatives. Your agreements and arrangements are between you and them, regardless of any association we have with them.

40. **Pacific Swim Co is Not Liable for Third-Party Providers.** Pacific Swim Co makes arrangements with accommodation providers, charter vessel providers, vessel leasing companies, charter vessel operators, independent contractors, and other independent parties (collectively, "Third-Party Providers") to provide Swimmer with some or all of the components of Swimmer's Booking. Third-Party Providers may also engage the services of local operators or subcontractors.

Any services provided by Third-Party Providers are subject to the terms and conditions imposed by such Third-Party Providers, whose liability may be limited or excluded by your tariffs, conditions of carriage, tickets and vouchers, and agreements that govern the provision of your services. Swimmer acknowledges that Third-Party Providers operate in compliance with the applicable laws of the state in which they operate, and Pacific Swim Co does not warrant that any Third-Party Providers are in compliance with the laws of Swimmer's any other jurisdiction.

Pacific Swim Co and its parents, subsidiaries, and your respective employees, affiliates, officers, directors, successors, representatives, and assigns shall not be held liable for, and will not assume

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responsibility of (i) any claims, causes of action, losses, damages, costs, or expenses arising out of or related to inconvenience, loss of enjoyment, disappointment, distress, or frustration, whether physical or mental, resulting from the act or omission of any party other than Pacific Swim Co and its employees; (ii) any acts or omissions, whether negligent or otherwise, of Third-Party Providers or any independent contractors; (iii) any damage to, or loss of, property or injury to, or death of, persons occasioned directly or indirectly by an act or omission of any Third-Party Providers; or (iv) any damage to, or loss of, property or injury to, or death of, persons occasioned resulting from, but not limited to, any defect in any aircraft, watercraft, or vehicle operated or provided by Pacific Swim Co or a Third-Party Providers.

41. **Other Transportation, Services, and Facilities.** Pacific Swim Co shall in no event be liable to you concerning any occurrence before, during or after your Swim. We make no representation, either express or implied, regarding the suitability, safety, insurance or other aspects of any such independent contractors, transportation, tours, services, products or facilities. Pacific Swim Co's liability for nonperformance of any independent contractor providing such facilities or services shall be limited to a refund of the amounts received by Pacific Swim Co on the guest's behalf, if any. We assume no responsibility in whole or in part for any delays, delayed departures or arrivals, missed connections, loss, death, damage, illness, or injury to person or property or accident, mechanical defect, failure or negligence of any nature whatever caused in connection with any accommodations, transportation, services or facilities, the substitution of hotels, common carriers or equipment with or without notice or for any additional expenses occasioned thereby.
42. **Pacific Swim Co's Reserved Rights.** The escort vessel, either before embarkation or at any time thereafter and whether or not required by any maritime necessity, may remain in port, proceed by any route and deviate from or change the advertised scheduled or intended route at any stage of the voyage and may proceed to and stay at any places whatsoever, although in a contrary direction to, or outside of, or beyond the usual route, one or more times, in any order, for loading or discharging fuel, stores, laborers, stowaways, guests, or members of the vessel's company, for this, or any prior or subsequent voyage and/or for any purpose whatsoever that we, as carrier, or the captain may deem advisable. Any such procedure shall be considered not to be a deviation but within the voyage herein intended as fully as if specifically described herein. The above-mentioned provisions are not to be considered as restricted by any words of this Booking Contract. The vessel may adjust compass or go on ways before or after the commencement of the voyage and may sail without pilots, tow or be towed, and assist vessels in all situations and deviate to save life or property.

If the performance of the proposed Swim is hindered or prevented (or in the opinion of Pacific Swim Co, is likely to be hindered or prevented) by war, hostilities, blockage, ice, labor conflicts, weather, poor air quality, restricted visibility, wind, surf, shallow waters, insurrections, disturbances, on board or ashore, restraint of any Governmental Authority, breakdown of the vessel, congestions, docking difficulties or any other cause whatsoever, or if we, as carrier, or the captain of the vessel consider that for any reason whatsoever, beyond the control of Pacific Swim Co, proceeding to, attempting to enter, or entering or remaining at any port may expose the vessel to risk of loss or damage, or be likely to delay the vessel, you and your baggage may be landed at any port or place at which the vessel may call, in which event our responsibility shall cease and this Ticket and Booking Contract shall be deemed to have been fully performed, or if you have not embarked, we may cancel the proposed Swim or any portion of the Swim without liability to refund any of the Total Fare paid in advance.

