



# Aquatic Consulting Services

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## Boating Tip #55: Sailing Participation Agreement

Participation agreements are not waivers, but are assumption of risk documents that might be helpful if litigation ensues after an activity related incident. Having participants sign participation agreements prior to taking part in a sailing activity may reduce your exposure to loss. You may be able to show that the participant had a knowledge and understanding of the risks, and an appreciation for the risks involved in participation.

Participation agreements explain the nature of the activity, expected participant behavior, the risks involved in the activity, the condition of the participant, include a concluding statement, and require that the participant acknowledge and sign the document.

In the nature of the activity, the activity is described in detail. Specific skills required for safe participation are listed. The intensity of the activity and physical stress involved is explained.

When describing the expected participant behavior, list important or unusual rules which contribute to safe participation.

When explaining the risks involved in the activity list types of accident which might occur, including minor, major, and catastrophic life-threatening injuries that might result. List common accidents and injuries, but don't try to be all inclusive. Use phrases such as "...including but not limited to".

List the pre-requisite participant physical condition and any pre-requisite skill competencies the participant must possess. Require that participants disclose conditions which might prevent or be relevant to safe participation.

Prior to signing and dating the agreement, Conclude with a statement that the participant affirms knowledge, understanding and appreciation of the risks of participation, and that participation is voluntary.

Read and explain the agreement to participants. Allow time for discussion and for questions and answers. Require that participants sign and return the agreement to you, and keep the agreement for at least 3 years.

# Sample Sailing Participation Agreement

## Nature and Description of the Activity

- This boating activity will take place upon the waters of \_\_\_\_\_ within \_\_\_\_\_ miles of shore.
- We will be sailing a \_\_\_\_\_ (year) \_\_\_\_\_ (brand) \_\_\_\_\_ (model) \_\_\_\_\_ (type of rig) named “\_\_\_\_\_” (name of boat). The sailboat has a \_\_\_\_\_ (type) keel and draws \_\_\_\_\_ feet of water, \_\_\_\_\_ (type) transom, \_\_\_\_\_ (number) spreaders, mainsail on a \_\_\_\_\_ foot tall mast, a roller furling \_\_\_\_\_% genoa, and cruising spinnaker, totaling \_\_\_\_\_ square feet of sail area, \_\_\_\_\_ anchors and windlass, saltwater washdown, wide \_\_\_\_\_ foot beam, and a \_\_\_\_\_ hp \_\_\_\_\_ (brand) diesel engine. All lines run aft to the cockpit. Tanks hold \_\_\_\_\_ gallons of fuel and \_\_\_\_\_ gallons of water. The boat has fiberglass and teak decks, and anodized aluminum, and stainless steel hardware. Belowdecks there are \_\_\_\_\_ staterooms with room for \_\_\_\_\_ people to sleep comfortably, \_\_\_\_\_ heads, sinks and showers; galley with \_\_\_\_\_ (refrigerator, small freezer, ice maker, propane oven and stove, microwave, storage and sink), saloon with seating for \_\_\_\_\_, navigation station, \_\_\_\_\_ (fans, heaters, AC), entertainment system, including \_\_\_\_\_ (iPod, radio, stereo / CD player, cabin and cockpit speakers, flat screen TV and DVD); \_\_\_\_\_ (brand and number) hatches and portholes, and \_\_\_\_\_ lighting. There’s electrical panels, gauges, \_\_\_\_\_ (batteries, inverter, generator), and navigation instruments, including \_\_\_\_\_ (VHF, RADAR, GPS and chartplotters, depthsounder, knotmeter, water thermometer, wind instruments, and autopilot).
- The services of \_\_\_\_\_ (private towing company) have been procured for assistance with towing or other on-the-water emergencies, if necessary.
- A brief overview of the boat and a safety orientation will be conducted prior to departure in which you will be required to participate.
- We will leave from \_\_\_\_\_ (marina) at \_\_\_\_\_ (address) in \_\_\_\_\_ (body of water), and spend approximately \_\_\_\_\_ hours / days on the water, sailing, motoring and/or motor sailing.
- You may join in and actively participate in sailing the boat, by helping to raise sails, handle lines, plot courses, and take a turn at the helm.
- Snacks, bottled water and soft drinks will be provided.

## Risks Involved in the Activity

We do not want to heighten your fears or reduce your enthusiasm for the experience, but we do want you to know in advance what to expect and to be informed of the

various risks. This is not a complete list of the risks you may encounter. It is your responsibility to get additional information about the risks you are about to undertake.

- I acknowledge that ocean sailing entails known and unanticipated risks which could result in minor or catastrophic physical or emotional injury, paralysis, death, damage to personal property, or injury to third parties.
- I understand that such risks cannot be completely eliminated without jeopardizing the essential nature and qualities of the activity.
- Risks of participation include, but are not limited to: exposure to adverse weather conditions, being ejected, thrown or washed overboard or falling into the water; injuries from climbing on or off the boat, hypothermia, sunburn, heat exhaustion or heat stroke, seasickness, slip-and-fall, being cut or impaled by sharp objects, bruises, head trauma, sprains, strains, broken bones, dislocations, encounters with dangerous marine life, sinking of the boat, and death by drowning.
- The captain and crew may be ignorant of your fitness level or abilities. They might misjudge the weather or elements. They might give inadequate warnings or instruction. Equipment may break or malfunction.
- I understand that there is a chance of injury resulting from the negligence and carelessness on the part of the captain and crew, and fellow sailors.

