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ASSUMPTION OF RISK AND WAIVER OF LIABILITY AGREEMENT

This is an important legal document; you must read the entire document (hereinafter “Agreement”). Anyone who does not acknowledge and agree to this Agreement in its entirety, which consists of 4 pages for all participants and volunteers, and 5 pages for participants who are minors or legally incapacitated, cannot participate. My signature and initials indicate that I have read and understood this Agreement. All volunteers, participants, and legal guardians of any participants who are minors or legally incapacitated (hereinafter collectively referred to as “I” or “Participant” throughout this Agreement) are required to sign this Agreement. This Agreement includes an Assumption of Risk, a General Release and Waiver of Liability, and other provisions. Among other things, signing and initialing this Agreement means that:

- **I understand that adaptive scuba diving involves additional risk of serious injury or death, over and above such risks that are generally associated with recreational scuba diving. Despite these risks, I voluntarily participate and agree to assume all financial responsibility for any injury to me and/or my death. I also agree not to hold Diveheart Foundation, or its staff or volunteers, (“Diveheart”) responsible in any way for any injury to me and/or my death.**
- **I agree not to sue Diveheart for any injury to me and/or my death which is caused by the failure to exercise reasonable care [negligence] or serious carelessness [gross negligence] by Diveheart.**
- **As the legal guardian of a Participant, I agree to all the above on behalf of myself and the Participant. I also agree not to sue Diveheart for my own loss due to the Participant’s injury and/or death.**
- **I agree to resolve all disputes in binding arbitration without a jury.**

This Agreement is effective for all present and future participation in all Diveheart Activities, as defined below, whenever or however they may occur.

Participant Name: _____

If Participant is a Minor or Otherwise Legally Incapacitated, Parent/Guardian Name(s):

Participant Email: _____



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I. ASSUMPTION OF RISK AGREEMENT

I understand that my participation in any and all activities with Diveheart, a non-profit tax exempt 501(c)(3) organization chartered in the state of Illinois, including, but not limited to, skin diving, scuba diving, educational trainings, shore dives, boat trips, travel, promotional events, and other activities (each and collectively, a “Diveheart Activity”) is voluntary. In consideration of being allowed to participate in a Diveheart Activity today and on all future dates, I voluntarily and expressly understand, acknowledge, appreciate, accept and personally assume all inherent risk of injury and/or death from any and all causes including, but not limited to, travel and/or transport risks, severe weather, marine life, actions (including negligent acts) of other Participants, Participant’s inability to correctly operate equipment, equipment failure, lack of compressed air, drowning and near drowning, decompression sickness, embolism, and other hyperbaric/air expansion injury that may require treatment in a recompression chamber. I further understand that the Diveheart Activities may be conducted at a remote site (by time, distance or both) from medical care and/or a recompression chamber. I choose to proceed in spite of these risks. Due to my possible physical and/or cognitive disabilities, I may have an increased risk of injury or death from my participation in a Diveheart Activity. I freely and voluntarily understand that my scuba instructors, the Diveheart Foundation, Dive Charterer/Operator, Scuba Schools International, and/or any other scuba education, training, or instruction organization, and any of their affiliates or subsidiary corporations, and any of their respective employees, officers, directors, agents, contractors, staff, volunteers, or assigns (hereinafter referred to as “**Released Parties**”), are not and will not be liable or responsible in any way for injury, death, or other damages to me, my family, estate, heirs, or assigns, and I and they will not hold the Released Parties responsible. My full and complete assumption of risk is a material covenant, without which I would not be allowed to participate in a Diveheart Activity. **I know, understand, and appreciate the inherent risks involved and am voluntarily still participating in Diveheart Activities.**

II. RECOGNITION OF ADDITIONAL RISK INHERENT TO ADAPTIVE DIVING

I understand that even though I may have received medical clearance to participate, due to my possible physical and/or cognitive disabilities and the physically strenuous nature of a Diveheart Activity, I acknowledge that I may have an increased risk of death or injury, including, but not limited to, exhaustion, heart attack, stroke, panic attack, hyperventilation, emotional stress, anxiety, panic, diminished comprehension and timely response to problem solving and emergent situations, an increased risk of decompression sickness, embolism, hyperbaric/air expansion injury, autonomic dysreflexia (hyperreflexia), heat exhaustion, thermal regulation related injuries, abrasions and lacerations due to sensory impairment or loss, hypothermia, hypertension, hypotension and muscle spasticity, drowning or near drowning, as well as other, foreseen and unforeseen medical injuries or complications.

I additionally recognize that due to my possible physical and/or cognitive disabilities, I may not be able to perform independently all scuba skills, including, but not limited to, self-rescue, and, therefore, there is a greater inherent risk of injury or death, including, but not limited to, the possible failure of my dive buddies or instructors to timely and effectively provide assistance, including, but not limited to, assistance with controlled ascents and descents, equalization, out of air emergencies and/or the usage of a full face mask.

I also understand that past or present medical conditions and medications may be contraindicative to my participation in Diveheart Activities, and recognize that some medical and/or scuba experts may opine that scuba is contraindicated in view of my medical condition and possible physical and/or cognitive disabilities. Despite such medical contraindications or expert opinions, I still choose to proceed.

I recognize there is a risk of bodily injury and/or death related to transfers or other similar activities, including, but not limited to, transfers in and out of the dive boat, where assistance may be provided to help me move my body.



