



ANOTHER LEVEL PERFORMANCE



Table of Contents

1. DEFINITIONS	2
2. ACKNOWLEDGEMENTS.....	4
3. RISK WARNINGS	5
4. WAIVER	7
5. ONLINE ENTRY.....	12
6. STANDARD SWIMMING EQUIPMENT.....	12
7. PRIZES	13
8. EVENT QUALIFYING REQUIREMENTS.....	13
9. DISQUALIFICATION RULES	13
10. VESSELS.....	14
11. PADDLERS	15
12. RELEASE AND DISCHARGE	15
13. REGISTERING MINOR OR PERSON WITH DISABILITY	16
14. REGISTRATION CHANGES.....	17
15. PAYMENT	17
16. REFUND POLICY	17
17. START TIME ALTERATIONS	17
18. DISTANCE AND COURSE ALTERATIONS	17
19. CUT OFF TIMES	17
20. BEHAVIOUR	18
21. MEDICAL TREATMENT.....	18
22. EXCLUSION OF LIABILITY	18
23. DISCLAIMER AND WARRANTY.....	19
24. INDEMNITY	20
25. PRIVACY	20
26. CANCELLATION OF THE EVENT	20
27. AMENDMENT OF TERMS	21
28. SWIM TERMS.....	21
29. FINAL DECISION	21



Terms and Conditions

The *Terms and Conditions* serve to reduce risk, set the tone for safety conditions and eligibility to enter the race.

There are no sources in the current document.

1. DEFINITIONS

Entry Fee means the relevant fee (*as per Payments and Refunds*) for your entry in the Event. By submitting your online application and paying your Fee you are agreeing to enter the Event and agree to abide by these Conditions of Entry and any instructions given to you by the organisers and officials of the Event. This also includes any entries made for you on your behalf by a third party (Parent or Guardian).

Event is any event organised by Another Level Performance Pty Ltd, which the participant has entered and is proposed to be conducted, by the Organiser on the Event Course on the specified date(s).

Event Briefing means the compulsory briefing for participants (other than Skippers) to be conducted by the Organiser on the dates notified by the Organiser on the Another Level Performance Website).

Event Course means the Course map as published and updated from time to time on the Another Level Performance Website.

Event Qualifying Requirements mean the prerequisites for entry as a Participant in the event (that include the prerequisites for entry as a Skipper).

Event Rules means the rules of the Event which can be accessed on the Event Website and sent to participants in the swimmers' information package, the rules are subject to change at the Organiser's discretion.

Event Website means the website Another Level Performance and any pages within that website.

Harm means death, personal injury (including burns), psychological trauma, loss or damage (including property damage).

Interested Parties means the Organiser, its shareholders, officers, employees and advisers together with any relevant Government Agency (including any port authorities, local councils and other public bodies), and any landholders, sponsors and suppliers in any way involved in the organisation or conduct of the Event.

Jet Ski rider/operator means a licenced under NSW Maritime law and operates under the restrictions of the PWC licence.

Law of New South Wales State or Commonwealth of Australia means all acts and statutes enacted and all regulations, bylaws, requisitions or orders made under any Law from time to time.



Terms and Conditions

Maritime Rules mean all statutes, regulations, by-laws, requirements and approvals including conditions under any applicable Law regulating the conduct of boating and recreational activities on or about the event course. This includes the rules and regulations for safe boating and marine safety in New South Wales waters published by the Department of Transport from time to time; including the Marine Safety Act 1998 and Navigation Act 1901. All participants including boat skippers and craft must comply with the Marine Safety Regulation 2016.

Minor is defined as a person under the age of 18 years of age.

Organiser means **Another Level Performance Pty Ltd** ABN 85628311035 of NSW, Australia, it's director, officers, employees, agents, volunteers and contractors.

Paddler means a person operating a Ski who is supporting a swimmer in the Event.

Participant means a person participating in the Event, Paddler, Skipper, or support crew.

Ski means a surf ski, canoe, kayak or any other similar craft that is propelled by paddler.

Skipper means a person in charge of a Vessel. The skipper is ultimately responsible for the safety of their passengers (crew) the paddler and all swimmers registered to that vessel.

Skipper Briefing means the compulsory briefing for Skippers to be conducted by the Organiser prior to the Event (or any other dates notified by the Organiser on the Event Website).

Solo swimmer means a swimmer who has remained in the water for the continuous distance unassisted.

Staged swim means a swimmer that has left the water and returned to the boat for medical reasons or a shark problem. The maximum time allowed on the boat is 15 minutes only. Swimmers are only permitted to exercise this clause once.

Support crew means anyone who is assisting your swim on the water. This includes your observer or feeder on the boat, your kayaker, ski paddler, board paddler, jet ski or small dingy.

Swimmer means a person competing in the Event as a swimmer (whether as a Solo Swimmer, as part of a Duo or in a Team of Four or Team of Six)

Swimmer Tow Float means an inflatable safety device in the form approved by the Organiser.

Released Parties means the Organiser, Another Level Performance Pty Ltd, swim officials and volunteers local councils and surf lifesaving clubs, sponsors and suppliers in any way involved in the organisation or conduct of the Event.