Nothing contained in this Booking Contract shall be construed to limit or deprive us of the benefit of Subtitle III of Title 46, United States Code, (as revised and amended) or of any other Statute or law whatsoever which might be applicable providing for exoneration from or limitation of liability. This Booking Contract and every term and provision hereof shall be and remain in full force and effect during all periods when we are under any responsibility to you or for your property for any reason whatsoever.

Pacific Swim Co reserves the right to refuse Booking of a Swim to any person or to cancel your Swim reservation for any reason. Any person(s) refused Booking or passage in advance of the scheduled Attempt by Pacific Swim Co will be given a refund of your Total Fare less the value of any services or products delivered to you and any transaction fees unless such refusal is due to the action or inaction of you or your guests.

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Pacific Swim Co reserves the right to request a letter from your physician attesting to your fitness to travel or participate in our Swim but requesting such a letter does not waive its right to disembark or refuse to embark you as set forth herein.

If you are refused passage, do not complete your Swim for any reason, do not comply with the Rules of the Northern California Open Water Swimming Association during a marathon swim or similar attempt, leave the vessel before the end of the Swim, do not comply with any of the reasons described in this clause or for other reasons including, but not limited to, personal, medical, or business reasons, Pacific Swim Co will not be liable or required to refund any portion of the fare paid for the Swim, issue a voucher or to be responsible for any payment, compensation or credit of any kind or any of your costs.

Pacific Swim Co reserves the right to deny Participant permission to participate in any aspect of a Swim at any time and at the Participant's own risk and expense where Pacific Swim Co determines, in its sole discretion, that Participant's physical or mental condition renders Participant unfit for the Swim or Participant represents a danger to Participant's self or others. Pacific Swim Co may refuse to include in a Swim anyone with certain medical conditions if reasonable accommodations or alternatives cannot be arranged.

43. Non-Liability for Medical Treatment or Transfer. PARTICIPANTS UNDERSTAND AND ACKNOWLEDGE THAT THE SWIM WILL OCCUR AT A REMOTE SITE THAT IS ISOLATED BY TIME AND DISTANCE FROM MEDICAL FACILITIES AND FIRST RESPONDERS WHO CAN RENDER FIRST AID.

PARTICIPANTS AGREE AND UNDERSTAND THAT PACIFIC SWIM CO DOES NOT EMPLOY OR PROVIDE ANY DOCTOR, NURSE, LIFEGUARD, OR PERSONNEL TRAINED IN EMERGENCY MEDICAL CARE ON ITS VESSEL(S) OR ELSEWHERE. Any required or desired medical attention must be sought at local facilities or, if possible, through emergency medical response providers. Pacific Swim Co makes no representation or warranty that such services will be available at any specific time or place.

Pacific Swim Co shall not be liable for any cost of, or incurred in connection with, medical services or for the quality or any aspect of treatment received by a Participant. Participants shall be responsible for all costs and expenses related to medical services, treatment, medications, and assistive devices. Participants consent to receive treatment by medical professionals designated by Pacific Swim Co and agree to bear the cost of such treatment in any circumstance where they are or appear unable to request or authorize medical treatment, and Pacific Swim Co or its representatives believe medical attention is necessary (even if such belief is incorrect). Participants shall be responsible for the payment of any medical expenses and other expenses incurred in connection with medical debark and medical conditions ashore. If at any time, due to illness or other causes, it becomes necessary, in the sole judgment of the captain, crew, onboard staff, or others, to transfer Participants for medical reasons, the cost of such transfer shall be borne by Participants. Participants also authorize any physician or other medical provider, facility, or emergency medical personnel to provide any emergency medical/surgical care, including, without limitation, anesthetics, and/or hospitalization to Participants, which they determine necessary or advisable.

Upon debark and/or transport to any such medical facility, Pacific Swim Co shall no longer have any responsibility for Participants. Participants agree to indemnify, defend, and hold harmless Pacific Swim Co from and against any and all losses arising from or in connection with: (i) any medical care provided to Participants pursuant to this Clause; and/or (ii) all costs related to the provision of such medical care and related transportation. Notwithstanding the foregoing, Participants acknowledge and agree that Pacific Swim Co is not under any legal obligation to render assistance to Participants.

