

## **ACKNOWLEDGMENT AND ASSUMPTION OF RISKS & RELEASE AND INDEMNITY AGREEMENT**

2022 Motatapu, Queenstown New Zealand, March 5, 2022

### **INTRODUCTION**

Please read this entire Acknowledgment and Assumption of Risks & Release and Indemnity Agreement (hereafter "Form") carefully before continuing with your entry and/or signing. The adult participant (those 18 yrs. of age or older), or the participant's legal guardian (for the participant and on his/her behalf), if applicable, must sign this Form. In consideration of the services of Motatapu Events Limited (hereafter "MEL") in allowing me to participate in this scheduled MEL competitive Event and related activities (collectively, the "Event") and other activities, I acknowledge and agree as follows:

### **ACKNOWLEDGMENT AND ASSUMPTION OF RISKS**

The Event takes place indoors or outdoors and can include but not be limited to: warm-up exercises; competitive swimming, cycling and running, both in practice and in the Event; demo-ing (trying out) gear; participation in clinics, training, demonstrations or other games and activities, attendance at any activities, use of any equipment, facilities or premises and traveling in planes, vans, buses or other vehicles to and from activities (the Event and other activities collectively referred to in this Form as "activities" or "activity"). Activities may be scheduled or unscheduled, mandatory or optional, whether or not authorized and/or conducted by MEL structured or unstructured and include free time.

I acknowledge that the inherent and other risks, hazards and dangers (collectively referred to in this Form as "risks") of these activities can cause injury, damage, death or other loss to participant or others. The following describes some, but not all of the inherent risks, as applicable to participant's activities:

Risks in any competitive or athletic activity. Training for, practicing or competing in triathlon or other events and associated swimming, cycling, running and other conditioning involves frequent and repetitive use of the arms and legs, extreme fitness and endurance, and pushing the limits of the participant's speed and abilities.

Risks present in an outdoor environment. Participants may be subject to: high altitude or mountainous terrain; severe storms or bad weather such as lightning, strong winds, rain, hail, snow and ice; fast moving or deep lakes, oceans or other water bodies; currents or whitewater; extremely hot or cold weather; stinging, venomous and/or disease carrying animals (including marine life) or insects and other natural or man-made hazards. Hazards (both on land and above and below water level) may not be marked or visible and weather is always unpredictable.

Risks involved in decision making and conduct. These risks include the risk that an MEL staff member, representative, volunteer, contractor or co-participant may misjudge a participant's capabilities, health or physical condition, misjudge some aspect of instruction, medical treatment, weather, terrain, water level, or route location, or, that one of those persons may not warn participant (and/or participant's legal guardian) about one or more of the inherent risks of these activities.

Cycling, running and swimming risks. These risks include the risk of losing control and falling from the bike, colliding with objects or people (including co-participants or spectators) on land or in water, tripping or falling down or encountering other water/road/trail hazards; or being submerged underwater, hitting bottom or drowning.

Personal health and participation risks. The risk that a participant's mental, physical or emotional condition (including any use or abuse of alcohol or prescription or non-prescription drugs), whether disclosed or undisclosed, known or unknown, combined with participation in these activities could

result in injury, damage, death or other loss. Although MEL may review participant's medical information, submitted in the registration process, MEL cannot anticipate or eliminate risks or complications posed by a participant's mental, physical (including fitness level) or emotional condition. I have sufficient competence, knowledge, common sense, experience, survival skills and will use sufficient appropriate equipment to participate in the Event in a manner which will be safe to myself and others.

Risks connected with location. Activity location may cause or contribute to delays or difficulties in communication, transportation, evacuation or medical care.

Risks associated with premises. Ruts, holes, water sources, rocks, uneven ground or other conditions may exist in and around the activities.

Equipment risks. The risk that equipment used in activities may be misused, or may break, fail or malfunction. Participant (and/or the participant's legal guardian) assumes full responsibility for choosing appropriate equipment and for the fit and condition of the equipment. MEL requires use of helmets for biking activities. Helmets or other safety gear may prevent or lessen injuries in some instances; however, use of safety gear is not a guarantee of safety, and injury can occur even with the use of this gear.

Supervision and activities risks. I understand that neither MEL nor its staff, representatives, volunteers, contractors or anyone associated with them will be supervising participant during the activities or at any time. Adult participant agrees he/she is solely responsible for his/her own well-being at all times; or, if applicable, a participant's legal guardian agrees to take sole responsibility for participant's supervision before, during and after the Event and other activities, including during free time and at all other times.