Terms and Conditions

Terms mean these terms and conditions for entry into the Event that include an exclusion of liability, indemnity and risk acknowledgment.

Waiver means A liability waiver is a legal contract where a participant agrees not to hold a company or individual responsible for injuries or damages that occur during an activity. The participant acknowledges the inherent risks involved and assume responsibility for them.

You and Your means:

The person completing the online registration personally (or by a parent or guardian on his or her behalf where the Participant is under the age of 18 years); and each Participant; and in each case, the person's heirs, executors and administrators.

Your Team means You and each person participating with You or supporting You in the Event as part of a discrete team including any person participating as a swimmer, Paddler, Skipper or support crew; and

Vessel means a motorboat, which is used to support a Participant to participate in the Event.

2. ACKNOWLEDGEMENTS

1. You understand and acknowledge:
The risks, which are associated with the Event.
2. Accidents can and often do happen which may result in me being injured or even killed.
3. By participating in the Event, You acknowledge that You have read the Terms and Conditions and agree to be bound by them.
4. You agree that the terms and conditions contained in this entry form shall be construed broadly to provide a release, indemnity and waiver to the Indemnified Parties of any liability for loss, injury, death or other damage to personal property to the maximum extent permitted by law.
5. You are 18 years or older.
6. For minor entries parent or guardian must agree to be bound by these terms on the minor's behalf.
7. My personal property may be lost or damaged.
8. You may cause injury to other persons or damage their property.
9. The conditions in which the Event is conducted may vary without warning.
10. You may be in a remote or isolated location where access to medical support may be limited and take significant time to reach me.



Terms and Conditions

11. There may be no or inadequate facilities for treatment or transport of me if I am injured.
12. You assume the risk and responsibility for any injury, death or property damage resulting from my participation in the Event
13. You agree to abide by the Event Rules, and I will comply with all instructions issued to me by or on behalf of the Indemnified Parties in relation to my participation in the Event.
14. You acknowledge that weather and sea conditions may change prior to the event. If conditions are unsafe, then the event will be cancelled and moved to the first available opportunity.

3. RISK WARNINGS

Participants must read the risks carefully before accepting these conditions as part of your entry, as this indicates that you are waiving certain legal rights. If you have any questions consult the Event Organiser or seek legal advice.

You hereby affirm that you have been thoroughly informed of the risk involved with any open water swimming activity.

You understand that open water swimming is potentially hazardous, and you should not enter and participate unless you are medically able (this includes both physical and mental ability) and properly trained. Treatment of an open water swimming incident or accident with these or other injuries may require immediate medical attention.

We recommend that you consult your doctor prior to undertaking training for the event. It is your responsibility to make sure you are medically fit and capable of taking part in the whole of the Event. We reserve the right, in our absolute discretion, to stop any swimmer from taking part if we deem him or her unfit to take part, including mid-event removal from the water where necessary.

Events that require boat support; You acknowledge that the skipper of the vessel is responsible for your safety, your paddler and crewman. You and your team must follow the skipper's directions concerning safety. You must check the right size boat, which will depend on number of people intended to carry, this must include paddler and swimmer.

Swimmers, paddlers, crew and skippers may be exposed to dangerous ocean conditions, which include rips, tides, currents, boat wash and large swell. There are reefs to negotiate and depending on conditions; need to be traversed safely. Swimmers and paddlers may encounter a variety of marine life that may threaten or harm possibly resulting in death. These include sharks, seals, whales, dolphins, rays, stingrays, Sea Snakes and jellyfish. There may be submerged objects in the water and exposure to varying water temperatures from 14°C to 20°C or more



Terms and Conditions

extreme temperatures. Inclement weather changes may cause problems for the skipper and paddler such as poor visibility, high wind and heavy rain.

With many swimmers in the water there is a possibility of swimmers colliding, or collisions involving the paddler and the vessel causing harm. There is a risk of mechanical failure on the vessel or damage to the ski. Other risks causing harm may result from you (or other participants) your team suffering from fatigue or making poor decisions. You may cause injury to other persons or damage their property. The conditions in which the Event is conducted may vary without warning.

You understand that The Event is at a location that is remote, either by time, distance or both, from a hospital. You still choose to proceed with the event despite the increased risk to me because a hospital is not close by in the event that you are injured.

You understand and agree that neither the Organisers of this Event nor the sponsors of the event, nor any of their respective officers, agents, or volunteers (hereinafter referred to as "Released Parties") may be held liable or responsible in any way for any injury, death, or other damages to myself, my family heirs or assigns that may occur as a result of my participation in the event or as a result of the negligence of any party, including the Released Parties, whether passive or active.

In consideration of being allowed to participate in the event, You hereby personally assume all risks in connection with it, for any harm, injury, or damage that may befall me while I am participating in the event, including all risks connected therewith, whether foreseen or unforeseen.

You agree to hold harmless the Released Parties from any claim or lawsuit by myself, my family, estate, heirs or assigns, arising out of my participation in the event, including any and all claims arising during my practicing and any arising during or after you complete the Event.

