



AFFIRMATION & LIABILITY WAIVER AND INDEMNIFYING AGREEMENT

WARNING:

Please read carefully before signing; activity waivers have held up in both Australian and New Zealand courts. Consider that you are assuming both physical and legal risks which have potential financial implications for yourself and/or your family should you be injured or killed while participating on a **Whaleswim Adventure** expedition.

X (Name) I, _____ do hereby release **WhaleSwim Adventures**, its owners, employees, independent contractors and agents from all liability, and do hereby waive as against **WhaleSwim Adventures**, its owners, employees, independent contractors and agents all resources, claims, courses of action of any kind whatsoever, in respect of all personal injuries or property losses which I may suffer arising out of or connected with my preparation for, or participation in, the aforesaid **WhaleSwim Adventures** expedition, notwithstanding that such injuries or losses may have been caused solely or partly by the negligence of **WhaleSwim Adventures** or any of its owners, employees, independent contractors or agents.

X (initial here) _____

And I do hereby acknowledge and agree:

1. that the sport of swimming with whales is dangerous, exposing participants to many inherent risks and hazards, including but not restricted to: loss or damage of personal property, injury from marine mammals, hypothermia, drowning, inclement weather, slipping and falling, falling objects, or suffering any type of accident or illness in remote areas without easy access to medical facilities. While some of these risks are inherent in the very nature of the sport itself, others may result from human error and negligence on the part of persons involved in preparing, organizing, participating in and leading the aforesaid whale-watching/swimming expedition;
2. that, as a result of the aforesaid risks and hazards, I as a participant may suffer serious personal injury, even DEATH, as well as property loss;
3. that some of the aforesaid risks are foreseeable, but others are not;
4. that I nevertheless freely and voluntarily assume all the aforesaid risks and hazards, and that, accordingly, my preparation for and participation in the aforesaid WhaleSwim Adventure expedition shall be entirely at my own risk;
- 4.5 that I agree to refrain from making any deliberate physical contact with the whales during this or any other WhaleSwim Adventures expedition and understand that I would be expelled from the said WhaleSwim Adventures expedition at the discretion of any of its owner, employees or tour leaders/guides without refund of full or part of monies paid for the said expedition or any expenses incurred from being expelled for the said expedition;
5. that while I recognise that the WhaleSwim Adventures owners, employees, independent contractors and agents, tour leaders/guides will make every reasonable effort to minimize exposure to known risks, that I have a personal responsibility to learn and follow safety rules and procedures established by my leaders/guides and to make them aware at any point in which I question my knowledge of these procedures or my ability to participate in any activity;
6. that I consent to receive first aid and medical treatment by the leaders/guides and medical personnel in the event of an accident, and/or illness during this or any other WhaleSwim expedition;

7. that I agree to pay any and all expenses related to medical treatment and/or evacuation of myself in the event of an accident, injury, illness including but not restricted to: air-sea rescue, air-sea search, ambulatory care;

8. that I understand that neither WhaleSwim Adventures nor any of its owners or employees assumes any responsibility whatsoever for my safety during the course of my preparation or participation in the aforesaid whale watching/swimming expedition.

9. that I have carefully read this ASSUMPTION OF RISK AGREEMENT AND INDEMNIFYING RELEASE agreement, that I fully understand same, and that I am freely and voluntarily executing same;

10. that I understand clearly that by signing this release, I will be forever prevented from suing or otherwise claiming against WhaleSwim Adventures, its owners, employees, independent contractors and agents for any loss or damage connected with any property loss or personal injury that I may sustain while participating in or preparing for any of WhaleSwim Adventures expeditions, whether or not such loss or personal injury is caused solely or partly by the NEGLIGENCE of WhaleSwim Adventures, its owners, employees, independent contractors or agents.

11. that I have been given the opportunity and have been encouraged to seek independent legal advice prior to signing this agreement.

12. that I understand clearly that WhaleSwim Adventures would not permit me to participate in any such whale-watching/swimming programs or expeditions unless I signed this ASSUMPTION OF RISK AGREEMENT AND INDEMNIFYING RELEASE, that this agreement applies to all the aforesaid whale-watching/swimming expeditions and programs whether occurring in the near or distant future, and that the terms of the Agreement need not be brought to my attention each time I participate in any such whale-watching/swimming expeditions or programs in order to be effective;

13. that this ASSUMPTION OF RISK AGREEMENT AND INDEMNIFYING RELEASE is binding on myself, my heirs, my executors, administrators, personal representatives and assigns;

14. that I understand clearly that WhaleSwim Adventures is and shall be deemed to be acting for itself and as an agent on behalf of and for the benefit of the owners, employees, independent contractors and agents of WhaleSwim Adventures for the purposes set out in the above-stated clauses of the agreement; and

15. that I am of sufficient age and mental capacity to sign this ASSUMPTION OF RISK AGREEMENT AND INDEMNIFYING RELEASE

X _____
Signature of Participant

X Dated at _____, this _____ day of _____, 2009
(City, Country)

X _____
Witnessed by (Print Name) Signature of Witness

X Participant's Date of Birth _____ Tour No/Name: _____

X _____
Signature (Parent or Guardian if the participant is under 19 years of age.)

Address: _____

Post/Mail to : WhaleSwim Adventures PO Box 551, Oneroa, Waiheke Island 1840 New Zealand