Risks regarding conduct. The potential that participant, co-participant/s and/or third party/s may act in a negligent or intentional manner.

Drone risks. I understand that unmanned aerial vehicles ("UAVs", also known as "drones") may be used at the Event for media or other purposes and accept the risk of a collision with, and any damage or injury relating to, any UAV.

Risk regarding criminal/terrorist activity. The potential that third party/s may commit criminal acts or acts of terrorism.

These and other risks may result in participants: falling partway or falling to the ground; being struck; colliding with objects (e.g., a UAV), people or the bottom of a lake or other water body; experiencing bicycle or vehicle collision or rollover; reacting to high altitudes, weather conditions or increased exertion; becoming lost or disoriented; suffering gastro-intestinal complications or allergic reactions or experiencing other problems. These and other circumstances may cause heat or cold related illnesses or conditions (including hypothermia, cold water immersion, frostbite, hyperthermia, or heat exhaustion/stroke); dehydration; hyponatremia; drowning; high altitude sickness; heart or lung complications; broken bones; paralysis or other permanent disability; mental or emotional trauma; concussions; sunburn or other burns or other injury, damage, death or loss -- before, during or even after the participant participates in the Event or other activities.

I understand and agree:

The minimum age requirements, as determined on race day for such race, are as follows: Mountain Bike, sixteen (16) or older; Miners Trail, sixteen (16) or older; Off Road Marathon, eighteen (18) or older; and Ultra Run, eighteen (18) or older.

I will review all materials received, accurately complete and agree to the registration information, documents and process, and rules and policies. I will obey all rules and policies, which include the Event Competition Rules, including those available at the Event website, with any applicable exceptions of the applicable national federation, applicable race sanctioning body, the International Triathlon Union Competition Rules; and all information included in the Event-specific athlete briefing session, as each of the foregoing may be amended, from time to time; and all traffic laws.

I acknowledge that in order to participate in the Event, I may be required to be a current member of, or purchase a one-day license from, an applicable race sanctioning body. I further understand and agree that I am responsible for obtaining and maintaining my own insurance coverage (including the costs of my repatriation after the Event if I am an international competitor); By submitting this entry, I agree to be bound by and comply with the applicable anti-doping rules including, without limitation, all policies, procedures and/or other rules adopted by MEL (as may be amended from time to time and at any time), and the authority given under those rules. I also agree to be bound by the World Anti-Doping Code and associated International Standards, as issued by the World Anti-Doping Agency (e.g., the International Standard for Therapeutic Use Exemptions, the List of Prohibited Substances and Prohibited Methods, and the International Standard for Testing and Investigations).

I acknowledge that I may also be bound by the rules of any applicable national federation, international federation, race sanctioning body, or anti-doping organization with authority over me; My final acceptance and participation in the Event is contingent upon MEL's receipt and review of all required information and forms, including this Form; I am fully capable of participating without causing harm to myself or others.

I further agree that participating in these activities requires extreme fitness and endurance, that I am solely responsible for my conditioning and fitness before, during and after the activities, and that I, in conjunction with my physician, am responsible for determining whether these activities are appropriate for me, before I participate; I will immediately notify an Event official if I believe or become aware that the race course, facilities, or equipment or other aspects of the race areas to be used are unsafe; MEL contracts with individuals or organizations that are independent contractors (not its employees or agents) to provide some of the Event services and to conduct some of the activities participants will engage in.

I acknowledge that MEL does not supervise or control these independent contractors and is not legally liable or responsible for their conduct. In addition, activities take place on premises or at facilities not owned or controlled by MEL, and MEL does not oversee or take responsibility for any aspect or condition of these independent facilities or premises; I consent to have my personal details provided to the official race photography company which may contact me via email to alert me of when photos from the Event are available on its website, and I consent to having my name and contact details stored in MEL's and/or any of its affiliates' or related parties' database and consent to receive emails from MEL and/or any of its affiliates or related parties. I acknowledge that I am able to opt-out of these services at any time; By signing this form, I agree to release and waive the liability of MEL for any: death; physical or mental injury of an individual (including the aggravation, acceleration or occurrence of such an injury of the individual); the contraction, aggravation or acceleration of a disease of an individual; or the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to the individual or community or that may result in harm or disadvantage to the individual or community, other than that which was caused by reckless conduct. The information provided in this Form is not exhaustive, other unknown or unanticipated activities,

inherent or other risks and outcomes may exist, and MEL cannot assure my safety or eliminate any of the risks.