You understand that swimming activities are physically strenuous and that you will be exerting yourself during the event, you expressly assume the risk of any and all injuries, and you will not hold the Released Parties responsible if you are injured as a result of heart attack, panic, drowning or any other cause of injury or death not specifically stated.

You are aware of the prerequisite skill level and/or equivalent swimming experience necessary to participate in these Events, and you stipulate that you meet these requirements.

You understand that you are responsible for supplying your own equipment in proper working condition, regardless of where you obtained it or from whom.

You understand that all the terms herein are contractual and your entering online is done of your own free act and in so doing, you waive your legal rights to sue.



Terms and Conditions

You state that you are of lawful age and legally competent to make an online entry, or that you have the written consent of your parent or legal guardian to engage in the event under the conditions of this waiver as stipulated by their entering on my behalf.

It is your intention to exempt and release all of the Released Parties as defined herein, from all liability whatsoever for personal injury, property damage or wrongful death however caused, including but not limited to the negligence of the Released Parties, whether passive or active.

By completing your online entry YOU HAVE FULLY INFORMED YOURSELF OF THE CONTENTS OF THIS LIABILITY RELEASE AND ASSUMPTION OF RISK BY READING IT. YOU DO HEREBY ACKNOWLEDGE that of your own free will and desire you voluntarily agree to assume the risk or any injuries, damages or loss, regardless of severity or death, that your participation or that of a participant under 18 years of age authorised by a Parent or Guardian, may sustain as a result of being a participant in the ocean swim.

Participants may want to consider Insurance that covers them for: accident and emergency repatriation and loss or damage to your property during the Event. We shall not be liable for any losses or compensation arising.

You acknowledge that the risk warning is a RISK WARNING in accordance with relevant law including the Section 5M Civil Liability Act 2002 NSW

4. WAIVER

ACCIDENT WAIVER AND RELEASE OF LIABILITY FORM

I HEREBY ASSUME ALL OF THE RISKS OF PARTICIPATING IN ANY/ALL ACTIVITIES ASSOCIATED WITH THIS EVENT, including by way of example and not limitation, any risks that may arise from negligence or carelessness on the part of the persons or entities being released, from dangerous or defective equipment or property owned, maintained, or controlled by them, or because of their possible liability without fault.

I certify that I am physically fit, have sufficiently prepared or trained for participation in this activity, and have not been advised to not participate by a qualified medical professional. I certify that there are no health-related reasons or problems which preclude my participation in this activity.

I acknowledge that this Accident Waiver and Release of Liability Form will be used by the event holders, sponsors, and organizers of the activity in which I may participate, and that it will govern my actions and responsibilities at said activity.

In consideration of my application and permitting me to participate in this activity, I hereby take action for myself, my executors, administrators, heirs, next of kin, successors, and assigns as follows:



Terms and Conditions

(A) I WAIVE, RELEASE, AND DISCHARGE from any and all liability, including but not limited to, liability arising from the negligence or fault of the entities or persons released, for my death, disability, personal injury, property damage, property theft, or actions of any kind which may hereafter occur to me including my traveling to and from this activity, THE FOLLOWING ENTITIES OR PERSONS: ANOTHER LEVEL PERFORMANCE PTY LTD and/or their directors, officers, employees, volunteers, representatives, and agents, and the activity holders, sponsors, and volunteers;

(B) INDEMNIFY, HOLD HARMLESS, AND PROMISE NOT TO SUE the entities or persons mentioned in this paragraph from any and all liabilities or claims made as a result of participation in this activity, whether caused by the negligence of release or otherwise.

(C) I acknowledge this is an endurance swim and I enter at my own risk. Open water swimming may expose me to hypothermia, marine creatures, boat accidents, clashes with other swimmers and objects in the water.

(D) I acknowledge that the Skipper is ultimately responsible for my safety and welfare for events requiring skipper and boat support. I acknowledge that the Skipper is responsible for ensuring that contact is made with the swimmer who is in the water, and that the swimmer in the water, is alongside the Support Boat before proceeding past the designated meeting point of swimmer and boat. The boat will remain 10m away from the swimmer and the skipper is responsible for the course.

(E) I understand and acknowledge that the only insurance provided for the Swim event is public liability cover. All other insurances are the sole responsibility of myself. I acknowledge that the Skipper is ultimately responsible for my safety and welfare on swims requiring boat support. For other swims requiring paddle support (ski, kayak, board or jet ski) I acknowledge that the Support person is responsible for ensuring that contact is made with me (the swimmer) in the water, and that I, the swimmer is alongside the Support craft, within 3m always and for Support Boat is within 10 metres.

(F) Under Australian laws: The COMPETITION AND CONSUMER ACT 2010 – SECT 139A Terms excluding consumer guarantees from supplies of recreational services involves a significant degree of physical exertion or physical risk. AND, Division 5 5J Application of Division Recreational activities (1) This Division applies only in respect of liability in negligence for harm to a person (***the plaintiff***) resulting from a recreational activity engaged in by the plaintiff. All parties involved in the swim may be exposed to risks. The interested parties exclude all liability in respect of any death, physical or mental injury or any loss or damage to property.

