

**TriLatino Athlete Waiver & Release**

(For Minors)

The undersigned parent/s or other legal guardian/s (the "Guardian") of \_\_\_\_\_ [print student's name], a minor under the age of eighteen (18) (the "Athlete"), desires to have the Athlete, and the Athlete herself or himself desires to, participate in the activities of TriLatino Triathlon Club, Inc. (the "Club") (such participation being referred to as a "Club Affiliation"). In exchange for the Club allowing any such participation, the Athlete and her or his Guardian have each read and signed this Waiver & Release with the agreement that they will be bound forever by its terms. This Waiver & Release shall be enforceable by the Club forever and need not be signed by the Club to be effective or enforceable by the Club. This Waiver & Release uses certain capitalized words or terms that have the meanings given to them in paragraph 7 and elsewhere in this Waiver & Release. Wherever in this Waiver & Release the term "Athlete" is used, it shall mean the Athlete and her or his Guardian, together and individually, and/or the Guardian on behalf of the minor Athlete as the case may be in the sole construction by the Club. If this Waiver & Release is signed by only one Guardian, then that Guardian represents that only her or his signature is necessary, and that any other Guardian is aware of this Waiver & Release and has agreed that the only signature below is required. This Waiver & Release is a legal document which affect the rights of the Athlete and Guardian.

1. **Club-Athlete Relationship.** The Athlete has entered or desires to enter into an arrangement with the Club for purposes of participating in coached and un-coached fitness- and Multi-Sport Event-related training or other activities and receiving such other Services as the Club may from time to time provide or facilitate. The Club from time to time may (but need not): **(a)** employ or retain as independent contractors one or more Coaches for purposes of providing Coaching Services; **(b)** facilitate training for particular Multi-Sport Events that may but need not be sanctioned by USA Triathlon ("USAT") and which the Club or third-party sponsors, organizers or promoters may facilitate ("Event Promoters"); **(c)** invite Health Care Professionals to give information to Club members and guests on matters specific to Multi Sport Events or fitness training in general or otherwise; or **(d)** provide for other activities related to Multi Sport Events and fitness.

2. **Athlete's Understanding.** The Club's agreement to permit a Club Affiliation to the Athlete is sufficient exchange for the Athlete to agree to the terms of, to sign and to forever abide by this Waiver & Release. The Athlete understands that the Club would not agree to permit any Club Affiliation or to otherwise provide any Service to the Athlete unless the Athlete signed and agreed to the terms of this Waiver & Release, and that the Club is reasonably relying and will reasonably rely on the accuracy of the Athlete's representations in this Waiver & Release and on the Athlete abiding by the terms of this Waiver & Release. The Athlete also understands that USAT, Coaches, Event Promoters, Referred Health Care Professionals, Venues and others may also on occasion have need to rely the terms of this Waiver & Release in exchange for services or consents provided by them and that such reliance is reasonable, and thus the Athlete agrees that they may enforce the terms of this Waiver & Release in any dispute between the Athlete and any of them to the same extent as the Club may so enforce this Waiver & Release. The Athlete has either retained her/his own attorney to understand this Waiver & Release and its legal consequences, or has voluntarily elected not to do so and has assumed all risks (known or unknown and whether foreseeable or unforeseeable to the Athlete and/or the Guardian and/or any other person) of not doing so. The Athlete understands that the Club may use funds to assist or otherwise promote its Causes as the Club in its sole discretion determines. This Waiver & Release shall be enforceable by the Club regardless of whether the Club provides any Services and regardless of whether any Club Affiliation between the Athlete and the Club terminates (for whatever reason).