I understand I can and should consult MEL representatives if I have further questions about the activities or the associated risks; and I am voluntarily participating with knowledge of the risks. Therefore, I assume and accept full responsibility for myself, for the inherent and other risks (both known and unknown) of the activities, and for any injury, damage, death or other loss I may suffer, resulting from those risks, including but not limited to the risk of my, a co-participant's, a Released Party's, a spectator's, a volunteer's and/or a third party's passive or active negligence or other misconduct.

### **RELEASE AND INDEMNITY**

Please read carefully. This Release and Indemnity section contains a surrender of certain legal rights.

I hereby acknowledge and assume all of the risks of participating in the Event and agree as follows: to release and not to sue MEL, any applicable federation and/or race sanctioning body, Event sponsors, Event organizers, Event promoters, Event producers, race directors, Event officials, Event staff, advertisers, administrators, contractors, vendors, volunteers, and all property owners and state, city, town, county, and other governmental bodies, and/or municipal agencies whose property and/or personnel are used and/or in any way assist in locations where the activities take place, and each of their respective parent, subsidiary and affiliated companies, assignees, licensees, owners, officers, directors, partners, board members, shareholders, members, supervisors, insurers, agents, employees, volunteers, contractors and representatives and all other persons or entities associated or involved with the activities (individually and collectively referred to in this Form as the "Released Parties"), with respect to any and all claims, liabilities, suits or expenses (including attorneys' fees and costs) (collectively referred to in this Form as "claim" or "claim/s") for any injury, damage, death, lost property, stolen property, disposed property, or other loss in any way connected with my enrolment or participation in the activities, including use of any equipment, facilities or premises, howsoever caused; negligence, whether passive or active, of the Released Parties; and/or any breach by the Released Parties of statutory duty.

I understand I agree here to waive all claim/s I may have against the Released Parties and agree that neither I, nor my estate, heirs, assigns or beneficiaries nor anyone else acting on my behalf, will make a claim against the Released Parties for any injury, damage, death or other loss I may suffer. The aforementioned exclusion of liability shall not apply to damages caused by wilful misconduct and gross negligence by MEL and to injuries to life, body or health due to intentional or gross negligent breach of duty by MEL or a person used to perform an obligation of MEL; to defend and indemnify ("indemnify" meaning protect by reimbursement or payment) the Released Parties with respect to any and all claim/s brought by or on behalf of me, my spouse, a family member, a co-participant or any other person, for any injury, damage, death, lost property, stolen property, disposed property, or other loss in any way connected with my enrolment or participation in the activities, including without limitation use of any equipment, facilities, or premises howsoever caused; negligence, whether passive or active, of the Released Parties; and/or any breach by the Released Parties of statutory duty.

This Release and Indemnity section includes but is not limited to claim/s for personal injury or wrongful death (including claim/s related to emergency, medical, drug and/or health issues, response, assessment or treatment), property damage, loss of consortium, breach of contract or any other claim, including claim/s resulting from the negligence of Released Parties, whether passive or active.

### **OTHER PROVISIONS**

I understand and agree:

Any dispute or claim/s I may have arising out of, relating to or in connection with this Form, my enrolment or participation in the activities, or any other aspect of my relationship with MEL:

- 1) will be governed by New Zealand law (without regard to its “conflict of law” rules) and
- 2) unless settled by direct discussions, will be determined by binding arbitration as the sole and final remedy for all matters in dispute, in accordance with then-applicable arbitration rules as interpreted and governed by an arbitrator knowledgeable in the field and in commercial matters, acceptable to both the participant and MEL (or, failing that, one nominated by AMINZ – Arbitrators’ & Mediators’ Institute of New Zealand, shall conduct the arbitration). Each such arbitration shall be conducted in accordance with and shall be subject to the provisions of the Arbitration Act of 1996 or any enactment passed in amendment or substitution thereof. Required Venue: I agree that any arbitration proceeding, or any suit or other proceeding must be filed, entered into and/or take place only in Auckland, New Zealand. If I am signing as the participant’s legal guardian, I have the legal authority to act for the participant and on their behalf. If my guardian status is challenged or found invalid, I will defend and indemnify the Released Parties, to the fullest extent allowed by law and per the provisions of this Form, just as if I were the participant’s lawful legal guardian. In regard to my relationship with MEL, I agree that the contents of this Form will take precedence over any other forms or contracts I may sign (for parties other than MEL) in connection with these activities.

If I use any of the bicycle services provided or made available in connection with the Event (including without limitation any on-course bicycle repairs), I agree to pay for the cost of such services (including the costs of replacement parts, etc.) upon receipt of applicable invoice(s).