44. Pacific Swim Co's Liability. On all Swims, Pacific Swim Co shall be entitled to all the exemptions from, and limitations of liability provided in or authorized by the laws of the United States (including title 46 U.S. Code Sections 30501-30509, and 30511).

45. Emotional Distress. Pacific Swim Co shall not be held liable for any damages related to emotional distress experienced by Participants, regardless of the circumstances. This includes damages resulting from mental anguish or psychological injury of any kind, if such damages were not the result of a physical injury to the Participants, nor the result of the Participants being at actual risk of physical injury, nor were intentionally inflicted by Pacific Swim Co.

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46. **Indemnification and Hold Harmless Regarding Participant's Information.** Participants understand, acknowledge, and agree to defend, indemnify, and hold Pacific Swim Co harmless for any claims, causes of action, losses, damages, or injuries arising out of or related to any of Participants errors, omissions, inaccuracies and/or any of Participant's incomplete, untimely, or mistaken information provided to Pacific Swim Co by Participant and relied upon by Pacific Swim Co and/or supplied to Third-Party Providers by either Pacific Swim Co or Participant.
47. **Force Majeure.** Pacific Swim Co shall not be liable in any way to Participants for death, bodily injury, illness, damages, financial costs both directly and indirectly incurred, delay or other loss or detriment to Participants or Participant's property or for Pacific Swim Co's failure to commence, perform and/or complete any duty owed to Participants if such death, delay, bodily injury (including emotional distress or injury), illness, damage or other loss or detriment to person or property is caused by any event reasonably beyond our control, including but not limited to act of God or public enemy, fire, flood, earthquake, lightning, severe weather, pandemics, public health emergencies, governmental restrictions or orders related to health crises, war (declared or undeclared) or warlike operations, terrorist activities, civil commotions, labor difficulties whether or not Pacific Swim Co is a party thereto, requisitioning of our vessel, political disturbance, and any other cause not reasonably within our control (each a 'Force Majeure' event or occurrence).

In the event of a Force Majeure event, Participants understand and agree that we shall take reasonable steps to minimize or mitigate the impact of the event on Participants or their property, as described within this document. Any such steps are limited to those expressly stated within this Agreement, and any terms or conditions related to such steps are limited to those expressly set forth within this Agreement. We may modify, suspend, delay, postpone, or terminate this Booking Contract, the Swim, or any element thereof as we deem necessary to address the impact of the Force Majeure event on Participants or their property, but any such modifications, suspensions, delays, postponements, or terminations will be consistent with the terms and limitations set forth in this document.

Participants also understand and acknowledge that there currently exists a pandemic relating to a virus known as COVID-19 (also known as Coronavirus and SARS-CoV-2) and that this pandemic, and/or the global response thereto, may directly or indirectly affect our performance of this Agreement. Negative effects may include but are not limited to reduced or no access to recreational activities on San Francisco Bay and the related environs; unavailability of our vessels, facilities or equipment; unavailable, exposed or infected personnel; or unseen and currently unknown conditions or circumstances. In light of this, Participants agree that it is beyond our control, regardless of foreseeability, which objectively prevents us from timely performing under the Booking Contract and which we cannot overcome.

Participants agree that performance under the Booking Contract may be modified as stated below upon the occurrence of an event or circumstance caused by the COVID-19 pandemic we shall, as soon as possible, provide written notice to you of the event and the inability to perform. Upon our written notice, our obligations under this Booking Contract shall have automatically stayed. The stay shall remain in place for the duration of the event, causing the inability to perform plus as many as fourteen [14] calendar days thereafter. The event must be described with sufficient detail to state a particular problem (e.g., a facilities closure, a government isolation order that prohibits certain conduct, captain/crew exposure or illness, a physician-ordered quarantine, etc.) we shall also have the right to subsequent or overlapping stays for different or multiple events caused by the COVID-19 pandemic. If the stay remains for longer than twenty [20] calendar days, we shall attempt to reschedule your Swim in the current calendar year on a mutually agreeable date. If a mutually agreeable date is unavailable, we will issue you a non-expiring voucher (within 30-days of the stay) for the actual amounts paid by you toward your Swim, less the services or products you have received in full and any transaction fees. Vouchers may be applied by you or others toward a future Swim of your choosing but have no cash value.