3. **About the Athlete.** The Athlete represents and promises that the Athlete: **(a)** is at least 18 years of age, **(b)** is not under advice from any Health Care Professional to avoid any activity, circumstance or environment that may be included in or associated with the Services, **(c)** is in good general health and physical condition, and has either consulted with an appropriate Health Care Professional prior to receiving any Service, or has voluntarily chosen not to do so and has assumed all risks of not doing so (known or unknown or foreseeable or unforeseeable to the Athlete), and if the Athlete has consulted with a Health Care Professional then the Athlete has followed and will continue to follow the advice of that professional with regard to the Services or has or shall have voluntarily chosen not to do so, thereby assuming all risks of not doing so (known or unknown or foreseeable or unforeseeable to the Athlete), **(d)** is not taking any medication or nutritional or herbal supplement that would preclude participating in or being exposed to any activity, circumstance or environment included in or associated with any Service and promises that she/he will immediately stop such participation if she/he begins to take any such medicine or supplement, **(e)** shall cease all activities and avoid all circumstances and environments included in or associated with any Service if advised by a Health Care Professional to do so, or as may be required by any medication or nutritional or herbal supplement the Athlete may at any time be taking, or that the exercise of reasonable care would otherwise require, **(f)** is not relying on or following, and shall not rely on or follow, any advice or encouragement (whether actual, implied or inferred) from the Club or any of its personnel (including, but not limited to, any Coach) that may be contrary to any advice of a Health Care Professional, the requirements of a medicine or nutritional or herbal supplement, or the personal desire of the Athlete, **(g)** will take responsibility to obtain, learn and follow all rules applicable to any Multi-Sport Event in which the Athlete participates, including (but not limited to) the *Competitive Rules* adopted by USAT (including, without limitation, the *Medical Control Rules*), as the same may be amended from time to time, and any rules of any Event Promoter, with the understanding that participation in any Club program, event or other Service, and any membership or other involvement in the Club, may be revoked or suspended for violation of any such rule or regulation, and **(h)** shall be solely responsible for the care, maintenance, repair and security of all equipment and other property used by the Athlete in connection with her/his receipt of Services or participation in any Multi-Sport Event or related activity, including (but not limited to) the Athlete's bicycle and related equipment, and heart-rate monitor, GPS and other sports-related technology and related equipment.

4. **Medical Matters.** The Athlete understands that neither the Club nor any Club Personnel is acting in the capacity of a Health Care Professional in connection with providing Services to the Athlete, nor have they held themselves out as such or as qualified to give advice appropriate to any such professional, and have not given any such advice. The Athlete promises that she/he will not follow any such advice (whether actual, implied or inferred) from any of them, but instead shall seek the advice of an independent qualified Health Care Professional. The Athlete represents that if the Club invites a Health Care Professional to provide information to Club members, the Athlete will take reasonable steps (including, but not limited to, consulting with her/his own independent Health Care

Professional) before deciding whether to specifically follow such general information and assumes all risks (known or unknown or foreseeable or unforeseeable to the Athlete) of doing so. The Athlete acknowledges that neither the Club nor any Club Personnel has any duty to provide the Athlete with medical care, but that if any Club Personnel does give medical care to the Athlete under circumstances in which the Athlete is unable to give consent for any reason at the time the care is given ("Emergency Care"), and the person giving such care believes it to be necessary, the Athlete hereby, for herself or himself and all Athlete Representatives: **(a)** consents to that care, **(b)** forever and irrevocably releases such person and all other Releasees from any and all liability arising therefrom or otherwise related thereto, **(c)** forever and irrevocably waives all Claims the Athlete or Athlete Representative may have against such person and any or all other Releasees in connection therewith, and **(d)** agrees forever to indemnify the Releasees for any loss, expense, cost or other liability (including attorneys' fees) any such Releasee may incur in connection with defending any Claim made by the Athlete, Athlete Representative or any other person related thereto. Coaches or other Club Personnel from time to time may (but are not required to) recommend a Health Care Professional or other provider of health-related services to the Athlete ("Referred Health Care Professional"), and it is the Athlete's sole decision whether to consult such professional, and the Athlete assumes all risks (known or unknown or foreseeable or unforeseeable to the Athlete) of that decision and shall forever and irrevocably hold harmless, and waive all Claims she/he may ever have against, the person making such recommendation related thereto.

