

RELEASE OF LIABILITY AND ASSUMPTION OF RISK

I, the undersigned participant, intending to be legally bound for myself, my heirs, successors, assigns, executors and administrators, hereby consent to the participation in the annual open water swim event (the “**Event**”) hosted by The Patrick Woepse Foundation, a California nonprofit organization (the “**Foundation**”). In consideration of being permitted by the Foundation to participate in the Event and in recognition of the Foundation’s reliance hereon, I, as the participant and/or the parent or legal guardian of the participant, agree to all of the terms and conditions set forth in this instrument on behalf of myself, my heirs, successors, assigns, executors and administrators (this “**Release**”).

I HEREBY FULLY WAIVE AND RELEASE AND FOREVER DISCHARGE ANY AND ALL RIGHTS AND/OR CLAIMS AGAINST FOUNDATION, ITS OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, AGENTS, SUCCESSORS AND/OR ASSIGNS (COLLECTIVELY, THE “**RELEASEES**”), ON ACCOUNT OF INJURY, DISABILITY, DEATH, OR DAMAGE ARISING OUT OF OR ATTRIBUTABLE TO MY PARTICIPATION IN THE EVENT, WHETHER ARISING OUT OF THE ORDINARY NEGLIGENCE OF THE FOUNDATION OR ANY RELEASEES OR OTHERWISE. I covenant not to make or bring any such claim against the Foundation or any other Releasee, and forever release and discharge the Foundation and all other Releasees from liability under such claims. This waiver and release does not extend to claims for gross negligence, willful misconduct, or any other liabilities that California law does not permit to be released by agreement.

I AM AWARE OF THE RISKS INHERENT IN OPEN WATER SWIMMING AND UNDERSTAND THAT THE EVENT IS A POTENTIALLY DANGEROUS ACTIVITY AND INVOLVES THE RISK OF PERSONAL OR PSYCHOLOGICAL INJURY, PAIN, SUFFERING, TEMPORARY OR PERMANENT DISABILITY, DEATH, AND/OR FINANCIAL LOSS. I ACKNOWLEDGE THAT ANY INJURIES THAT ARE SUSTAINED MAY RESULT FROM OR BE COMPOUNDED BY THE ACTIONS, OMISSIONS, OR NEGLIGENCE OF THE FOUNDATION, INCLUDING NEGLIGENT EMERGENCY RESPONSE OR RESCUE OPERATIONS OF THE FOUNDATION. **NOTWITHSTANDING THE RISK, I ACKNOWLEDGE THAT I AM KNOWINGLY AND VOLUNTARILY PARTICIPATING IN THE EVENT WITH AN EXPRESS UNDERSTANDING OF THE DANGER INVOLVED AND HEREBY AGREE TO ACCEPT AND ASSUME ANY AND ALL RISKS OF INJURY, DISABILITY, DEATH, AND/OR DAMAGE ARISING FROM MY PARTICIPATION IN THE EVENT, WHETHER CAUSED BY THE ORDINARY NEGLIGENCE OF THE FOUNDATION OR OTHERWISE.**

I understand that by signing this Release, I am waiving any and all claims, of any kind arising out of or attributable to participation in the Event, including those claims that may be unknown to me, or which I do not suspect to exist at this time. **WITH THE INTENTION OF WAIVING ALL UNKNOWN AND UNSUSPECTED CLAIMS, I HEREBY EXPRESSLY WAIVE ALL RIGHTS, BENEFITS, AND PROTECTIONS I MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:**

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

I shall defend, indemnify, and hold harmless the Foundation and all other Releasees against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, fees, the costs of enforcing any right to indemnification under this Release, and the cost of pursuing any insurance providers, incurred by/awarded against the Foundation or any other Releasees in a final judgment, arising out or resulting from any claim of a third party related to participation in the Event, including any claim related to my own negligence or the ordinary negligence of the Foundation.

I hereby consent to receive medical treatment deemed necessary if I am injured or require medical attention during my participation in the Event. I understand and agree that I am solely responsible for all costs related to such medical treatment and any related medical transportation and/or evacuation. I understand and agree that limited medical facilities may be available during participation in the Event, and that in the event of illness or injury, medical care beyond the skill of the Foundation and its Releasees may be required to be summoned by the radio, and treatment will be delayed. I hereby release, forever discharge, and hold harmless the Foundation from any claim based on such treatment or other medical services.