48. **Waiver and Release.** Swimmer, Guests, Sponsored Swimmers or Participants, on behalf of yourselves and each of your successors, heirs and assigns, unconditionally and irrevocably waive, discharge, release and relinquish any and all rights, claims, demands, suits, actions, losses, damages (including any and all injuries), costs and expenses, including attorneys' fees and costs (collectively, "Losses"), that you may incur or have against Pacific Swim Co, arising from or related to your Swim, including, without limitation, any losses arising from or related to: (i) any defect in or failure of a vessel or the operation, installation,

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manufacture, and/or design of any ancillary equipment; (ii) the inadequacy of any services, warnings, policies, procedures or instructions; (iii) the conditions on or about the Swim premises or locations; (iv) the actions or omissions of Pacific Swim Co, Third Party Providers, other participants, spectators or other third parties; (v) the breach of any implied or express warranty and/or representation of Pacific Swim Co; (vi) transportation; (vii) weather conditions; (viii) the gross negligence or intentional misconduct of Pacific Swim Co or Third-Party Provider; (ix) any cause that cannot be waived or released under applicable law; and/or (x) any other operations associated with your Swim, and, with respect to each of the foregoing, whether based on tort (including, without limitation, acts of negligence), contract or any other theory of recovery in law or equity, whether for compensatory or punitive damages, equitable relief or otherwise, and whether now known or unknown, suspected or unsuspected (all of the foregoing shall be collectively referred to as the "Released Claims").

- **Scope of Waiver.** The waiver and release of claims set forth in clause titled '**Waiver and Release**' above includes, but is not limited to, claims for bodily injury, personal injury, emotional distress, property damage, or any other Losses arising out of or related to the Swim.
- **Release of Claims.** The waiver and release of claims set forth in clause titled '**Waiver and Release**' above applies to any and all claims, whether known or unknown, suspected or unsuspected, that you may have against Pacific Swim Co, and includes all claims that may arise in the future, whether based on tort (including, without limitation, acts of negligence), contract or any other theory of recovery in law or equity, whether for compensatory or punitive damages, equitable relief or otherwise.
- **Limitations on Claims.** The waiver and release of claims set forth in clause titled '**Waiver and Release**' above shall not apply to any claims that cannot be waived or released under applicable law.

49. **Covenant Not to Sue.**

IF ANY BREACH OF CONTRACT, LOSS, DEATH, INJURY, ILLNESS, OR OTHER LEGAL CLAIM IS CAUSED BY ANY ACTION, CIRCUMSTANCE, INCIDENT, OR EVENT OF PACIFIC SWIM CO, A THIRD-PARTY PROVIDER, OR ANY OTHER ENTITY ACTING IN ANY CAPACITY ON BEHALF OF PACIFIC SWIM CO, WHETHER MALICIOUS, NEGLIGENT, OR AN OMISSION, PARTICIPANTS AND THEIR SUCCESSORS, HEIRS, AND ASSIGNS UNCONDITIONALLY AND IRREVOCABLY AGREE NOT TO SUE OR ASSERT ANY CLAIMS AGAINST PACIFIC SWIM CO, ANY SUCH THIRD-PARTY PROVIDER, OR ENTITY.

Participants understand that this clause constitutes a bar to any and all Released Claims. The provisions of this clause may be pleaded as a full and complete defense to and may be used as the basis for any injunction against, any Released Claim that may be instituted, prosecuted or attempted in breach of this Agreement.