In no event may I (or anyone else on my behalf) without the prior written consent of MEL, its assignees, or its designees:

- (a) use any intellectual property of MEL and/or its affiliates, and/or any words or marks that refer to, or are suggestive of, or confusingly similar to, the Event, any Event logo, Event name, Event location, Event date, or Event race distance (collectively, “Event IP”), or
- (b) sell, market, distribute, or produce any products, events, merchandise, websites, or services that are Event-branded, or branded or marked using
  - (i) any Event logo,
  - (ii) any Event name,
  - (iii) any Event IP, or
  - (iv) or any MEL IP.

I authorize MEL staff, representatives or contractors to inspect any of the equipment I use (or intend to use) in connection with the Event, including but not limited to inspection of bicycles for concealment of any motor or other artificial accelerating mechanism, by any inspection method selected by MEL.

I authorize MEL staff, representatives, contractors or other medical personnel to obtain or provide medical care for me, to transport me to a medical facility, and to provide treatment (including but not limited to evacuation, hospitalization, blood transfusions, surgery and medications) they consider necessary for my health. I agree to pay all costs associated with that care and transportation. I agree to the release (to or by MEL, the race sanctioning body (if any), insurance carriers, other health care providers and their staff, representatives or contractors) of any medical information or records necessary for treatment, referral, billing or other purposes. MEL reserves the right, in its sole discretion, to dismiss any participant from the activities, to deny or revoke entry of any applicant at any time, and/or to disqualify any participant from the Event. If I am dismissed or depart for any reason, I agree I am responsible for all costs of early departure whether for medical reasons, dismissal, personal emergencies or otherwise. If my entry application is denied or revoked, I agree MEL is not responsible for costs incurred or damages suffered by me or my family in excess of the amount of the entry fee. In the event that MEL denies or disqualifies any participant from the Event (either before or during the

Event), MEL will not refund any entry fees to that participant where the participant has misrepresented his/her eligibility to participate in the Event at the time of entry or has breached any of the conditions of this Form.

I acknowledge and agree that MEL, in its sole discretion (whether for safety reasons, legal reasons, or any other reason), may:

- (a) at any time, with or without notice, change or modify the race course, distances, routes, elevation, ascents, difficulty level, or any other race-course or Event aspect; or
- (b) delay or cancel the Event (or any leg(s) of the race) if it believes the conditions are unsafe or otherwise unsuitable for the Event. If the race course or Event is changed, modified, delayed, or cancelled for any reason, including but not limited to acts of God or the elements (including without limitation, wind, rough water, rain, hail, hurricane, tornado, earthquake), acts of terrorism, fire, threatened or actual strike, labour difficulty, work stoppage, insurrection, war, public disaster, flood, unavoidable casualty, pandemic, race course conditions, or any other cause beyond the control of MEL, there will be no refund of MEL's entry fee or any other costs incurred in connection with the Event.

I grant to MEL, its affiliates, designees and assignees the right and permission to photograph, film, record and/or otherwise capture in any media the name, image, voice, written statement, photograph and/or visual likeness of me and/or my friends or family members (collectively "images"), during the race or related activities. I expressly grant MEL an irrevocable licence to use, copy, adapt, edit and sublicense the images without compensation, for any purpose in any media throughout the world in perpetuity, including but not limited to use in broadcasts, photographs, publications, podcasts, webcasts, motion pictures, brochures, CDs, DVDs, internet websites, social media platforms, television, and/or in any related commercial, informational, educational, advertising, or promotional materials. *Where the images include my friends or family members, I warrant I have their authority to grant such rights to MEL on their behalf.* I understand that all ownership and copyright rights in the published images will be owned by MEL, its assignees, or its designees, and I waive any inspection or approval rights.

I understand and agree that my name, bib number and race results will be available to the public during and after the Event. MEL may assign this Form to other entity/s or individual/s ("assignees") at any time, and any such assignment will grant assignees the full rights and protections accorded in this Form, consistent with MEL's and other Released Parties rights and protections under this Form. If I sign this Form both online and on-site, I agree that the on-site version of this Form, as that version may be amended from the online version, will be binding and control. I also understand that I may also be required to sign a version of this Form on-site. This Form is effective in regard to participant's enrolment or participation in the activities from the date signed through the completion of all activities, and this Form will remain in full force and effect following completion of all activities. This Form is intended to be interpreted and enforced to the fullest extent allowed by law. If any portion of this Form is deemed unlawful or unenforceable, it will not affect the enforceability of the remaining provisions, and those remaining provisions will continue in full force and effect.