

Participant Release of Liability, Waiver of Claims, Assumption of Risks, and Indemnity Agreement

For and in consideration of Eatmore Cheesecake, LLC (“Eatmore Cheesecake”), d/ba/ First Wave Endurance and Project Fleming, its agents, owners, employees, clients, participants, sponsors, third-party vendors, as well as all other persons or entities acting in any capacity on its behalf, allowing me, the undersigned, to participate as a member of the First Wave Endurance team and/or the Project Fleming team (at times, the “Team” or “Teams”), I, for myself, and on behalf of my spouse, children, guardians, heirs and next of kin, and any legal representatives, executors, administrators, successors and assigns, hereby agree to make the following contractual representations pursuant to this **Participant Release of Liability, Waiver of Claims, Assumption of Risks, and Indemnity Agreement (the “Release and Agreement”)**.

1. **Inherent Risks:** I understand that there are inherent risks in running, swimming, and cycling which cannot be avoided without fundamentally changing the essential nature of the running, swimming, and cycling activities in which the Teams engage. **THE INHERENT RISKS INCLUDE THE POSSIBILITY OF SEVERE INJURY OR DEATH.** [Initial here _____]

a. **Cycling:** By participating in cycling with the Teams, I understand and accept that the inherent risks of cycling include but are not limited to: crashing on a public or private roadway, crashing on a public or private trail, being fallen on or impacted by other participants or animals, poor or improper riding by other members of the Teams or other cyclists, the possibility that I will be jolted, jarred, bounced, thrown to and fro, or shaken about while cycling, entanglement in bicycles, impacting the ground or a bicycle, including the one being ridden by the participant, or impacting a naturally occurring or man-made obstacle, equipment failure, improperly maintained equipment which may or may not have been supplied by the Teams, general slips/trips/falls or painful crashes while preparing to participate, or participating with the Teams, or in using any of the Teams’ equipment, cycling out of control or beyond my or another participant's limits, the negligence of other cyclists or visitors or participants or motorists who may be present, participants giving or following inappropriate cycling advice, mine or others' failure to follow any rules of the Teams, my own negligence or inexperience, exposure to extreme weather, dehydration or exhaustion or cramps or fatigue—some or all of which may diminish my or another participant’s ability to react or respond.

b. **Running:** By participating in running with the Teams, I understand and accept that the inherent risks of running include but are not limited to: falling or tripping on objects that are naturally occurring or man-made, causing me to impact the ground, wildlife, cacti, rocks, man-made objects, other people, whether they be afoot, on a bicycle, or any other type of vehicle; jostling, bumping, pushing and shoving may occur causing stubbed toes, trips, bruises, being spiked pulled muscles or any number of other mishaps, unforeseen in a large group activity, running out of control or beyond my or another participant’s limits, the negligence of other runners or visitors or participants or motorists who may be present, participants giving or following inappropriate running advice, mine or others' failure to follow any rules of the Teams, my own negligence or inexperience, exposure to extreme weather, dehydration or exhaustion or cramps or fatigue—some or all of which may diminish my or another participant’s ability to react or respond.

c. **Swimming:** By participating in swimming with the Teams, I understand and accept that the inherent risks of swimming include but are not limited to: drowning, including fatal drowning, nonfatal drowning with injury or illness, or nonfatal drowning without injury or illness, bacterial

infections of the ear canal, chlorine induced asthma, athlete's foot, slips and falls that can cause me to impact the pool deck or pool edging, injuries to the head, neck, and bones, infections or reactions caused by improperly maintained chemical levels in the pool water, hazardous bacteria or alga, lightning or other weather related phenomena, motorized or non-motorized watercraft could run over me, water conditions may exist that limit visibility and increase my chances of swimming into naturally occurring or man-made debris, marine life such as jellyfish that sting and sharks that bite, currents, waves, swells, or rip tides that may make reaching safety difficult or impossible, shock from water temperatures, physical contact with other swimmers or participants may cause me to be pushed under water, hit or kicked by another swimmer, goggles that may become dislodged or fill with water that impairs vision, water splashed into my face making breathing difficult, muscle cramps that make returning to safety difficult or impossible, the negligence of other swimmers, visitors, or participants who may be present, participants or other Team members giving or following inappropriate swimming advice, mine or others' failure to follow any rules of the Teams, my own negligence or inexperience, exposure to extreme weather, dehydration or exhaustion or cramps or fatigue—some or all of which may diminish my or the other participant's ability to react or respond.