5. **Athlete Voluntarily Assumes Risks.** The Athlete understands that Multi Sport Event training and racing in particular, and fitness conditioning in general, involve extreme tests of a person's physical and mental limits and involve rigorous physical activity and exertion and necessarily implicate the Inherent Risks. The Athlete understands, from her/his discussions with the Athlete's independent Health Care Professionals, past experience with sports and fitness training and competition, general education and knowledge and personal investigation, and is otherwise aware of, the Inherent Risks and voluntarily assumes them. The Athlete acknowledges having received, read and understood the List of Risks below the Athlete's signature to this Waiver & Release. Inherent Risks may result from many circumstances and causes, which include (but are not limited to): events of nature such as lightning, rain, wind, ice, black ice, snow, sleet, poor visibility, rip tides and currents and extreme temperatures, humidity and dew point; automobile, bicycle and pedestrian traffic; dangerous road conditions; competing in groups where the Athlete may be knocked down, fallen upon, tripped, swum over, run over, kicked, hit or shoved; carelessness or mistake of the Athlete, Club Personnel, and other athletes, coaches or other individuals; faulty, damaged or misused equipment; glass, shells, rocks, loose boards, gopher holes, undulations, cliffs, streams, rivers and other similar natural and artificial surface hazards and terrain features; dogs and other domesticated animals; wild animals (including, but not limited to, jelly fish, sharks, snakes, bears, raccoons, squirrels and other non-domesticated animals); and the Athlete's current or future predispositions to injury or death from Inherent Risks (whether known or unknown or foreseeable or unforeseeable to the Athlete). Athlete agrees that neither the Club nor any Club Personnel has any responsibility at any time to warn the Athlete of any Inherent Risks or any other risks, and that any such warning or any pattern or practice of such warnings over the course of time shall not be deemed an assumption by the Club or Club Personnel of such responsibility.

6. **Waiver, Release and Indemnity.** The Athlete, for herself or himself and all Athlete Representatives, fully and irrevocably holds harmless and releases, and discharges and waives any Claims that the Athlete or any Athlete Representatives may have had, now have, or in the future come to have, against, any Releasee related to Services, Club Affiliation, Referred Health Care Professionals, and any other association and activity involving the same or arising therefrom. The Athlete for herself or himself and all Athlete Representatives irrevocably warrants that she/he shall not sue or bring any other action against any Releasee for any Claim, regardless of the circumstances, or cause or theory, and agrees to reimburse all Releasees and hold them harmless for all losses, expenses, costs or other liability (including any reasonable attorneys' fees) the Releasees may incur in connection with defending any Claim made by the Athlete or Athlete Representative.

7. **Certain Definitions.** The following terms used in this Waiver & Release have the meanings given to them below.

"Athlete Representative" means any of the Athlete's heirs, successors, assigns, administrators, executors, conservators, receivers, attorneys, attorneys-in-fact and any other representatives and agents of any kind or nature.

"Causes" means any and all charitable, philanthropic, cultural or other cause or organization that the Club may from time to time determine to promote or assist, either financially or otherwise.

"Claims" means any and all claims, counterclaims, impleadings, demands, actions, rights, choses in action, lawsuits, arbitrations, mediations, and other proceedings for any remedy for property loss, personal injury, death, or any other loss or liability of any kind or nature, whether based on any legal, equitable or other theory, in any way related to: any acts or omissions of the Club, any Coach or other Club Personnel, USAT, Event Promoter, Referred Health Care Professional, and individual or entity that may manage, own or control any venue in which any Service is provided or other activity occurs; Emergency Care; and the Athlete's participation in or proximity to any activities, environments or circumstances related or associated with the Services, Multi-Sport Events and/or physical fitness training and conditioning generally.

"Club Personnel" means any current, past or future director, trustee, officer, employee, consultant, independent contractor or other representative, agent or volunteer of the Club; any Coach; and any outside accountants, lawyers and other professional advisors whom the Club may from time to time retain for professional services; and any entity or association by or under which any of them may provide services or goods.

"Coach" means (collectively and individually) any and all coaches, personal fitness trainers or other fitness professionals engaged to provide Coaching Services, who may, but need not, have relevant third-party certifications, but who will in any case have such experience or knowledge as may be acceptable to the Club in its sole determination, which determination the Athlete hereby accepts and agrees is reasonable, without reservation.

"Coaching Services" means coaching, training, conditioning and counseling services as the Club may agree with a Coach to have provided to the Athlete, including (but not limited to): developing training plans for general fitness conditioning and Multi-Sport Event-specific training; advice and feedback regarding the use of training plans; strength, flexibility, balance, core, cardio-respiratory, speed and agility training; sports- and training-related nutrition counseling; visualization, goal setting and motivation exercises; and one-on-one personal instruction and in-person training sessions.