(G) I undertake to ensure that I, including the Skipper and the Paddler (for support craft), comply with the Marine Legislation and the Swim Race Officials. I understand that failure to do so shall result in automatic disqualification and acknowledge that it may also result in my prosecution.



Terms and Conditions

(H) Where boats are used to support swimmers, the must remain within 10m of the swimmer. I understand that failure to comply with this safety measure shall result in disqualification.

I acknowledge that ANOTHER LEVEL PERFORMANCE PTY LTD directors, officers, volunteers, representatives, and agents are NOT responsible for the errors, omissions, acts, or failures to act of any party or entity conducting a specific activity on their behalf.

I acknowledge that this activity may involve a test of a person's physical and mental limits and carries with it the potential for death, serious injury, and property loss. The risks include, but are not limited to, those caused by sea conditions, temperature, weather, condition of participants, equipment, boat traffic, kayakers, other swimmers, hypothermia, marine creatures, lack of hydration, and actions of other people including, but not limited to, participants, volunteers, monitors, and/or producers of the activity. These risks are not only inherent to participants but are also present for volunteers.

I hereby consent to receive medical treatment, which may be deemed advisable in the event of injury, accident, and/or illness during this activity.

I understand while participating in this activity, I may be photographed. I agree to allow my photo, video, or film likeness to be used for any legitimate purpose by the activity holders, producers, sponsors, organizers, and assigns.

The Accident Waiver and Release of Liability Form shall be construed broadly to provide a release and waiver to the maximum extent permissible under applicable law.

1. I hereby declare that I am medically and physically fit and capable and have undertaken all necessary and adequate preparation and training and I am able safely and successfully to complete the Swim event.
2. I acknowledge this is an endurance swim and I enter at my own risk. I acknowledge that the Skipper is ultimately responsible for my crew and kayaker and my safety and welfare on the Swim day.
3. I acknowledge that the Swim support is responsible for ensuring that contact is made with the swimmer who is in the water, and that the swimmer in the water, is alongside the support craft as per the event rules.
4. I acknowledge that I enter the Swim event entirely at my own risk and that the Swim event maybe challenging, endurance open water swim with the risk of injury and possible fatality notwithstanding the risk management plan and safety measures adopted by the Director of Another Level Performance.
5. I acknowledge that I am aware that by taking part in this open water swimming event may expose me to the possible risks of open water



Terms and Conditions

swimming including drowning, shark attack, marine stingers, injury by marine life, injury by freshwater life, being hit by a boat, object, or person, and hypothermia. I acknowledge that I am aware that the extended time that I spend in the water in taking part in the open water swimming event may expose me to the risk of hypothermia. I acknowledge that although all competitors are at risk, swimmers of a lower body mass index (BMI) are at greater risk. By agreeing to take part in the event, I accept that risk.

6. I certify that I am fourteen years of age or older on the day of the event, or compliant with the Swim Rules. If I am younger than eighteen years of age on the day of the event (the Minor) then the Guardian/Parent MUST certify on behalf of the Minor the terms and conditions of this entry form.
7. I hereby waive all and any claims, rights or causes of action which I or they might otherwise have for, or arising out of, loss of life or injury, damages or loss of any description whatsoever which I or anyone involved in the Swim event on my behalf (including any other swimmers in my duo or team (the Swimmers), support crew, the skipper (the Skipper) of my support boat (the Support Boat) and any paddler (the Paddler), support craft or support crew assisting in the Swim on my behalf (collectively My Team) as well as my equipment (including the Support Boat and any equipment of My Team) may suffer or sustain in the course of, or consequent upon, my/My Team's entry, preparation for, or participation in the Swim event.
8. I indemnify the Swim event organiser, Race Director and Officials, volunteers, sponsors and service providers against any claim for damages or injury arising as a result of my conduct, preparation and participation in the event.
9. This waiver, release and discharge shall operate separately in favour of all persons, corporations, organisations and bodies involved or otherwise engaged in promoting, managing, operating or staffing the Swim event and the servants, agents, sponsors, representatives and officers of any of them including officers of the event, and shall so operate to the fullest extent permissible at law whether the damage or cause is due to any act, commission of an act or omission, omission or neglect of any of them.
10. I undertake to ensure that my Support crew, comply with the Marine Legislation and the Swim Event Race Officials. I understand that failure to do so shall result in automatic disqualification and acknowledge that it may also result in prosecution of me and/or My Team.
11. I understand and acknowledge that the only insurance provided for the Swim event is public liability cover. All other insurances are the sole responsibility of myself or guardian/parent for under eighteen swimmers.
12. I acknowledge that I have read the rules, terms and conditions.