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I understand and agree that Diveheart may provide confidential information, including, but not limited to, information about my physical and/or cognitive disabilities, to other entities and affiliates deemed necessary for participation in Diveheart Activities, which may include, but are not limited to, dive boat operators, hotels, airlines, and travel agents.

I know, understand, and appreciate these additional inherent risks involved in adaptive scuba diving and am voluntarily still participating in Diveheart Activities.

III. GENERAL RELEASE AND WAIVER OF LIABILITY

In consideration of being allowed to participate in a Diveheart Activity, today and on all future dates, I voluntarily and expressly waive, excuse, absolve and release the Released Parties from *any and all present and future claims* (including claims for injury and/or death to me), resulting from or incident to my participation in a Diveheart Activity, *including without limitation any claims resulting from the ordinary or gross negligence of the Released Parties.*

I understand and agree that I am not only giving up my right to sue the Released Parties, but also any rights my heirs, assigns, beneficiaries, personal representatives or guardians may have to sue the Released Parties resulting from my death or injury. I further represent that I have the authority to do so, and my heirs, assigns, beneficiaries, personal representatives or guardians will be estopped from claiming otherwise.

I understand and agree that all of the instructors and other individuals and volunteers are dedicating their time and services to make a Diveheart Activity possible and provide me an opportunity to participate; they are relying on and would not be willing to do so without my representation to fully release and waive any and all claims against the Released Parties as consideration for the services they are providing me. While these individuals seek safety, they are not infallible, and may be ignorant of a participant’s fitness or abilities, may misjudge the weather or conditions, or otherwise make judgment errors. I understand and acknowledge that I AM ULTIMATELY RESPONSIBLE for my own safety.

IV. APPLICABLE LAW; ARBITRATION

PLEASE READ THIS SECTION CAREFULLY. BY SIGNING THIS, I AM KNOWINGLY AND VOLUNTARILY WAIVING MY CONSTITUTIONAL RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION, OR ENGAGE IN DISCOVERY BEYOND AS PROVIDED FOR IN THE RULES. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. The laws of Florida shall govern this Agreement without giving effect to conflict of laws principles. We agree that any dispute, claim or disagreement between us (a “Dispute”) shall be resolved exclusively by arbitration in Chicago, Illinois. The arbitration will be administered by JAMS, under its Streamlined Arbitration Rules (the “Rules”) by a single neutral arbitrator agreed on by the parties within thirty (30) days of the commencement of the arbitration. The arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party may initiate the arbitration process by filing the necessary forms with JAMS. To learn more, call any JAMS office or visit www.jamsadr.com. We will each bear all of our own attorneys’ fees and costs. Disputes must be brought in the name of an individual person or entity and must proceed on an individual non-class, non-representative basis. The arbitrator, whose decision shall be final and binding, shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator’s decision may be enforced in any court having jurisdiction. The arbitrator is not authorized to change or alter the terms of this Agreement. All statutes of limitations that are applicable to any dispute shall apply to any arbitration. **(Please initial_____)**



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V. WAIVER, ENTIRE AGREEMENT

I am of lawful age and legally competent to sign this Agreement, or I have acquired the written consent of my parents or guardians who also sign this Agreement. I understand the terms herein are contractual and not a mere recital and that I have signed this Agreement of my own free will and with the knowledge that I hereby agree to waive my legal rights. I further agree that if any provision of this Agreement is found to be unenforceable or invalid, such provision shall be severed from this Agreement and the remainder of this Agreement shall then be construed as though the unenforceable provision had never been contained herein. Any delay or failure of a party to enforce any of the provisions of this Agreement shall not be construed to (i) be a waiver of such provisions or a party's right to enforce that provision; or (ii) affect the validity of this Agreement. I affirm that this Agreement *supersedes any and all previous oral or written promises or agreements*. Accordingly, I am not relying upon any representation made by Diveheart that is not expressly specified in this Agreement, including without limitation any statements regarding the likelihood of injury or lack thereof. This Agreement is the entire agreement regarding my participation in Diveheart activities, and cannot be modified or changed in any way by representations or statements by any agent or employee of Diveheart. This Agreement may only be modified by a written document signed by all parties.

ACKNOWLEDGEMENT OF UNDERSTANDING: I, _____, HAVE READ THIS ENTIRE AGREEMENT AND FULLY UNDERSTAND ITS TERMS. I UNDERSTAND THAT BY SIGNING, I COVENANT NOT TO SUE THE RELEASED PARTIES AND AGREE TO EXEMPT AND RELEASE THE RELEASED PARTIES FROM ALL LIABILITY AND RESPONSIBILITY WHATSOEVER, HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE OF THE RELEASED PARTIES, WHETHER PASSIVE OR ACTIVE. I AM AWARE THAT I AM RELEASING LEGAL RIGHTS THAT MAY OTHERWISE EXIST. I FURTHER ACKNOWLEDGE THAT I AM FREELY AND VOLUNTARILY SIGNING THIS AGREEMENT, AND BY SIGNING I UNDERSTAND THAT DIVEHEART IS NOT LIABLE FOR ANY INJURIES OR DEATH I MAY SUSTAIN AS A PARTICIPANT; I ASSUME ALL RISK OF INJURY OR DEATH.

Participant: _____
Signature

Date: _____

Parent/Legal Guardian if Minor
or Otherwise Incapacitated: _____
Signature

Date: _____

Signature

Date: _____

Diveheart Representative: _____

Date: _____