

New England Sailing Center

Participant Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement

In consideration of being allowed to charter or higher for training a yacht or sailing vessel from New England Sailing Center, its agents, owners, officers, skippers, crewmen, helmsmen, volunteers, participants, parent, sister or subsidiary corporations, employees, sales agents, booking agents, boat owners, sponsors, subcontractors and all other persons or entities acting in any capacity on their behalf (hereinafter collectively NESC.), I hereby agree to release and discharge NESC. on behalf of myself, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Inherent Risks** I acknowledge that the activity of sailing or yacht chartering entails known and unanticipated risks that could result in physical or emotional injury, disability, death, or damage to myself, to property, or to third parties. I understand and acknowledge that the enjoyment and excitement of adventure activities and particularly ocean and water related activities is derived in part from inherent risks incurred by activity beyond the accepted safety of life at home or in my normal day to day activities and that these inherent risks contribute to my enjoyment and excitement and are an integral reason for my participation. I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. I also understand and acknowledge that failing to use or properly use safety type equipment increases my risk of injury or of not surviving an accident or incident while sailing or chartering a yacht.

The inherent risks associated with the sailing or yacht charter in which I am about to voluntarily participate include, but are not limited to: people falling overboard, grounding the vessel, equipment failures, expected and unexpected wind conditions, accidental jibes, changing or unpredictable water flows, encountering submerged obstructions and/or water traffic. In addition - the inherent risks include: the boat or my body encountering tidal forces or currents, wave action or wakes; collisions with other participants, watercraft and/or other manmade objects such as docks, bridge abutments, etc; collisions with natural objects such as rocks, reefs, beaches, marinas or docks, etc.; wind shear (changes in wind speed or direction); the boat, myself or the masts or sails being struck by lightning; the boat or myself capsizing or sinking; exposure to weather and/or marine or sea elements; injury and/or drowning; exposure to wild or dangerous or toxic marine life; equipment failure and/or defects; operator (which includes myself, the Boat Captain or anyone else participating in the activity) error; mental distress from exposure to any of the risks of the activity; and any and all other risks associated with sailing or the instruction of the yacht charter whether listed or not. I also acknowledge that while in the water I may become disoriented, panicked and/or experience trauma from rocks, reefs, etc; I can slip or fall during hiking or getting to and from the boat or yacht and I understand that the areas in which I might hike/walk sometimes hide dangerous obstacles such as marine life, docks, hot sand, sticks, etc.; accidents can occur getting on and off the boat; changing weather conditions, storms or even lightening are possible; exposure to the natural elements can be uncomfortable and/or harmful and I am aware that this exposure could cause sunburn, dehydration, heat exhaustion, heat stroke, heat cramps or fatigue, some or all of which may diminish my or the other participants' ability to react or respond; I understand that prolonged exposure to cold water can result in "cold water immersion" syndrome or "cold shock," hypothermia and in extreme cases death; communication in the marine environments in which this activity occurs is always difficult and in the event of an accident, rescue and medical treatment may not be immediately available. **I acknowledge that I AM ULTIMATELY RESPONSIBLE for my own safety during my participation in NESC. events/activities.**

Furthermore NESC. **Skippers/crewman and helmsman (where applicable) have difficult jobs to perform.** They seek safety, but they are not infallible. They might be ignorant of a charter participant's fitness or abilities. They might misjudge the weather, the elements, or the terrain. They may give inadequate warnings or instructions and/or I as the participant may fail to understand the safety directions due to language issues. I specifically acknowledge that decisions made by skippers/crewman and helmsman and participants are often made in remote/dangerous settings and are made based on often imprecise, momentary and subjective perceptions so that decisions are subject to errors in judgment that cannot and should not be associated with fault at a later point in time.

2. **Express Assumption of Risk** As lawful consideration for being allowed to participate in the charter activities offered by NESC., I expressly agree and promise on behalf of myself and any of the children for which I am responsible, to accept and assume all the risks existing in this activity. My/our participation in this activity is purely voluntary, and I/we elect to participate in spite of the risks. I/we expressly agree and acknowledge that the terms and conditions of this Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement are contractual in nature and that I/we are signing it of our own free will.
3. **Release and Waiver of Rights Including for Claims of NEGLIGENCE** On behalf of myself and any of the children for which I am responsible I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless NESC. from any and all claims, demands, or causes of action, which are in any way connected with my participation in this activity or my/our use of NESC.'s boats, equipment or facilities, including any such Claims which allege negligent acts or omissions of NESC. to full extent of the law.
4. **Indemnity** Should NESC. or anyone acting on their behalf, be required to incur attorney=s fees and costs to enforce this agreement, I agree on behalf of myself and any of the children for which I am responsible to indemnify and hold them harmless (in other words, I agree to pay for...) **all** such defense fees and costs.
5. **Personal Skill & Insurance** I certify on behalf of myself and any of the children for which I am responsible that I/we have sufficient skill and fitness to participate in the charter activities offered by NESC. I further certify that I/we have no medical, mental or physical conditions which could interfere with my/our safety or ability to participate in these activities, or else I/we are willing to assume and bear the cost of all risks that may be created, directly or indirectly, by any such condition. I/we further certify that I/we have adequate insurance to cover any injury, damage or emergency transportation or search and rescue costs I/we may cause or suffer while participating, or else agree to bear the costs of such injury, damage or emergency transportation costs ourselves. I/we also agree to bear the costs of any damage or groundings we may cause to the vessel being chartered.
6. **Medical Issues** I agree on behalf of myself and any of the children for which I am responsible that, I/we acknowledge and recognize that, in the event that a Skipper/crewman or helmsman deems it necessary to administer emergency first aid or CPR or to remove