Terms and Conditions

13. I agree to follow instructions of Race Officials and on-water safety personnel, I agree to comply with all the Swim Event Rules and conditions.
14. I consent to receive medical aid in the swim, including ambulance transportation, which may be deemed advisable at the discretion of your support crew, or race official in the Swim event of any injury, accident, or illness to me (or a member of My Team) as the result of my/My Team's participation in the Swim event.
15. I acknowledge and accept that the on-water safety personnel have the authority to disqualify me if they believe I am unable to continue in the Swim event for medical reasons. A team may continue if there is not a medical emergency.
16. I hereby agree that in the Swim event in adverse weather conditions, or any other matter which gives rise to a safety concern(s), the Race Director has the right to modify or cancel the Swim and the entry fee shall not be refundable in whole or in part.
17. I acknowledge and accept that the on-water safety personnel have the authority to disqualify me/My Team if they believe I/My Team has breached a fundamental safety rule of the Swim event.
18. I acknowledge and consent to photographs and electronic images being taken of me, before, during, and after the Swim event by an official representative of Another Level Performance or a party appointed by the Director, and agree that such photographs and electronic images are owned by the Another Level Performance. I understand that all participant details including details of Swimmers, Support crew, Skippers, and Support Boats (the Details) will be entered into the Another Level Performance database. I give permission for the free use of my name, voice or pictures in any broadcast, telecast, advertising, promotion or other account of this Swim event, including advertising and promotions for future Swim events.
19. Under the Privacy Act your personal details will not be released to public sector agencies.
20. I understand that as a solo swimmer in the Swim, my entry is not transferable and that no other person is permitted to participate in the Swim event in my place. A written notification must be submitted prior to the race to seek approval, and the new swimmer must meet the race requirements to be allowed to enter.
21. I acknowledge that property damage or bodily injury occurring in connection with my boat and its use is the boat owner/skipper's responsibility. I understand and acknowledge that it is strongly recommended that all boat owners and operators have Boat/Hull Public Liability cover insurance to



Terms and Conditions

protect against claims in this regard. I accept and acknowledge that the Race Director will not take any responsibility or provide insurance for boat owners or boat operators for any claims that arise from the use of the skipper's boat.

22. I declare that all the information supplied by me in the Swim event registration system is true and correct. I acknowledge and accept that the Race Director reserves the right to request information from entrants to validate this information.

23. I acknowledge and agree that by my conduct in participating in the Swim event, I am submitting to the **Terms and Conditions** of Entry. I acknowledge that if I do not agree to the Terms or Conditions of Entry, I will not be permitted to participate in the Swim event.

5. ONLINE ENTRY

By applying online and paying a fee for entry into this event you understand and agree to abide by the terms and conditions, the instructions given by the organiser and race officials. This also includes any entries made for you on your behalf by a Guardian or Parent. By making an entry to the Event you agree to the Liability Release and Assumption of Risk prior to participating in the Event.

6. STANDARD SWIMMING EQUIPMENT

- Minimal equipment is allowed for unassisted swims, including goggles, earplugs.
- One non-neoprene swim cap, non-neoprene swimsuit.
- One swimsuit made of porous, textile material. For males, the suit must be swim briefs or square-cut swim briefs. For females the swimsuit should finish as swim briefs or square-cut swim briefs, must not extend onto the neck, or beyond the shoulder.
- Sunscreen and grease.
- Safety lights for night visibility.
- Simple timekeeping device (chronometer).
- Escort boat, pilot, and crew.
- Nutrition, and equipment (rope or pole or net) to transport it between the boat and swimmer. The swimmer may not be supported or towed by the feed equipment.
- Paddler(s) and support swimmer(s)
- Observer/crewman



Terms and Conditions

7. PRIZES

Prizes are only eligible to participants using standard equipment of marathon swimming. Performance-enhancing equipment is defined as nonstandard equipment that benefits the swimmer's speed, buoyancy, heat retention, or endurance. Swims using such equipment cannot be considered unassisted.

Examples of performance-enhancing equipment include:

1. Equipment that may retain or increase warmth – e.g., wetsuits, neoprene caps, booties, gloves.
2. Equipment that may increase speed – e.g., flippers, paddles.
3. Equipment that may increase buoyancy – e.g., pull buoys, wetsuits.
4. Auditory pacing aids – e.g., music players, metronomes.
5. Wearable electronic devices that transmit information to the swimmer beyond the time of day and elapsed time.
6. Performance-enhancing drugs on the [World Anti-Doping Agency List of Prohibited Substances](#).

8. EVENT QUALIFYING REQUIREMENTS

The Event Qualifying Requirements for participation as a solo swimmer in the Event is:

1. Minimum age 14 years old.
2. As per event rules.
3. Other ocean swims require the participant to be a strong swimmer, capable of completing the distance.
4. Freshwater swims require the participant to be a capable of swimming the event distance.
5. The 10km solo swimmers must have completed a 10km open water swim prior to the event in less than 4 hours.
6. Participants must be supported by a Vessel with Skipper. Participant may also be supported by a Paddler/Board/Jet ski.
7. Participant swimmer is supported by a crewman/observer and must always be observed by one person on the boat or support craft.

9. DISQUALIFICATION RULES

If any safety rules are breached, they may lead to immediate disqualification. You agree that if anyone (including you or your support team) who disobeys any rules,



Terms and Conditions

directions, instructions, decisions, or laws, or whose behaviour endangers safety or negatively affects a person, or property of any type or kind, then the swimmer maybe disqualified.

