

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND/OR §15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS AMENDED

**Waiver, Release, and Indemnification Agreement**

THIS WAIVER, RELEASE AND INDEMNIFICATION AGREEMENT ("Agreement") is made and entered to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by SALT MARSH ADVENTURES LLC (the "Company") and \_\_\_\_\_ ("Guest").

(1) Notice. BY SIGNING THIS DOCUMENT, YOU MAY BE WAIVING CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ACKNOWLEDGE THAT PRIOR TO SIGNING THIS AGREEMENT THAT YOU HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY TO REVIEW THIS AGREEMENT.

(2) Acceptance of Risk. Guest acknowledges that activities in, around, and on the water come with a certain amount of risk, including the risk of serious injury and death. Guest hereby accepts all risks associated with use of vessels, equipment and all other facilities utilized by the Company for operation of charters and other Company events (collectively, the "Facilities"), including but not limited to, the risks associated with inclement weather, rough water, wild and domestic animals, including animals that may sting or bite, irregular footing, damage to the vessel which may result in the boat listing or sinking, lightning strikes, or by any element or act of God, or by the neglect of any other person or persons.

(3) Medical Treatment. The Guest specifically acknowledges that the Company does not provide professional medical care and any injury may be compounded by non-professional medical care provided by Company representatives or delayed medical care. Guest hereby authorizes the Company to secure, and consents to, any medical treatment that may be given to Guest should the Company determine, in its sole discretion, that a Guest needs medical care, as a result of Guest's use of the Facilities. Guest accepts full responsibility for all costs related to the Guest's medical treatment, including any

transport costs, and releases all parties involved from any type of liability for anything that may happen during treatment or transport.

(4) Personal Property. Guest acknowledges and agrees that he or she is fully and solely responsible for any personal belongings that the Guest brings onto the Facilities or that the Guest uses, and that the Company will not be responsible for or provide any security for Guest's property and personal belongings.

(5) Condition of Facilities. Guest acknowledges that the Company makes no representation as to the condition of the Facilities or the safety of the Facilities or any equipment either on the Facilities or used on the Facilities. The Guest specifically acknowledges that he or she has had the opportunity to inspect the Facilities, raise any safety concerns, and ask any questions regarding the safe operation of any of the Facilities. Guest accepts and shall use the facilities, and its equipment, in its "AS IS" condition. The Company further makes no representations that any safety measures taken were done properly and Guest accepts that those efforts may have been done with negligence. Guest acknowledges and agrees that Guest is not relying upon any representation or statement by the Company or the Company's employees, agents, sponsors, or representatives regarding this agreement or the Facilities, except to the extent such representations are expressly set forth in this agreement.

(6) Condition and Compliance with Instruction. The Guest certifies that he or she has no physical or mental condition that precludes him or her from safely using the Facilities and agrees to notify Company representatives should any such condition arise during the course of the Guest's use of the Facilities. The Guest agrees that should he or she observe any hazard or condition which jeopardizes the Guest's safety or that of others, that he or she will notify Company representatives. The Guest agrees that he or she will follow all federal, state, and local laws, rules,

and regulations, and the instructions of Company representatives and conduct himself or herself in a way that minimizes the risk of injury to the Guest and to others.

(7) Release and Indemnification. In consideration of being allowed to use the Company's Facilities, Guest hereby releases and forever discharges the Company, Company's agents, heirs, successors and assigns, (collectively, the "Released Parties" and individually a "Released Party"), of and from any and every liability, charge, claim, expense and all manner of action, cause of action, claim or demand of whatsoever kind, nature or description, at law or in equity, or created by statute, known and unknown, which the Guest now has or which the Guest, and the Guest's agents, guests, heirs, successors and assigns, shall or may have against a Released Party arising from or in connection with Guest's use of the Facilities, including any that may arise through the negligence of Company representatives. Guest agrees to indemnify, defend and hold harmless the Released Parties from and against any claim, liability, damage, deficiency, penalty, cost, expense or loss, including reasonable attorneys' fees and costs of investigating and defending against lawsuits, complaints, administrative and other actions or other pending or threatened litigation, disputes, or violations arising from or in connection with Guest's use, or the use by the Guest's agents, guests, heirs, successors and assigns, of the Facilities, including any that may arise through the negligence of Company representatives.

(8) Covenant Not to Sue. Guest agrees not to sue the Released Parties or initiate or assist in the prosecution of any claim for damages or causes of action against the Released Parties which Guest may have as a result of any personal injury, death, or property damage the Guest sustains through his or her use of the Premises.

(9) Media Release. Guest hereby consents to the Company's use of photographs,

videos, or other digital media featuring the Guest for any lawful purpose, including publicity, illustration, advertising, including its use in any of its publications, including those distributed online, without payment or any form of compensation arising from or related to the use of the photos.

(10) Arbitration and Choice of Law. Guest agrees that any and all claims relating to or arising from the creation, effect, enforcement, implementation, construction, interpretation, and application of this Agreement shall be resolved by binding arbitration, before a single arbitrator. The arbitration shall be conducted in Beaufort County, South Carolina. The arbitrator shall be an attorney selected by consent of the Company and Guest. If the Company and Guest are unable to agree on the arbitrator, each shall identify a proposed arbitrator, then these two proposed arbitrators shall select the single arbitrator. If the two proposed arbitrators cannot agree on the arbitrator, and so state in writing, then the arbitrator shall be selected by the President of the Beaufort County Bar Association. The arbitrator shall apply the law of the State of South Carolina to all disputes. The arbitrator may permit such discovery as he/she deems appropriate, and shall establish a schedule to timely resolve all disputes. The Company and Guest shall each bear their own attorney's fees and costs. The arbitrator shall be paid his/her normal rates, and this cost will be divided equally between the Company and Guest. Any disputes as to costs shall be decided with finality by the arbitrator. Any decision by the arbitrator may be confirmed by a court of competent jurisdiction, and shall carry the force of a binding and final judgment. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and venue and jurisdiction of any court action arising hereunder shall be in the Circuit Court for Beaufort County, South Carolina. In the event that any court of competent jurisdiction determines that any provision contained herein is unenforceable, then, to the maximum extent possible, the remaining

provisions of this agreement shall be unaffected thereby.

(11) Survival. Any provision of this Agreement providing for performance by Guest after termination of this Agreement shall survive such termination and shall continue to be effective and enforceable.

(12) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and it supersedes and replaces any previous or contemporaneous agreements, proposals, terms or conditions. This Agreement shall not be modified

or amended except by a subsequent written agreement, signed by the parties hereto.

(13) Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

IN WITNESS WHEREOF, Guest has caused this Waiver, Release and Indemnification Agreement to be executed the day and year first above written.

**ADULT GUEST:**

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_

**MINOR GUEST:**

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name of Minor: \_\_\_\_\_  
Name of Guardian: \_\_\_\_\_