**"Health Care Professional"** means any medical doctor, osteopathic doctor, chiropractor, acupuncturist, psychotherapist or other mental health care provider, registered dietician or certified nutritionist, or other licensed or certified professional health care provider.

**"Inherent Risks"** means all risks (known and unknown, and foreseeable and unforeseeable to the Athlete or any other person) inherent in, associated with or otherwise arising out of activities and circumstance related to the Services, Multi-Sport Events and fitness training and conditioning generally, including (but not limited to) those listed on the List of Risks below.

**"Multi-Sport Event"** means triathlon, duathlon, aquathlon, aqua-biking, XTerra, and any other multi-sport event comprising more than one constituent sport, and their respective constituent sports of swimming, biking, running or other included sport or event.

**"Releasees"** means the Club and its Coaches and other Club Personnel; USAT, Event Promoters and Referred Health Care Professionals; any individual or entity that may manage, own or control any venue in which any Service is provided or other Club-related activity occurs; and any corporation, limited liability company, general, limited, or limited liability partnership or other entity as to which any of them has had, now has or may come to have any interest or association; any partner, co-member, co-equity holder, director, officer, manager, employee, consultant, attorney, attorney-in-fact or other representative of any such entity; and any heir, successor, assign, administrator, executor, receiver or other agent, attorney, attorney-in-fact or other representative of any of the foregoing parties.

**"Services"** means any of the services that the Club provides or facilitates, whether directly or indirectly through third-parties, including (but not limited to) Coaching Services and providing information about Multi Sport Events and about the Club's Causes.

8. **Publicity.** The Athlete acknowledges that the Club from time to time may record and publicly use for marketing, publicity, advertising, media relations and other purposes photographic, audio, video or other recordings that may include, alone or together with others, the Athlete in connection with her/his receipt of Services or other participation in any Club activities or Multi-Sport Events. The Athlete hereby irrevocably consents to such use by the Club of such recordings without the need for any consideration to be provided to the Athlete therefor. The Athlete represents and warrants that any such use shall not violate the terms of any other agreement to which the Athlete is party, or to which the use of her/his image or likeness is subject.

9. **Miscellaneous.** This Waiver & Release: **(a)** represents the entire agreement of the Athlete and Club concerning its subject matter and all other prior and contemporaneous agreements or understandings concerning its subject matter (whether written or oral; express, implied or inferred) are merged into this Waiver & Release (except that any previous written waiver and release provided by the Athlete to the Club relating to previous Services provided shall remain fully enforceable by the Club as against the Athlete), **(b)** may not be amended and no condition herein may be waived except by a writing signed by the party to be held thereto, **(c)** does not create an employment or partnership relationship between the Athlete and Club, and shall not create any rights for the Athlete to receive future Services beyond what the Club and Athlete have elsewhere expressly agreed to in writing, **(d)** may be signed in multiple counterparts which together shall form one and the same instrument, and **(e)** shall be interpreted to the broadest extent legally permissible for the benefit of the Club and all Releasees, including (but not limited to) terms related to the Athlete's assumption of risk and her/his release, waiver and indemnity of the Releasees. If any provision of this Waiver & Release is deemed unenforceable, the other provisions will remain effective to the greatest extent permissible. The Athlete agrees to sign and deliver any other documents which may from time to time be requested to evidence or make effective any of the Club's rights under this Waiver & Release. The Athlete agrees that the Club, without notice to the Athlete, may assign (exclusively or collectively with other persons) its rights under this Waiver & Release to any other corporation, limited liability company, general, limited or limited liability partnership, joint venture, or other entity or individual as to which the Club is or may become an owner, partner, co-equity holder or otherwise associated, and any such assignment shall grant to the assignee all of the benefits to which the Club is entitled hereunder without thereby terminating any rights of the Club to enforce this Waiver & Release. The laws of New York State (without giving effect to its conflict of laws provisions) govern this Waiver & Release, and any dispute related to this Waiver & Release, of whatever kind or nature, may only be brought in the state or federal courts located in the County, City and State of New York, and the Athlete waives any right to a trial by jury and claim of inconvenient forum, lack of personal or subject matter jurisdiction or any similar claim, in respect thereof.