For ocean swims requiring mandatory boat support. No boat support then immediate disqualification. No marine radio is an immediate disqualification.

Intentional contact with another swimmer involving grabbing, pulling, scratching, hitting and swimming over another swimmer will result in immediate disqualification.

For marathon swims involving a support team:

Any swimmer, or swimmer's approved representative, or escort safety craft, takes advantage by committing any violation of the rules or by making intentional contact with any swimmer, the following proceeding shall apply:

Any craft (kayak, ski, board, jet ski) not within 3m of the swimmer will be disqualified.

Any vessel that is not within a 10m radius of the swimmer while escorting the participant, then the swimmer must return to the boat and will be disqualified. This is a safety issue to ensure quick access to swimmer and paddler as well easier observation from the boat by the skipper and observer.

A disqualified swimmer is no longer deemed to be a participant in the event and must leave the water immediately.

10. VESSELS

1. Participants may have a mandatory requirement to be supported by a Vessel and Skipper.
2. The Skipper is responsible for the participants safety, this includes the swimmer, paddler and crew.
3. That the Vessel used by Your Skipper complies with NSW boating rules, safety and registration.
4. The Skipper holds a current licence required by NSW Law to operate the Vessel in NSW event.
5. The vessel must be licensed to carry the number of passengers in the swimmer's support team and not exceed maritime rules.
6. A Vessel may only support one team (maximum 4) or no more than three Solo Swimmers if each Solo Swimmer is also supported by their own support crew.
7. Multiple swimmers (no more than 3) supported by a vessel must be within 10m of their vessel.
8. Commercial vessels require a certificate of survey as per [amsa](https://www.amsa.gov.au/)



Terms and Conditions

9. For boat support swims, the Vessel must have the participants registration number on a white placard 600mm X 500mm written in black texture visible and affixed to port and starboard side of the Vessel.
10. The Swimmers must always be within 10 metres distance from the vessel while on the Event Course, except at the start of the race and end of the race, check event rules.
11. The Skipper must have a crewman/observer or a participant's crewman to always assist and observe water safety.
12. Boats should not go astern at all. Skippers can use reverse thrust to stop the forward way of their boat, to avoid swimmer, paddler or vessel collision.
13. Any unsafe operation of a vessel by a skipper that compromises safety will result in immediate disqualification and the swimmer and paddler must leave the water.
14. Your swimmer must never be out of sight.
15. Do not reverse back to swimmers or paddlers.
16. When retrieving the swimmer, it is advisable to "shut off" the engine while picking up swimmer and paddler.
17. Your radio must be on at all times.

11. PADDLERS

Some events may have mandatory requirements for participants may to use a paddler to guide them through the course for the swims. Check rules.

1. A paddler can be on either a ski, kayak, or board.
2. Paddlers will be used to assist/supervise minors or swimmers with disability and guide them through the course.
3. Paddlers must be strong swimmers and experienced paddlers.
4. Paddlers must wear a Personal flotation device **PFD**.
5. Paddlers must not interfere or collide with other swimmers
6. Paddlers must be within 3m of their swimmer.
7. Assisted swimmers with paddlers will be the last wave to leave the beach.
8. Paddlers must be aware they may be exposed to accidents and injury and should consider Insurance that covers them for: accident and emergency repatriation and loss or damage to your property during the Event. We shall not be liable for any losses or compensation arising.
9. The Skipper of the vessel is responsible for the paddler's safety. Paddler must obey skipper instruction regarding safety.

12. RELEASE AND DISCHARGE

RELEASE AND DISCHARGE the Indemnified Parties, to the maximum extent permitted by law, from any and all liability for death, disability, personal injury,



Terms and Conditions

property damage, property theft and all other loss, damage or liability whatever and however occurring (whether under tort (including negligence), statute, contract, equity or otherwise) which you or any other person may suffer as a result of or in connection with, directly or indirectly, your participation in the Event and/or Associated Training and you waive all and any rights, claims, actions or suits against the Indemnified Parties which but for the execution of this Acknowledgement Waiver, Release and Indemnity you may have had against the Indemnified Parties or any of them now or in the future INDEMNIFY AND HOLD HARMLESS and will keep indemnified each of the Indemnified Parties whatever or however caused which may be brought against them or any of them which arises in connection with my participation with the Event and/or Associated.

13. REGISTERING MINOR OR PERSON WITH DISABILITY

If You complete the online registration for a Minor or person with disability, You warrant that:

I DO HEREBY ACKNOWLEDGE that of my own free will and desire I voluntarily agree to assume the risk or any injuries, damages or loss, regardless of severity that my minor child/ward may sustain as a result of being a participant in the Event and that I have read and understood the terms and conditions. By enrolling my minor child/ward I authorize event organiser or staff and contractors to obtain such medical assistance as they deem necessary and I agree to meet these expenses. I forever discharge and release all parties from any and all claims for injuries, damages, or loss that my accrue to my minor child/ward arising out of, connected with, or in any way associated with these activities. Minor entry is conditional on them being sufficiently mature to participate, acknowledge and understand and except the risks.

