**RELEASE OF LIABILITY AND ASSUMPTION OF RISK**

The individual named below (referred to as “**I**” or “**me**”) desires to engage in [ACTIVITY] (the “**Activity**”) managed by [DMC’s NAME] (the “**DMC**”). In consideration of being permitted by the DMC to engage in the Activity and in recognition of the DMC’s reliance hereon, I agree to the terms and conditions set forth in this agreement (this “**Release**”).

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| **Drafting Note: Parties and Consideration**  This release is drafted to be executed:   1. By an individual person engaging in a specified activity. 2. For the benefit of the DMC. 3. To enable the attendee to engage in the specified activity.   A release of this type generally is not executed by the DMC because it imposes obligations and liability only on the individual attendee. However, before using this document, the DMC should confirm that the contract laws of the relevant state or states do not require both parties to execute the agreement.  The DMC should specify the activity to be conducted with a reasonable level of detail, which may include, for example, participation in meetings, dine-arounds, transportation, or certain activities.  Specifying the activities the attendees intend to engage in provides evidence to help support the validity of the assumption of risk provision. |

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1.  I am aware of the contagious nature of bacterial and viral diseases, including the 2019 novel coronavirus disease (i.e., COVID-19) (the “**Disease**”), and the risk that I may be exposed to or contract the Disease by engaging in the Activity. I understand and acknowledge that such exposure or infection may result in serious illness, personal injury, permanent disability, death, or property damage. I acknowledge that this risk may result from or be compounded by the actions, omissions, or negligence of others, including DMC employees, vendors, or staff. I understand that while the DMC has implemented preventative measures designed to reduce the spread of the Disease, the DMC cannot guarantee that I will not become infected with the Disease while engaging in the Activity and that engaging in the Activity may increase my risk of contracting the Disease. NOTWITHSTANDING THE RISKS ASSOCIATED WITH THE DISEASE, I ACKNOWLEDGE THAT I AM VOLUNTARILY ENGAGING IN THE ACTIVITY WITH KNOWLEDGE OF THE DANGER INVOLVED. I HEREBY AGREE TO ACCEPT AND ASSUME ALL RISKS OF PERSONAL INJURY, ILLNESS, DISABILITY, DEATH, OR PROPERTY DAMAGE RELATED TO THE DISEASE, ARISING FROM MY ENGAGING IN THE ACTIVITY, WHETHER CAUSED BY THE ORDINARY NEGLIGENCE OF THE DMC OR OTHERWISE.

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| **Drafting Note: Assumption of Risk**  The DMC includes this provision to provide evidence that the attendee:   1. Understood (i) the contagious nature of the specified infectious disease, and (ii) the risk of becoming infected by this disease when engaging in the activity. 2. Was aware that exposure to this disease could lead to property damage, serious illness, personal injury, permanent disability, or even death. 3. Voluntarily engaged in the activity despite understanding this risk.   These statements demonstrate that the attendee was aware of the risks related to the disease associated with engaging in the activity and agreed to assume these specific risks, which increases the likelihood the release will be enforced. Even if a court does not enforce the release of liability, a court may point to the attendee’s acknowledgment to mitigate the DMC’s liability in a personal injury lawsuit.  Courts generally require waivers to be clear and unambiguous to be enforceable. Without a specific reference to the risk of infection by the particular disease (or infectious diseases in general), it is unclear if a general waiver would protect any business from liability in an exposure lawsuit. Therefore, this release requires the attendee to specifically acknowledge the hazards and risks associated with the infectious disease.  DMCs may increase the likelihood of enforcement if the acknowledgments and assumption of risk are presented in large-face typeface, for example, in all capital letters, bold, or other typeface used to distinguish the provision from the other provisions of the agreement.    **Preventative Measures**    The DMC may want to include the optional language in the fourth sentence to reassure its attendees that it is taking measures to reduce the spread of the infectious disease. However, the DMC should be aware that including this language may make it more likely that:   1. An attendee in an exposure lawsuit may challenge the waiver’s enforceability on the ground that the DMC failed to take proper measures to reduce the spread of the infectious disease despite the language in the release indicating that it had done so. 2. The DMC may be required to demonstrate the measures it took to diminish the spread of the infectious disease at its premises in an exposure lawsuit.   In addition, in most states, release of liability for gross negligence is contrary to public policy and unenforceable. It is possible that a failure to adhere to infectious disease-related precautions under government orders and guidelines applicable to the relevant industry could be considered gross negligence not subject to release or waiver under applicable state law.  In most states, it is also against public policy for a party to attempt contractual exemption from responsibility for violation of the law. A business that does not comply with mandatory legal safety requirements may also find that related liability cannot be released or waived.  Therefore, whether or not the DMC includes the optional language, the DMC should ensure it:   1. Implements preventative measures to reduce the spread of the infectious disease in accordance with governmental orders and guidelines for its industry. 2. Maintains records of these preventative measures.   These steps not only increase the likelihood of effective release from liability but may also help to protect the DMC from any government fines or penalties arising from violation of any mandatory safety rules, regulations, or orders. |

