



# Tom's Dive & Swim - Liability Release

## RELEASE OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT

I \_\_\_\_\_, as Participant, do hereby affirm that I have been fully informed that there are substantial, serious, inherent hazards and risks associated with Snorkeling, Skin and/or Scuba Diving ("Diving Activities"). While an exhaustive listing of such hazards and risks is not possible, I understand that the hazards and risks may lead to severe injury and even loss of life. I understand that Diving Activities may be conducted at locations that are offshore, remote, and/or foreign. I understand that the locations at which Diving Activities are conducted may be far from access to a recompression chamber and/or other competent medical assistance; and, in many cases, timely medical care may not be available.

Additionally, I understand that the offshore, remote, and/or foreign locations at which Diving Activities are conducted may involve travel, and that there are also significant hazards and risks associated with such travel, including, but not limited to the possible injury or even loss of life as a result of an accident or occurrence during travel to and from Dive Activities. I further understand that such travel may also involve hazards and risks not only associated with the travel itself but also with hazards and risks associated with the safety of the locations in which, and through which, such travel occurs, and the safety of other activities conducted while traveling to and from Dive Activities.

Nevertheless, I choose to proceed with Dive Activities even with the possibility of the absence of a recompression chamber and/or other competent medical assistance. I further choose to proceed with travel to offshore, remote, and/or foreign locations at which the Dive Activities are to be conducted even with the comprehension of the possibility of hazards and risks associated with the travel to and from such locations, and of the possible lack of safety with respect to the locations in which, and through which, such travel occurs. I further choose to engage in other potentially hazardous and risky activities while traveling.

Despite the potential hazards and dangers associated with the Dive Activities, and of the travel to and from such Dive activities, and of other activities while traveling, I wish to proceed and I freely accept and expressly assume all risk, dangers and hazards that may arise from Diving Activities which could result in personal injury, loss of life and property damage to me.

NOW, THEREFORE, in consideration of being allowed to participate in Dive Activities, travel, and other activities in conjunction therewith (as well as the use of any facilities and/or equipment), I hereby agree:

\_\_\_\_\_ (INITIAL)

Participant does hereby release, acquit, and forever discharge the following:

(Dive Leader) \_\_\_\_\_, and Facility Tom's Dive and Swim, and others:

(Other facility) \_\_\_\_\_, as well as their respective owners, officers, directors, agents, employees, contractors, volunteers, assigns, and representatives (collectively, the "Parties") from any and all disputes, demands, causes of action, claims, liabilities, obligations, debts, controversies, suits at law or in equity, damages, and costs, including attorney's fees, of whatsoever kind or nature, whether such may arise under state or federal or maritime law, and which Participant has or may have, or which Participant may claim or assert, or in the future may have or claim or assert, because of, on account of, arising out of, regarding, pertaining to, or in any manner related to or connected to Participant's participation in the Diving Activities and/or the travel and other activities associated therewith, regardless of whether such claims, demands or damages arose in the past, exist presently, or arise in the future. This Release shall encompass and include, but shall in no way be limited to any and all claims arising out of statutory, regulatory, common law, equitable, and/or vicarious liability of any of the Parties; and includes any and all claims that are now recognized by law or that may be created or recognized in the future by any manner, including without limitation, by statute, regulation, or judicial decision.

\_\_\_\_\_ (INITIAL) Participant does hereby assume all risks, dangers, and hazards that may arise from the Diving Activities and/or the travel and other activities associated therewith, any or all of which could result in personal injury, loss of life, and/or

property damage.

\_\_\_\_\_ (INITIAL) Participant further agrees that, as additional consideration, Participant does hereby agree to indemnify and hold harmless the Parties from any and all claims, demands, causes of action, losses, damages, injuries, and liabilities, including attorneys fees and expenses, litigation costs, and court costs, of whatsoever nature, which may have been or may hereafter be asserted by any person or entity whomsoever or whatsoever, arising out of, resulting from, because of, on account of, regarding, pertaining to, or in any manner related to or connected to Participant's participation in the Diving Activities and/or the travel and other activities associated therewith, regardless of whether such arose in the past, exist presently, or arise in the future. This indemnification and agreement to hold harmless shall encompass and include, but shall in no way be limited to any and all claims arising out of statutory, regulatory, common law, equitable, and/or vicarious liability of the Parties; and includes any and all claims that are now recognized by law or that may be created or recognized in the future by any manner, including without limitation, by statute, regulation, or judicial decision.

\_\_\_\_\_ (INITIAL) Participant hereby declares that the damages that Participant has and/or may sustain are or may be uncertain and indefinite. If any of the provisions in this Agreement are held to be unenforceable or invalid, the liability of any of the Parties, if any, for damages for any cause whatsoever arising out of or related to the Participant, regardless of the form of the action, shall be limited to the amount actually paid by Participant to such Party during the one (1) month immediately prior to the event or occurrence giving rise to such claim. Further, the Parties shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind.

\_\_\_\_\_ (INITIAL) Participant has consulted with whatever attorneys and other advisors that Participant deemed appropriate in connection with the effect of this Agreement; and Participant assumes the risk arising from not seeking further or additional consultation with such advisors. Participant assumes the risk of any mistake of fact or law with regard to any aspect of this Agreement, the claims described herein, and any asserted rights released by this Agreement. This Agreement shall be construed to have been drafted by all the parties to it so that the rule of construing ambiguities against the drafter shall have no force or effect.

\_\_\_\_\_ (INITIAL) If a portion or term of this Agreement is held unenforceable by a court, then the remainder of this Agreement shall not be affected and shall remain fully in force and enforceable, if such can be done while still effectuating the intent of the parties to this Agreement.

\_\_\_\_\_ (INITIAL) If any of the Parties is the prevailing party in any legal proceeding by or on behalf of Participant brought under or with relation to this Agreement or any of the matters provided herein, then such Parties shall be additionally entitled to recover court costs and reasonable attorney fees, and all other litigation expenses, including deposition costs, travel, and expert witness fees, from the Participant.

\_\_\_\_\_ (INITIAL) Venue with respect to any action between Participant and any of the Parties, whether or not in relation to any matter concerning his Agreement, shall lie exclusively in Travis County, Texas.

\_\_\_\_\_ (INITIAL) This Agreement states the entire agreement with respect to the matters discussed herein, and supersedes all prior or contemporaneous understandings, agreements, statements or promises between the Parties and Participant. There are no understandings or Agreements between the parties hereto other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either party to enter in to this Agreement. This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the parties to this Agreement.

**NAME OF PARTICIPANT:** *(print)* \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**NAME OF WITNESS:** *(print)* \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PARENT/GUARDIAN:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Tom's Dive & Swim 5909 Burnet Road, Austin, TX 78757 512-451-3425 fax 512-451-4607 www.TomsScuba.com