### **Condition of the Participant**

- You must be in moderate physical condition, have good balance, be able to move about a sailboat while underway, and be able to climb on and off a boat unassisted.
- You may participate in the activity if you are a novice or inexperienced sailor, but may be given instruction and asked to participate in necessary activities to assure your safety, the safety of the crew and passengers, and the safety of the vessel.
- You must have intermediate level swimming ability, be able to tread water in the open ocean for a period of not less than 20 minutes, or at all times while topside, wear a USCG approved PFD.

### **Expected Participant Behavior**

- As required by \_\_\_\_\_ (state) law, all children under \_\_\_\_\_ years of age, while topside, must wear a properly sized and fastened PFD.
- In inclement weather conditions, at night, or at any time when directed by the Captain to do so, you must don a PFD, harness and tether, or other safety gear.
- I understand that that use of illegal drugs or excessive consumption of alcohol may endanger myself or other participants. I agree not to use any illegal drugs or excessive alcohol while undertaking this activity.
- I understand that this is a non-smoking trip. As such, the consumption of any tobacco product will not be permitted while on-board the vessel.
- While we strive to operate the safest possible vessel, equipment and programs for the enjoyment of our guests, you are primarily responsible for your own safety and the safety of any minor children who accompany you aboard the boat.
- Follow directions of the captain and crew. We will be happy to give you a tour of the vessel, explain safety rules, administer a swim test, or show you how to properly use

any equipment upon your request. Please ask questions if you do not fully understand the rules established for your safety, or do not fully appreciate the risks involved in participation, or in using any piece of equipment aboard the vessel.

- The safety rules have been developed for your protection. Failure to heed warnings, partaking in unsafe behavior or activities in which you are not qualified, or misuse or abuse of equipment can result in serious or even fatal injury.

### **Concluding Statements**

- In consideration of the services of \_\_\_\_\_ (company), \_\_\_\_\_ (owner's name), company owners, employees, volunteers, crew, participants and all other persons acting in any capacity on their behalf (herein collectively referred to as "\_\_\_\_\_"), I hereby agree to release and discharge the above listed persons and entities on behalf of myself, my children, my parents, my heirs, personal representatives, and estate.
- I affirm that I have an understanding and appreciation of the risks involved in participating in ocean sailing, a potentially dangerous activity, and that my participation in the activity is voluntary. By signing this document, I acknowledge that if I am hurt or my property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to bring a lawsuit against \_\_\_\_\_ on the basis of any claim from which I have released them.
- I hereby voluntarily release, forever discharge and agree to indemnify and hold \_\_\_\_\_ harmless from any and all claims, demands, or causes of action which are in any way connected with my participation in this activity or in use of \_\_\_\_\_ equipment or property, including any such claims which allege negligent acts or omissions of \_\_\_\_\_.
- Should \_\_\_\_\_ or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this agreement, I agree to pay liquidated damages, and indemnify and hold them harmless for all such fees and costs.
- I certify that I have adequate health, disability, life and other insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself.
- I certify that I have no medical or physical conditions which could interfere with my safety in this activity, or I am willing to assume and bear the costs of all risks that may be created, directly or indirectly, by any such condition.
- All contracts or agreements with \_\_\_\_\_ are entered into in the judicial district of \_\_\_\_\_, \_\_\_\_\_ (state). Should either party bring or initiate a suit or action before any court, it shall be brought in \_\_\_\_\_, \_\_\_\_\_ (state), regardless of whether a party may not be a resident or maintain a domicile or business in the State. I further agree that the law of the State of \_\_\_\_\_ will apply in any action brought, without regard to the conflict of law rules of the State.
- I agree that film, photographs, videotape, or digital imagery of me as a participant in the activity becomes the property of \_\_\_\_\_ and may be published, displayed or used for promotional or commercial purposes.

- I agree that if any portion of this agreement is found to be void or unenforceable, the remaining portions shall remain in force an effect.
- I have read this entire document, been given an opportunity to ask questions which clarify the meaning and purpose of this document, understand the document, and agree to be bound by its terms.

**Participant Signature**

\_\_\_\_\_  
Participant Signature

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

\_\_\_\_\_  
Address City State Zipcode

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Date

**Additional Indemnification**

(To be signed by parents and/or guardian of participants under age 18)

In consideration of \_\_\_\_\_ , a minor, being permitted to participate in its activities and use its equipment and facilities, I further agree to indemnify and hold harmless \_\_\_\_\_ from any and all claims brought by me, or on behalf of the minor, and which are in any way connected with such participation or use by the minor.

\_\_\_\_\_  
Parent/Guardian

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