10. **Effectiveness.** This Waiver & Release is effective (regardless of the date signed by the Athlete) as of the time the Athlete first receives or began to receive any Coaching Services or other Services (other than in accordance with the Club's junior athlete program which it previously facilitated during 2011 with the Bronx Academy of Letters and the Martin Luther King Junior Health Center, the participation in which is subject to a previously executed waiver which shall not be affected by this Waiver & Release); provided, that if there is deemed to be any applicable conflict between or among any terms of this Waiver & Release and/or any one or more such prior agreements, then the term(s) that most favor(s) the Club, in the Club's sole discretion, shall govern; and if this Agreement and/or any one or more such prior agreements provide(s) rights or protections to the Club that are not provided by another of them, then the rights and protections greatest in scope and most favorable to the Club shall govern to the maximum extent not prohibited by law existing as of the effective date of this Agreement.

Signed: \_\_\_\_\_ (first Guardian) on \_\_\_\_\_ (date)

Signed: \_\_\_\_\_ (second Guardian, if any) on \_\_\_\_\_ (date)

Signed: \_\_\_\_\_ (the Athlete) on \_\_\_\_\_ (date)

***Acknowledged and Received on behalf of the Club:***

By: \_\_\_\_\_

### List of Risks

“Inherent Risks” include (but are not limited to) the following risks, hazards, inconveniences and unpleasanties:

- equipment damage and destruction;
- falls, collisions, missteps, tripping, slipping, choking, drowning or near drowning;
- embarrassment, humiliation, anxiety, depression, exhaustion and sleeplessness;
- dehydration, hyponatremia, upper and lower respiratory infections, immune system issues due to (among other causes) improper recovery and nutritional needs, gastro-intestinal discomfort or pain, diarrhea, constipation, heart attack and other heart-related symptoms, heat stroke, frost bite, blood in urine or other urinary tract issues, high ketone, protein and free radical counts, anemia, fatigue, weight loss, ear infection, dry skin, change in hair color, and adverse reactions to chlorine, pollution and other environmental hazards;
- saddle sores, neck and back pain, general soreness and aches, numbness of limbs related to bicycle and other causes, nipple pain from friction, groin/crotch and chest rashes, lacerations, blisters, bruises, broken bones, sprains, strains, trigger points and muscle adhesions, plantar fasciitis, tendinitis, bursitis and other inflammation and overuse injuries, contusions, concussions, loss of consciousness, blindness and loss of other sensory perception, amputation, brain damage, paralysis, coma and death;
- in men: penile numbness, prostatitis, swollen testicles, and impotence from bicycling; and
- in women: vulvar swelling, yeast infections and changes in menstrual cycles and in breast size.
- in all persons: risk of infection by contagions (including, but not limited to, influenza viruses, corona viruses, and other viruses, bacteria and other infectious diseases) from fellow athletes, coaches, and third parties with whom the Athlete has proximate contact.

This list is not exhaustive, either generally or with respect to gender-specific risks. If the Athlete has any question regarding the Inherent Risks, she/he shall consult an appropriate, independent Health Care Professional before receiving any Services, and if the Athlete does not do so then the Athlete assumes all risks (known or unknown or foreseeable or unforeseeable to the Athlete) of not doing so.

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### **Covid-19 Supplemental Waiver**

This Supplemental Covid-19 Waiver & Release Agreement (this "Waiver") is signed by the undersigned guardian (the "Guardian") of the undersigned minor athlete (the "Athlete") and delivered by them to TriLatino Triathlon Club, Inc. ("TriLatino") for the benefit of TriLatino and any other releasees named in any Antecedent Waiver (defined below). This Waiver supplements and is incorporated into, and does not supersede, each and every effective prior waiver and release, by whatever named called and whether a stand-alone document or a provision in another document (each, an "Antecedent Waiver") given by the Athlete to and for the benefit of TriLatino and/or any and all other Releasees, whether prior or contemporaneous. In the event of any conflict between any provision in this Waiver and any Antecedent Waiver, the provision most favorable to TriLatino and/or any other Releasee (as applicable) shall govern.

Athlete acknowledges she/he is aware of the recent and current novel coronavirus pandemic ("Pandemic") and the associated governmental "stay-at-home" guidance and related health and law enforcement directives from governmental authorities in New York City, New York State, and other cities and states and the United States government ("Health Directives"). Athlete also acknowledges she/he is aware of the recent and current public demonstrations that have taken place in New York City and in other cities locally and throughout the United States, and that such demonstrations have ranged from peaceful protests and civil petitions for redress of governmental grievances, to violent outbreaks that have included arson, looting, physical assaults on people by other people, and death ("Civil Unrest").