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2.  I hereby expressly waive and release any and all claims, now known or hereafter known, against the DMC, and its officers, directors, managers, employees, vendors, contractors, agents, affiliates, shareholders, members, successors, and assigns (collectively, “**Releasees**”), on account of injury, illness, disability, death, or property damage arising out of or attributable to my engaging in the Activity and being exposed to or contracting the Disease, whether arising out of the ordinary negligence of the DMC or any Releasees or otherwise. I covenant not to make or bring any such claim against the DMC or any other Releasee, and forever release and discharge the DMC and all other Releasees from liability under such claims.

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| **Drafting Note: Release**  [Section 2](#co_anchor_a590494_1) contains a release of claims arising out of the attendee engaging in the activity and being exposed to or contracting the disease, including those arising from the DMC’s ordinary negligence. Absent a statute or public policy concern, exculpatory clauses that release a party from or limit its liability for its own ordinary negligence are generally enforceable under the laws of most states. In contrast, liability for gross negligence or willful misconduct cannot be released in most states.  However, the provision should expressly:   1. Require the attendee to “release” the DMC from liability. 2. Exculpate the DMC from liability arising from its “ordinary negligence.”   Even if the provision contains express language releasing the DMC from its negligence, public policy concerns in a particular state may arise and render an exculpatory clause unenforceable if, for example:   1. The agreement concerns a public, recreational activity, or other matters of interest to the public. 2. The agreement is a standardized contract of adhesion offered to the plaintiff on a “take it or leave it” basis. 3. Because of the agreement, the plaintiff was under the care and control of the party released from liability.   Therefore, counsel for the DMC should research applicable state law, including statutes, decrees, or case law, to determine whether public policy concerns threaten the enforceability of an exculpatory provision, which may depend on the type of activity the attendee engages in.    **Public Health Emergencies**    While the legal principles related to liability waivers in general should apply to determine whether an infectious disease waiver is enforceable, counsel should research applicable state law on the enforceability of waivers in the context of infectious disease exposure lawsuits or other lawsuits related to public health emergencies. For example, if the waiver relates to COVID-19, counsel should research whether there are any cases or statutes regarding the enforceability of waivers relieving the owner of a commercial establishment or business of liability for exposure to COVID-19.  The DMC should be mindful that in the context of COVID-19 or other public health emergency:   1. The law, including statutory law, regarding the enforceability of release from liability for ordinary negligence related to the health emergency may evolve rapidly. 2. Given the public impact of the health emergency, courts may consider that a public policy concern exists even for settings where a release from liability for ordinary negligence has generally been enforceable.   Therefore, counsel for the DMC should be careful to:   1. Monitor applicable law for any changes regarding release from liability for ordinary negligence related to the public health emergency. 2. Ensure that the DMC fully understands its: 3. risks; and 4. responsibilities under health emergency orders, mandatory safety requirements, and guidelines for the relevant industry.   The DMC should also be aware that some states are limiting liability for COVID-19 exposure lawsuits legislatively (e.g., Iowa, North Carolina, Oklahoma, Utah, and Wyoming passed COVID-19 exposure protection legislation). Counsel for the DMC should research if its state has passed any similar legislation that applies to the DMC based on its circumstances. Even if there is applicable state law limiting potential COVID-19 liability, it may still be in the DMC’s best interests to have signed releases of liability in place as well. Depending on the effect of the relevant state law, counsel may consider that adjustments to the language of this release are needed to:   1. Afford the most effective and comprehensive protection for the DMC. 2. Obtain the releasing party’s acknowledgement of the existence and effect of the state law.   **Covenant Not to Sue**    In addition to the release, this section contains a covenant not to sue, which requires the attendee to promise not to bring a claim against the DMC or any other releasee. The covenant not to sue works to protect the DMC in case the release is not effective. The provision also provides a release from any liability the DMC or any releasee may incur under those claims if the attendee breaches the covenant not to sue.    **Ordinary Negligence Versus Gross Negligence**    This release aims to limit the release to the DMC’s ordinary negligence. A party acts with ordinary negligence when it fails to exercise the degree of care that a reasonably prudent person would have used under similar circumstances.  However, because most states do not enforce waivers of liability for gross negligence or willful misconduct, this release does not purport to protect the DMC from liability arising from its:   1. Gross negligence, which generally involves a higher level of misconduct than ordinary negligence, for example: 2. an extreme departure from the ordinary standard of care; or 3. reckless conduct. 4. Willful misconduct, which generally involves the DMC’s: 5. intent to cause harm; or 6. conscious indifference to the consequences of its acts or omissions. |

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3.  I will comply with all such orders, directives, and guidelines while engaging in the Activity, including, without limitation, requirements related to hand sanitation, social distancing, and use of face coverings. I will also follow all instructions of the DMC while engaging in the Activity. I agree not to engage in the Activity if I am experiencing symptoms of the Disease (such as cough, shortness of breath, or fever), have a confirmed or suspected case of the Disease, or have come in contact in the last 14 days with a person who has been confirmed or suspected of having the Disease.

