

## **BOAT CLUB NORTH AMERICA, LLC OPERATOR AGREEMENT**

Agreement by and between Boat Club North America, LLC, a New York Limited Liability Company ("BOAT CLUB") and the undersigned "Operator", designated below pursuant to the terms hereof.

**PARTIES:** This is a contract made on this date, between "BOAT CLUB", and "Operator". The words "you" or "your" refer to "Operator" as the context requires.

**OBLIGATIONS OF "OPERATOR":** it is understood and agreed between the "Operator" that the "Operator" is fully, totally, and completely liable for any damage, injury to person, injury to property, or any other liability caused or created during or as a result of the operation of the watercraft by the "Operator" or anyone operating the watercraft with or without the consent of the "Operator".

This liability extends to damage or injury resulting from violation of law, operation while under the influence of alcohol or any other criminal or civil liability.

The "Operator" agrees to pay any and all damage to the watercraft or accessory equipment whatsoever caused during the term of this agreement or as a result of the operation of the watercraft no matter who caused said damage with the exception of damage directly caused by "BOAT CLUB", its agents or employees.

The "Operator" further indemnifies and saves harmless "BOAT CLUB", its owners, officers, directors, agents and employees, from any and all liability resulting from the "Operator's" operation of the watercraft. This indemnification extends to all liability by way of damages, attorneys fees, costs of litigation and defense of claim.

**COMPLIANCE WITH LAWS AND ORDINANCES:** "Operator" shall comply with all applicable governmental laws, ordinances, orders, and regulations now in force or which may hereafter be in force insofar as they pertain to the use and utilization of watercraft. "Operator" shall also comply with all requirements of any insurance companies providing insurance for "BOAT CLUB" and the rules and regulations of any marina or other docking facility in which "BOAT CLUB" watercraft are located.

**LEGAL:** In the event of any legal proceedings brought by any party to construe or enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, and venue of any and all such legal proceedings shall be exclusively in Monroe County, New York irrespective of the residence elsewhere of any other party.

**INABILITY TO PROVIDE SERVICE:** "BOAT CLUB" shall use its best efforts to deliver the watercraft to the "Operator" at the date and time agreed. In the event "BOAT CLUB" cannot deliver said watercraft at the agreed time it shall not be liable for any consequential or other damages beyond the return of any payment previously made for the use and operation of the watercraft at that time.

**BOAT CLUB:** A copy of the revised Operational Instructions will be available on the scheduling system website or via email upon request.

**"OPERATOR" CONDUCT:** "Operator" is expected at all times at "BOAT CLUB" locations and while on "BOAT CLUB" watercraft to display lawful and courteous behavior/conduct. At the sole discretion "BOAT CLUB", failure to follow this rule may result in "Operator" being suspended and having his/her right to use the watercraft terminated. BOAT CLUB further reserves the right to not deliver or to terminate use of the watercraft if in its sole discretion it deems the "Operator" unfit or incapable of operating the watercraft. Under the conditions of this section, "BOAT CLUB" will retain any and all payments made by the "Operator".

**"OPERATOR'S" RESPONSIBILITY FOR WATERCRAFT:** At no time shall "Operator" allow anyone other than an "Operator" or "BOAT CLUB" staff member with the appropriate US Coast Guard Captain's License to

operate or have control of any "BOAT CLUB" watercraft. "Operator" specifically acknowledges and agrees that he/she is obligated to be in complete custody and control of the watercraft at all times, unless a "BOAT CLUB" staff member with the appropriate US Coast Guard Captain's License is formally in charge of the watercraft.

RULES AND REGULATIONS: "Operator" acknowledges that "BOAT CLUB" has provided "Operator" with specific Rules and Regulations relating to the use and operation of the watercraft. The "Operator" agrees to abide by all rules and regulations and be responsible to "BOAT CLUB" for any costs and expenses of damage or liability resulting from the "Operator" noncompliance with said Rules and Regulations. "Operator" further acknowledges that he/she is operating the "BOAT CLUB" watercraft for personal use only, and not for hire.

DENIAL OF INSURANCE. In the event that "Operator" is denied coverage by "BOAT CLUB" insurance underwriter, the operation shall terminate. All money paid by the "Operator" shall be returned less any expenses incurred by Boat Club prior to termination.

DEFAULT: Any of the following shall constitute events of default with respect to this Agreement: (a) failure of "Operator" to pay any and all sums due for the operation of the watercraft; (b) any breach by "Operator" of any covenant or obligation on the part of the "Operator" pursuant to this Agreement; (c) failure of "Operator" to abide by and adhere to the Operational Instructions of "BOAT CLUB" or the rules and regulations of any marina where "BOAT CLUB" watercraft are docked, as now in effect or as hereafter published or amended from time to time or; (e) the failure or inability of the "Operator", as demonstrated to "BOAT CLUB" in its sole judgment reasonably exercised, to operate the watercraft in a safe manner.

REMEDIES ON DEFAULT: Upon the occurrence of any event of default "BOAT CLUB" may immediately terminate this agreement and the "Operator's" rights hereunder. No refunds of payments will be made by "BOAT CLUB".

BINDING EFFECT: ENTIRE AGREEMENT; MODIFICATIONS: this agreement shall be binding upon the parties hereto and their heirs, legal representatives, successors, and permitted assigns, and shall be governed by New York Law. This Agreement contains the entire understanding of the parties and may not be changed unless in writing and signed by all parties.

"OPERATOR" FULL NAME:

DATE:

"OPERATOR" SIGNATURE:

Thank You for becoming an "Operator" of watercraft that are in the "BOAT CLUB" fleet. I look forward to making your boating experience with BOAT CLUB as enjoyable and relaxing as I possibly can. If at any time you have any questions or safety concerns feel free to call me at 585-629-8393 or email me at David@boatclubusa.com 24/7.

Thank You,

Captain David