The capacity of minors to contract is governed by the Minors (Property and Contracts) Act 1970. Sections 18 and 19 provide that as long as having sufficient maturity to understand what he/she is doing a minor can be bound by a contract, which is to his/her benefit. As a parent or guardian, it is your responsibility to gauge the minor's level of maturity. Minors must be accompanied by an adult paddler during the event and be held responsible for their safety. However, If the minor is deemed to be mature and an elite swimmer with a proven track record of a 5km ocean swim in less than 120 minutes and the parent or guardian is satisfied with the terms and conditions then the minor may swim without a paddler for the 5km event.

Entries from visually impaired swimmers, disabled swimmers or medically assisted swimmers are welcome, however all such participants must be accompanied by another paying entrant. All such entrants must contact the Organisers prior to entering by email at anotherlevelperformance1@gmail.com and we will be able to advise you on your participation.



Terms and Conditions

14. REGISTRATION CHANGES

Any changes must have the approval of the Race Director, and these changes must be submitted by email for consideration and approval. Credits will be issued for withdrawal with health related issues or medical problems. They can be used to transfer your entry to another year; to be eligible for a credit, you must notify the organiser in advance of the event writing by email.

A refund will not be given.

You agree not to transfer or assign a successful entry to another person or team. There is a process for entry acceptance determined by the Event organiser. **Transfers will NOT be accepted.**

15. PAYMENT

You must pay the Entry Fee in full during the online registration.

Late entry fees will incur an extra fees.

16. REFUND POLICY

You agree that no refund of the Event Fee will be payable and that neither You nor any member of Your Team will have any claim for damages or loss of any kind against any of the Interested Parties.

17. START TIME ALTERATIONS

The Organiser reserves the right to alter the start time of the event. In the event of a change of start time the participants will be notified of the revised start time with as much notice as reasonably practicable. No refund in full or in part shall be made for any change in start time for an event provided the event takes place on the specified date of the event. This will be governed by weather and sea conditions for safety. Contingency dates are given and chosen at the earliest opportunity to run the event.

18. DISTANCE AND COURSE ALTERATIONS

You are aware the organiser reserves the right to reduce the course distance, or increase, change the course, or make any other amendment to the Event that they deem necessary to stage the Event. Any change to the Event will be communicated to you at the event or sooner if practicable.

19. CUT OFF TIMES

You understand that the Organiser may introduce cut off times as they see fit as part of the event rules, being limits on the time taken to complete sections of the event (as initiated by the Event Organiser at its discretion) to ensure the safe and proper running of the event. Subsequently, competitors may be instructed to withdraw from the race in accordance with imposed cut off times. The organiser's decision on this is final.



Terms and Conditions

20. BEHAVIOUR

You must be responsible for the behaviour of yourself and your party. We require that all our participants abide by any event rules or other codes of conduct which may be discussed prior to the swim commencing and any other regulations that we may reasonably have in force in respect of the swim in question and all instructions given by those supervising any swim. We can refuse to accept you as a participant or refuse to continue dealing with you and/or any other member of your team (skipper, observer, crewman, paddler or swimmer) by terminating your place in the swim if behaviour is or is likely to be, in our reasonable opinion or other person in authority, disruptive, upsetting or dangerous to yourself or anyone else. We will not pay any refund, compensation or other sum whatsoever or any costs or expenses incurred by you if we must terminate your place in the swim due to such unacceptable behaviour or any failure to follow regulations or instructions. In this situation we will then have no further responsibility for you or any other member of your party.

21. MEDICAL TREATMENT

You agree that if you are injured or require medical assistance, the Event Organisers may, at your cost, arrange medical treatment and emergency evacuation as deemed necessary by the Event Organisers. You agree that You are responsible for your own medical and ambulance insurance cover. You agree to release, indemnify and hold harmless the Event Organisers, its officers, employees, agents, volunteers, contractors, public bodies and sponsors, from and against any and all claims, demands, right or cause of action, suits, expenses, costs and proceedings of any nature whatsoever which may be made by you or on your behalf or by other parties for or in respect of or arising out of any injury, loss, damage or death caused to you or your property as a result of your entry or participation in the Event whether by negligence, breach of contract or in any way whatsoever. You also agree that in the event you are injured, or your property is damaged, You will bring no claim, legal or otherwise, against the Event Organisers in respect to that injury or damage.

You understand that your medical history and personal information, collected as part of the entry process for the Event will be made available to the event medical team and emergency Services. It will only be used to help staff look after you if you need help and care. If you are evacuated from the event by Emergency Services, this personal information plus any new data entered by event staff will be supplied to the Emergency Services staff to enable your continued care. Your emergency contact details are essential, and this person should be familiar with your medical conditions. It is highly preferable that your medical information is stored on your mobile phone and is in your dry kit with clothes on your support boat.