50. **Subsequent Discoveries.** Participants acknowledges that there is a possibility that, after entering this Booking Contract, they will discover facts or incur or suffer claims which were unknown or unsuspected by you at the time this Booking Contract was executed, and which, if known or suspected by you at that time, may have materially affected your decision to enter into this Booking Contract. You acknowledge and agree that, according to this Booking Contract, you are unconditionally and irrevocably assuming all risk of such unknown and unsuspected facts and claims. You understand that this Booking Contract will constitute a full release of all claims, including all future, unknown and unsuspected claims, against Pacific Swim Co. You acknowledge and agree that this clause is an essential and material term of this Booking Contract, and without such terms, you would not have been permitted to participate in your Attempt. You understand and acknowledge the significance and consequence of this clause.
51. **Images and Marketing.** Swimmer agrees that, while participating in a Swim, images, photos or videos may be taken by Pacific Swim Co or Pacific Swim Co's representatives, Third-Party Providers, Attendees, or other participants. Such photos or videos may contain or feature Participants. Participants consent to any such pictures being taken and grants a perpetual, royalty-free, worldwide, irrevocable license to Pacific Swim Co, Third-Party Providers, our contractors, our sub-contractors, and our assigns, to

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reproduce, for any purpose whatsoever (including marketing, promotions, and the creation of promotional materials by or with sub-licensees), in any medium whatsoever, whether currently known or hereinafter devised, and without any further obligation or compensation payable to Participant.

52. **Privacy.** Pacific Swim Co must collect Swimmer's personal information to deliver the Swim and any related products or services. Pacific Swim Co collects, uses, and discloses only that information reasonably required to enable Pacific Swim Co and its Third-Party Providers to provide the particular Swim, products, and/or services that Swimmer has requested. Pacific Swim Co's Privacy Policy, which can be accessed any time on Pacific Swim Co's website (www.SwimAlcatraz.com), is expressly incorporated into these Terms. By submitting any personal information to Pacific Swim Co, Swimmer indicates his or her acceptance of Pacific Swim Co's Privacy Policy.
53. **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 the Swimmer 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, the Swimmer agrees to indemnify and hold Pacific Swim Co harmless from and against any and all such costs, expenses, and attorneys' fees.
54. **Fully Binding, Contract Parties & Successors.** These Terms will inure to the benefit of and be binding upon the Parties, their respective affiliates, agents, and contractors, and the Participants respective heirs, legal and personal representatives, executors, estate trustees, successors, and assigns. If any provision of this Booking Contract 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 Booking Contract will not in any way be affected or impaired thereby.
56. **Governing Law.** This Agreement shall be construed, and disputes resolved, in accordance with the general maritime law of the United States, which shall include the Death on the High Seas Act (46 USCS § 30302) without regard to choice of law rules, which replaces, supersedes and preempts any provision of law of any state or nation to the contrary.
57. **Class Action Waiver.** Participants agree that any dispute, claim, or controversy arising out of or relating to your use of Pacific Swim Co products or services must be resolved by individual arbitration. Participants waive any right they may have to participate in any class action or class-wide arbitration, either as a representative or a member.
58. **Forum for Disputes.** Participants agree irrevocably that any dispute, claim or controversy arising out of or related to these Terms or concerning any Swim, product or service offered by Pacific Swim Co, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be submitted to and decided by binding arbitration in San Francisco, California, before one arbitrator with substantial experience in maritime law, administered by the Maritime Arbitration Association of the United States in accordance with its Rules, and final judgment on the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof.
59. **Amendments.** Pacific Swim Co reserves the right to update or alter these Terms at any time. Pacific Swim Co will post the amended Terms of Service on Pacific Swim Co's website. Pacific Swim Co recommends that Swimmer refer to the Terms prior to your Swim to familiarize themselves with the most up-to-date version available. An up-to-date copy of these Terms, as amended, may be accessed at any time on Pacific Swim Co's website.
60. **Grammatical correctness.** The language of this document has been carefully reviewed for grammatical correctness, but any typographical errors, misspellings, or other mistakes shall not affect the validity of this document.

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61. Full Understanding.

PARTICIPANTS ACKNOWLEDGE AND UNDERSTAND THAT THIS BOOKING CONTRACT IS AN IMPORTANT LEGAL DOCUMENT, AND BY ENTERING INTO THIS AGREEMENT YOU ARE WAIVING LEGAL RIGHTS YOU MAY HAVE AGAINST PACIFIC SWIM CO AND OTHER INDIVIDUALS AND ENTITIES. YOU FURTHER AGREE THAT NO ORAL REPRESENTATIONS, STATEMENTS OR INDUCEMENTS APART FROM THE FOREGOING WRITTEN AGREEMENT HAVE BEEN MADE.

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SWIM CANCELLATION: <https://www.PacificSwimCo.com/cancel/>

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