Athlete further acknowledges that the State and City of New York and other cities and states and the United States government have each recently announced a loosening of certain Health Directive restrictions in order to return in incremental fashion to personal and commercial activities in the ordinary course.

This loosening of restrictions allows TriLatino to begin expanding its training services for which the Athlete has engaged TriLatino under separate contract. Such services may include in-person and/or remote coaching and training services for triathlon and other endurance sport and related activities.

Athlete further acknowledges that such loosening of restrictions is no guarantee of personal health or safety in matters related either to the Pandemic or Civil Unrest or otherwise. Athlete understands that any decision by TriLatino to expand its services as legally permitted by Health Directives at any time and from time to time does not constitute any guarantee by TriLatino or any other Releasee of personal health or safety in matters related either to the Pandemic or Civil Unrest or otherwise. Furthermore, no services provided to Athlete by TriLatino or any other Releasee constitutes or will constitute an undertaking or assumption by TriLatino or any other Releasee to provide personal health or safety services to or for the benefit of Athlete, whether related to the Pandemic, any Health Directives, Civil Unrest, or otherwise.

TriLatino reserves the right, from time to time and at any time, to impose restrictions on the athlete that exceed those required by any governmental authority in connection with the athlete receiving any TriLatino services. Such restrictions may include additional social distancing, the wearing of masks or other personal protective equipment, and otherwise. Athlete understands that any such restriction will be at the sole expense of the Athlete.

Athlete here by confirms, ratifies, and restates the assumption of all risks associated with the services provided by TriLatino, including but not limited to risks, whether foreseeable or unforeseeable and whether known or unknown to any person, related to the Pandemic, the Health Directives, Civil Unrest, and otherwise. Athlete hereby acknowledges that the determination by TriLatino to provide services to Athlete is not a representation or warranty that the risks from these or any other factors do not or will not exist or that they are or will be diminished in any respect.

Athlete hereby represents and warrants that she/he is and will abide by all Health Directives and similar requirements of TriLatino, and all other reasonable measures for her/his own health and safety and that of those around her/him in association with the receipt of TriLatino's services.

Any change in the Health Directives or in any other external circumstance related to the Pandemic, Civil Unrest, or otherwise, may result in TriLatino altering the nature and scope of services provided.

Athlete must execute, deliver, and abide by the terms in this Waiver in order to continue receiving services from TriLatino. The only remedy available to Athlete in the event Athlete does not agree with the terms provided herein for the continuation of the receipt of services from TriLatino is to refrain from receiving the Services any further. Delivery of this executed Waiver constitutes Athlete's acknowledgment of her/his determination to proceed with receipt of services, notwithstanding the associated risks, whether foreseeable or unforeseeable and whether known or unknown to any person. This Supplemental Covid-19 Waiver & Release Agreement may be executed by hand or electronically, as determined by TriLatino, and in either case will be fully enforceable as against the Athlete and in favor of the Club and any other person entitled to enforce this Waiver & Release as against the Athlete.

EACH OF THE UNDERSIGNED HAS READ THE FOREGOING; HAS UNDERSTOOD IT; AND HAS EITHER RETAINED INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH EXECUTING AND DELIVERING THIS WAIVER TO TRILATINO, OR HAS CHOSEN NOT TO AND ASSUMED ALL RISKS THEREOF (KNOWN AND UNKNOWN, AND FORESEEABLE AND UNFORESEEABLE, TO ANY PERSON) OF NOT DOING SO.

[The signatures to this Supplemental Covid-19 Waiver are set forth on the following page.]

In witness whereof, the undersigned Guardian and Athlete each hereby signs this Waiver, agreeing to be, and thereby becoming, forever legally bound to its provisions.

Signed: \_\_\_\_\_ (first Guardian) on \_\_\_\_\_ (date)

Signed: \_\_\_\_\_ (second Guardian, if any) on \_\_\_\_\_ (date)

Signed: \_\_\_\_\_ (the Athlete) on \_\_\_\_\_ (date)