me/us from its activities/charter or to seek emergency medical care for me/us that, by signing this document, I/we are giving NESC. permission to: administer emergency first aid or CPR, secure emergency transport or medical care and/or disclose any medical information it may have about me/us to any health care provider which may become involved in my/our care, treatment or removal from the activity/charter. By signing this document I/we are waiving any right to object to or bring any type of action or claim against NESC. for its administration of emergency first aid or CPR or for securing emergency transport or medical care and/or for the disclosure of personal medical information it may have about me/us to any health related person who becomes involved in my/our care or removal from NESC. activities or the activity. I/we also recognize and acknowledge that, in the event of a bareboat charter, that no emergency medical assistance will be available to me from NESC.

7. **Photographic Assignment** I understand that NESC. reserves the right to take photographic or film (of whatsoever nature) records of any or all of its activities or charters and on behalf of myself and any of the children for which I am responsible I/we hereby agree that NESC. may use such records for promotional and/or commercial purposes without any remuneration to me. I/we hereby assign all right, title and interest I/we may have in or to any and all media in which my name or likeness might be used by NESC.
8. **Release as Contract and Personal Capacity** On behalf of myself and any of the children for which I am responsible I expressly agree and acknowledge that the terms and conditions of this Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement are contractual in nature and that I/we are signing it of my/our own free will. I/we expressly acknowledge that I/we are not under the influence of drugs or alcohol at the time of my/our signing of this document and that there are no other impediments or reasons why I/we would lack the capacity to enter into this contract with NESC.
9. **Forum Selection, Severability, Breach of Contract/Warranty Waiver, Etc.** In the event I/we file a lawsuit against NESC., I/we agree to do so solely in the State of Rhode Island., and I/we further agree that the substantive law of that state shall apply in that action without regard to the conflict of law rules of that state and I/we hereby irrevocably waive any other jurisdiction or venue to which I or my estate might otherwise have been entitled. I/we agree to submit to the jurisdiction of the Rhode Island courts. I/we agree that if any portion of this agreement/contract is found to be void or unenforceable, the remaining portion shall remain in full force and effect; this document is intended to be interpreted as broadly as possible. A copy of this release contract can be used as if it were the original. I/we understand that this document constitutes the entire Agreement/Contract between ourselves and NESC. that it cannot be modified or changed in any way by representations or statements of any nature (be they vocal, advertising, etc.) outside of this document; in other words, I/we are also waiving any claims I/we might have for breach of contract or warranty for statements or representations made outside of this release contract.

By signing this document, I acknowledge for myself and any of the children for which I am responsible that if anyone is hurt or property is damaged during my participation in this activity, I/we may be found by a court of law to have waived my/our right to maintain a lawsuit against NESC. on the basis of any claim from which I/we have released them herein.

**I/WE HAVE HAD SUFFICIENT OPPORTUNITY TO READ THIS ENTIRE DOCUMENT (TWO PAGES).
I/WE HAVE READ AND UNDERSTOOD IT, AND I/WE AGREE TO BE BOUND BY ITS TERMS.**

Participant Signature: _____ Printed Name: _____

Address: _____

E-mail _____

City: _____ State: _____ Postal Code: _____ Country: _____

Age: _____ Phone #: _____ Date: _____

Parents or Guardians Additional Indemnification and Signature (Must be completed for participants under 18 years of age)

I/we represent that I/we have complete and absolute authority to bind, contract for and legally act on behalf of the minor child listed below; I/we believe and represent that I/we have the legal authority to make the waivers and releases contained herein. I/we understand and acknowledge that NESC. relies to its detriment on this representation. In consideration of my child or ward (Minor) being permitted by NESC. to participate in its programs or activities, I further agree to indemnify (in other words, I agree to pay for...) and hold harmless NESC. from any/all claims which are brought by, or on behalf of Minor, and which are in any way connected with Minor's use or participation.

Parent Signature: _____ Printed Name: _____ Date: _____

Address: _____ City: _____ Phone: _____

State: _____ Country: _____ Postal Code: _____

Email address: _____

© NESC. 2019

**KEEP ALL SIGNED RELEASES ON FILE FOR THREE YEARS OF THE DATE SIGNED.
THIS IS REQUIRED BY INSURANCE.**