I hereby represent and agree that (i) I am in good health and in proper physical condition to participate in the Event; and (ii) I have not been advised of any medical conditions that would impair my ability to safely participate in the Event. I agree that it is my sole responsibility to determine whether I am sufficiently fit and healthy enough to participate in the Event.

I hereby represent and agree that I have the requisite skills to participate in the Event, which involve open water swimming. I hereby understand and acknowledge that the Foundation does not provide swim lessons nor does it endorse the Event which I may not have the requisite skills to participate. If I am not able to swim, I agree to remain out of the water at all times during the Event. By participating in the Event, I represent and warrant that I have the requisite skill to participate in the Event.

I hereby grant to the Foundation the irrevocable right and permission to photograph and/or record us during the Event and to use the photograph and/or recording for all purposes, including, without limitation, advertising and promotional purposes and other commercial purposes, in any manner and all media now or hereafter known, in perpetuity throughout the world, without restriction as to alteration. I hereby waive any right to inspect or approve the use of the photograph and/or recording, and acknowledge and agree that the rights granted by this release are without compensation of any kind.

If a dispute arises out of or relates to this Release and/or the Foundation and/or the Event, involving a single claimant, or claimants who are related or asserting claims arising from a single incident and if the dispute cannot be settled through direct negotiations, and unless the parties agree on a different mediation or non-binding arbitration process, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association (the "AAA") under its Commercial Mediation Procedures available at <http://www.adr.org> before resorting to non-binding arbitration. Thereafter, any unresolved claims shall be submitted to non-binding arbitration administered by the AAA in accordance with its Non-Binding Consumer Arbitration Rules, except that Rule R-2 (e) is amended to allow an answer to be filed within thirty (30) calendar days. The arbitration shall be governed by the laws of the State of California. In-person hearings will take place pursuant to the Non-Binding Consumer Arbitration Rules in Orange County, California. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any non-binding arbitration hereunder without the prior written consent of both parties. The parties hereto agree to mediation and non-binding arbitration of any and all claims, disputes and grievances, not otherwise excepted herein, arising out of or relating to this Release, the participation in the Event. A copy of the Rules mentioned herein may be obtained from the AAA by visiting AAA's website at <http://www.adr.org>. The scope of this Release is intended to be as broad as possible under applicable law, and shall include all types of negligence, tort, contract, statutory and administrative actions. The parties further agree to submit to non-binding arbitration the issues of substantive and procedural arbitrability, including defenses to arbitration and all disputes regarding the enforceability, interpretation, breadth, scope and meaning of this Release. The parties reserve their rights to resolve disputes involving less than \$10,000.00 in an applicable small claims or district court in Orange County, California. In the event non-binding arbitration does not totally resolve all claims, it is agreed that the sole and exclusive venue for any lawsuit filed against the Foundation shall be in the Orange County, California. It is further agreed that the substantive law of the State of California shall apply without regard to any conflict of law rules. Unless all parties agree otherwise, the non-binding arbitration decision or award may not be entered in any federal or state court having jurisdiction.

This Release constitutes the sole and entire agreement of the Foundation and me with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. If any term or provision of this Release is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Release or invalidate or render unenforceable such term or provision in any other jurisdiction. This Release is binding on and shall inure to the benefit of the Foundation and me and our respective heirs, successors, and assigns. All matters arising out of or relating to this Release shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction). To the extent that any claim or cause of action arising under this Release is not required to be arbitrated or filed in small claims court in accordance with the arbitration provision above, such claim may be brought only in the federal and state courts located in Orange County, California and I hereby consent to the exclusive jurisdiction of such courts.

BY CLICKING THE BOX ON THIS WEBSITE, AS INDICATED, I CONFIRM THAT I HAVE CAREFULLY READ THIS AGREEMENT AND AM AWARE THAT THIS AGREEMENT IS LEGALLY BINDING AND THAT I AM RELEASING CONSIDERABLE LEGAL RIGHTS BY SIGNING IT.