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| **Drafting Note: Covenants**  [Section 3](#co_anchor_a747471_1) contains an optional provision requiring the attendee to agree:   1. To comply with applicable laws and orders, as well as CDC guidelines (if applicable), related to the infectious disease. 2. Not to engage in the activity if the attendee is infected with the disease, exhibiting symptoms, or been in recent contact with someone who has or is suspected of having the disease. The contact period should be equal to or greater than the disease’s incubation period. In the case of COVID-19, the CDC has determined the incubation period to be between 2 to 14 days.   By including these covenants in this agreement, the DMC imposes a contractual obligation that helps to ensure the attendee complies with these conditions. It also can enable the DMC to obtain remedies for any breach, including damages for breach of contract.  However, it may be difficult for a DMC to successfully bring a claim for breach of these covenants for a variety of reasons, including that the DMC may be unable to prove the attendee infected others with the infectious disease while engaging in the activity. Nevertheless, including these covenants can:   1. Reinforce to the attendee the importance of following applicable laws and guidelines and refraining from engaging in the activity if the attendee: 2. is infected, symptomatic; or 3. has been in recent contact with someone that is, or is suspected of being, infected. |

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4.  This Release constitutes the sole and entire agreement of the DMC and me with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. If any term or provision of this Release is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Release or invalidate or render unenforceable such term or provision in any other jurisdiction. This Release is binding on and shall inure to the benefit of the DMC and me and our respective successors and assigns. All matters arising out of or relating to this Release shall be governed by and construed in accordance with the internal laws of the State of [RELEVANT STATE] without giving effect to any choice or conflict of law provision or rule (whether of the State of [RELEVANT STATE] or any other jurisdiction). Any claim or cause of action arising under this Release may be brought only in the federal and state courts located in [RELEVANT COUNTY], [RELEVANT STATE] and I hereby consent to the exclusive jurisdiction of such courts.

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| **Drafting Note: Boilerplate**  This release addresses only a few important [boilerplate](http://www.westlaw.com/Document/I03f4d931eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) issues, including:   1. Integration. 2. Severability. 3. Successors and assigns. 4. Choice of law and forum.   This provision notifies the attendee:   1. That there are no other documents or oral agreements, representations, or warranties that cover the issue of the DMC’s liability. 2. That the potential unenforceability of any part of the agreement does not impact the enforceability of any other part of the agreement. 3. That the agreement is binding on and inures to the benefit of the successors and assigns of the DMC and the attendee. 4. Of the law that governs this agreement. 5. Of the forum where any disputes arising from this agreement must be adjudicated. |

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**BY SIGNING, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS RELEASE AND THAT I AM VOLUNTARILY GIVING UP SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE THE DMC.**

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| **Drafting Note: Acknowledgment**  The purpose of this acknowledgment is to limit the attendee’s ability to successfully argue that:   1. The attendee did not: 2. have a reasonable opportunity to review the provisions; or 3. understand what the attendee was signing. 4. The DMC otherwise had an unfair advantage against an unsophisticated attendee signing the agreement in the attendee’s personal capacity.   Generally, a party who signs a document is bound by its provisions and barred from asserting that they are contrary to the party’s intentions when the party is capable of reading and understanding the document. However, while a written release may otherwise be effective in relieving the released party from liability, in general, the release may be invalidated if it is obtained by fraud, misrepresentation, duress, or undue influence.  Therefore, the presence of an acknowledgment in a written release is not a guarantee that the releasing party cannot contest the validity of the release based on the circumstances of its execution. The DMC should be mindful of these circumstances as well as the content of the document. |

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Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If applicable: I am the parent or legal guardian of the minor named above. I have the legal right to consent and, by signing below, I hereby do consent to the terms and conditions of this Release of Liability.

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| **Drafting Note: Signatures of Parent or Legal Guardian and Witness**  Because contracts with minors may be void or voidable under state law, the DMC should require a minor’s parent or legal guardian to also sign the waiver and release on the minor’s behalf. This optional statement and related signature blocks can be included, if necessary, to obtain the signatures of an attendee’s parent or legal guardian.  Counsel for the DMC, however, should research the enforceability of parental waivers, which varies from state to state and may vary from one setting to another. The age of majority also varies from state to state (age 18 is the most common).  To further increase the likelihood that the waiver and release is enforceable and depending on the law and practice in the relevant state or states, the DMC may require the attendee’s (and a minor’s parent’s or legal guardian’s) signature to be formally witnessed. An additional signature line for the witness may be added, accordingly. |