22. EXCLUSION OF LIABILITY

The Event organisers cannot guarantee your safety. Obvious risks include injury and/or drowning, due to being hit by other persons, objects or boats, cold weather,



Terms and Conditions

entry and exit injuries, medical conditions, marine creatures. Swimmers enter at their own personal risk and are responsible for deciding if their own physical condition allows them to participate.

You agree that on no occasion shall the organiser be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the agreement for any: loss or damage, loss of profit, loss of reputation, loss of business revenue or goodwill, loss of anticipated savings, pledges made on your behalf or by you to charity: or

Consequential or indirect loss, regardless of whether the loss or damage: would arise in the ordinary course of events, is reasonably foreseeable; or is in the contemplation of the parties, or otherwise.

Participants accept that open water swimming is only for persons with a high degree of physical fitness and who have undertaken an appropriate training regime. It is your responsibility to seek appropriate medical advice prior to participation.

Participation in the Event is entirely at your own risk and by entering the Event participants acknowledge that we shall not be liable for death, injury, loss or damage arising from participation in the Event save to the extent that it is caused by our negligence. Nothing in this document excludes the application of the Australian Consumer Law.

While the event organiser takes every care with the staging of the event, the participant acknowledges that personal accident and personal items insurance is his or her sole responsibility.

23. DISCLAIMER AND WARRANTY

You acknowledge that Another Level Performance has not made and will not make any express or implied warranties in relation to the Services or any other goods or services provided by Another Level Performance under this Agreement, other than those warranties contained in this Agreement. Subject to the following, any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.

Subject to your rights arising under the *Competition and Consumer Act 2010* (Cth) or other similar consumer legislation, you agree that Another Level Performance will not be liable in respect of any claim by you (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Services or the provision of any other goods or services under this Agreement and whether as a result of any breach or default by Another Level Performance. The maximum liability of Another Level Performance under this Agreement for any and all breaches of this Agreement, and any negligence in relation to this Agreement, will not exceed the total Payments made by you.



Terms and Conditions

If the *Competition and Consumer Act 2010 (Cth)* (or analogous legislation) apply to this Agreement and permits the limitation of liability for breach of warranty implied by statute, the liability of Another Level Performance is limited, at the option of Another Level Performance to: the supplying of the services again, or the payment of the cost of having the services supplied again.

Any of the terms and conditions of this Agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of Another Level Performance will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by statute.

The above disclaimer and limitation of liability do not exclude any rights, which by law may not be excluded.

24. INDEMNITY

You agree to hold harmless, to indemnify and keep indemnified the indemnified parties against all actions, suits, demands, claims, proceedings, costs, expenses, liabilities and judgments arising out of or in relation to my participation in the Event. This indemnity may be pleaded as a bar to any action, claim, demand, suit or legal proceedings.

25. PRIVACY

You release and grant full and unencumbered rights to the Released Parties the use of my filmed, digitised, videotaped, recorded image including any edited, revised or modified versions thereof, as well as my name, voice and/or likeness, for purposes of promotion, advertising, training materials and trade in any and all media anywhere in the world at any time without limitation.

In accordance with the Privacy Act, none of your personal details will be shared and considered classified. Only in the event of an emergency will this information be shared with emergency services.

26. CANCELLATION OF THE EVENT

We may cancel the Event if circumstances beyond our reasonable control arise, including, without limitation, act of God or inclement weather conditions, water quality and safety. In such circumstances we will endeavour to stage the event to a later date – the earliest alternative date. This decision is based on the report from the Bureau of Meteorology and can be either a long range indicator or day before event report about adverse sea and weather conditions. In the event of cancellation of the Event we will have no responsibility for any costs incurred because of cancellation including any travel or accommodation costs, including your travel to the Event location. You will have the right to take part in the re-staged Event. If you cannot make this date, no other alternative or refund will be offered.



Terms and Conditions

27. AMENDMENT OF TERMS

You acknowledge that the Organiser may amend these Terms at any time, in its sole discretion, but must notify You where an amendment is important and will impact detrimentally on You. You agree that the Organiser can notify You by sending an email to the email address included in the online registration process.

28. SWIM TERMS

A solo swim is a swimmer who has remained in the water unassisted and swam the continuous distance. A DNF means a swimmer who Did Not Finish. The swimmer did not complete the swim. A staged swim: For safety reasons the introduction of a stop and get out of the water and back on to the boat will be permissible ONCE only for safety concern with sharks. In this instance your skipper must hold their position and the GPS coordinates be recorded. The time must be recorded. This information must be relayed to the race director immediately. The swimmer is allowed 15 minutes to get back into the water. If the swimmer does not get back in the water, it will be a DNF. If the swimmer gets back in the water and continues from where they previously exited, then this will be considered a staged swim.

29. FINAL DECISION

All decisions and rulings by the Organiser, its employees and its agents are considered final. Accordingly, you agree to comply with all event rules and all instructions and guidelines given by race crew, stewards, marshals, and safety personnel. You acknowledge and agree that the Organiser will organise and run the event and will have sole authority and be the final arbiter on all decisions relating to the safety, running and organisation of the event, the rules of the event, the timings/finish times and the placings.