2. **Assumption of Risks:** Eatmore Cheesecake and the Teams strive to safely engage in running, swimming, and cycling activities but are not infallible. Eatmore Cheesecake, or members of the Teams, may err by being ignorant of a participant's skill, health, or other individual circumstances, and therefore may give incorrect or inadequate warning or instruction. By signing this Release and Agreement, I acknowledge that **I AM ULTIMATELY RESPONSIBLE** for my own safety before, during, and after my use of the Teams' equipment, or participation in the Teams' activities. [*Initial here* _____]

3. **Waiver of Rights and Indemnification:** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Eatmore Cheesecake and/or the Teams from any and all claims, demands, or causes of action, which are in any way connected with my participation in these activities or my use of Eatmore Cheesecake's and/or the Teams' equipment, or facilities, including any such claims which allege negligent acts or omissions of Eatmore Cheesecake and/or the Teams. I further agree to indemnify and defend Eatmore Cheesecake and/or the Teams with respect to any court costs and reasonable attorneys' fees which may arise out of or from my participation in or use of any Eatmore Cheesecake and/or Team activity or premises or equipment. I expressly agree that this Release and Waiver is intended to be as broad and inclusive as allowed by the laws of the State of Arizona, and that if any portion is held to be invalid, that the remaining terms and conditions shall remain in full legal force and effect.

4. **Fitness to Participate:** I understand and agree that before participating, I should consult with medical professionals to determine and assure that I am fit and capable, and that any observation, comment, or advice on my fitness or capability by any Eatmore Cheesecake or Team participant is not an endorsement of my fitness or capability. By participating in or using any Eatmore Cheesecake or Team activity, equipment, or property, I certify that I am fit in my bodily health and mental capability such that I may safely participate.

5. **Medical Consent:** I give consent and authority to Eatmore Cheesecake and/or the Team to obtain medical treatment on my behalf if an injury requires medical attention during my participation in or use of any Eatmore Cheesecake or Team activity, equipment, or property. I understand and agree that I am solely responsible for all costs related to such medical treatment, medical transportation, and/or evacuation. I hereby release, forever

discharge, and hold harmless Eatmore Cheesecake or the Team from any claim whatsoever in connection with such treatment or other medical services.

6. **Voluntariness and Use of Image:** I understand that my participation in or use of any Eatmore Cheesecake or Team activity, equipment, or property is voluntary, and that I am free to not participate. By participating in or using any Eatmore Cheesecake or Team activity, equipment, or property, I agree that Eatmore Cheesecake or the Teams may use my image in promoting Eatmore Cheesecake or the Teams in all media.

7. **Jurisdiction:** This Release and Agreement shall be construed in accordance with, and any action arising under or relating to the Release and Agreement shall be governed by the laws of the State of Arizona.

By signing this document I acknowledge that if anyone is hurt or killed or property is damaged during my participation in or use of any Eatmore Cheesecake or Team activity or premises or equipment, I may be found by a court of law to have waived my rights to maintain a lawsuit against Eatmore Cheesecake and/or the Team on the basis of any claim from which I have released them herein.

I HAVE HAD SUFFICIENT OPPORTUNITY TO READ AND UNDERSTAND THIS ENTIRE DOCUMENT. I HAVE READ AND UNDERSTOOD IT, AND AGREE TO BE BOUND BY ITS TERMS.

Participant _____
(print name) (signature) (date)

(If Participant is under the age of 18, a parent or guardian of the Participant must sign)

Parent/guardian _____
(print name) (signature) (date)