



TenTuk Outfitters

Equipment Rental Agreement with Liability Waiver, Indemnification, and Release

This Equipment Rental Agreement with Liability Waiver, Indemnification, and Release (the "Agreement") is hereby entered into, and made effective on the date of execution hereof (the "Effective Date"), by and between the undersigned individual, whose name, address, phone number, and e-mail address are also provided on the attached Personal Information Disclosure Form attached hereto and hereby incorporated into this Agreement by reference as if fully set forth herein ("Renter"), and Cypress Creek Freight LLC d/b/a "TenTuk Outfitters™" ("TenTuk"), a Tennessee limited liability company having its principal place of business located at 554 Cypress Creek Dr, Camden, TN 38320, collectively hereinafter also referred to as the "Parties," and each a "Party."

WHEREAS, Renter has requested to rent certain Equipment from TenTuk; and

WHEREAS, subject to the warranties, terms, and conditions of this Agreement, TenTuk has agreed to rent said Equipment to Renter;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and lawful consideration the receipt and sufficiency of which is hereby acknowledged by the Parties, each Party hereto irrevocably agrees to be legally bound by each, every, and all of the following terms and conditions of this Agreement.

Article 1. Definitions; Construction.

Section 1. Definitions. The capitalized terms herein must be deemed have the meanings assigned to them in this Section or in the provisions in which they first appear.

- (a) As used herein, "Adult" means a person, over the age of 18;
- (b) As used herein, "Child" means a minor person, under the age of 18;
- (c) As used herein, "Equipment" means any and all goods described on the Equipment Rental Schedule, attached hereto as Schedule 1 and hereby incorporated into this Agreement as if fully set forth herein;
- (d) As used herein, "Equipment Rental Fee" means the fee TenTuk is entitled to charge to Renter, and which Renter agrees hereunder to pay to TenTuk, which is specifically quoted on the attached Equipment Rental Schedule (Schedule 1);
- (e) As used herein, "TenTuk Personnel" means a member, employee, or independent contractor working for TenTuk and authorized to perform certain duties described herein, and others related hereto, as directed by an authorized member, officer, or supervising employee of TenTuk.

Section 2. Construction. For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement must be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein must be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Article 2. Renter's Warranties.

Section 1. Warranties. Renter hereby warrants:

- (a) Renter is an Adult;
- (b) Renter is in reasonably good health, capable of engaging in activities pertaining to the use of the Equipment without causing any injury to themselves or others and without damaging the Equipment;
- (c) Renter is able to handle the equipment under all foreseeable conditions, and return the Equipment to the Pick-up Location undamaged, excepting reasonable wear and tear; and
- (d) Renter will supervise all Children using the Equipment and take reasonable care to ensure they carefully handle the equipment under all foreseeable conditions, and return the Equipment to the Pick-up Location undamaged, excepting reasonable wear and tear.

Section 2. Renter Warranty Breach Liquidated Damages. If Renter is found to have breached the warranties given hereunder (a "Renter Warranty Breach"), Renter must pay to TenTuk an amount equal to fifty percent (50%) of the Equipment Rental Fee for each Renter Warranty Breach (the "Renter Warranty Breach Liquidated Damages"). The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that the TenTuk's harm caused by a Renter Warranty Breach would be impossible or very difficult to accurately estimate at the time of contract, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Renter Warranty Breach. The Renter's payment of the Liquidated Damages is Renter's sole liability and entire obligation and TenTuk's exclusive remedy for any Renter Warranty Breach.

Article 3. TenTuk's Warranties.

Section 1. Warranties. TenTuk hereby warrants:

- (a) TenTuk is a Tennessee limited liability company, validly organized and operating in the State of Tennessee, subject to all its applicable laws and regulations; and
- (b) TenTuk is the owner of the Equipment.

Section 2. All Other Warranties Disclaimed. Except as expressly provided herein, TenTuk provides no other warranties to Renter, and hereby expressly disclaims the Warranty of Merchantability, the Warranty of Fitness for a Particular Purpose, and any and all other warranties recognized in equity or at law. TenTuk provides the Equipment "as-is," and upon receiving possession of the Equipment, Renter thereby agrees to accept the Equipment "as-is."

Article 4. Renter's Obligations.

Section 1. Obligations. At all times relevant to this Agreement, Renter must:

- (a) Make to TenTuk timely payment of the Equipment Rental Fee ;
- (b) Refrain from knowingly, willfully, or intentionally damaging the Equipment;
- (c) Take reasonable care to prevent any damage to the Equipment;
- (d) Refrain from engaging in horseplay or other reckless behavior in or near the Equipment;
- (e) Refrain from using the Equipment while under the influence of any intoxicating substance;

(f) Make every reasonable effort to timely return the Equipment to the Pick-up Location, taking into account that returning the Equipment within thirty (30) minutes of the Pick-up Time specified herein will entitle Renter to the rebuttable presumption that their effort to timely return the Equipment to the Pick-up Location was reasonable; and

(g) Call TenTuk immediately upon the occurrence of any problem involving the Equipment Renter may experience while the Equipment is in their possession.

Section 2. Equipment Damage.

(a) TenTuk Personnel will inspect the Equipment prior to, or at the time of, Renter's rental thereof, make note of any pre-existing damage to the Equipment, and keep said note(s) on file with this Agreement. TenTuk Personnel may, but are not required to, take pictures of the Equipment to supplement these notes. Any such pictures must be kept on file with this Agreement.

(b) TenTuk Personnel will inspect the Equipment at the time of Renter's return thereof to the Pick-up Location, making note of damage to the Equipment, and keep said note(s) on file with this Agreement. TenTuk Personnel may, but are not required to, take pictures of the Equipment to supplement these notes. Any such pictures must be kept on file with this Agreement.

(c) After taking possession of the Equipment following Renter's rental thereof, TenTuk Personnel will review and compare all notes regarding any damage to the Equipment and any pictures supplementing the same, and will determine whether the Equipment was damaged during Renter's rental thereof.

(d) The Parties agree that the determination of whether or not the Equipment was damaged during Renter's rental thereof will be made in the sole and exclusive discretion of TenTuk, according to the observations of TenTuk Personnel, and that such determination is not subject to dispute, *provided* the determination is made in good faith and is adequately supported by the notes and any photographs supplementing the same.

(e) If one or more TenTuk Personnel determine that the Equipment was damaged during Renter's rental thereof, Renter agrees to pay to TenTuk the reasonable cost of repairing or replacing the Equipment, which TenTuk, in its sole and exclusive discretion, may elect to do.

Article 5. TenTuk's Obligations.

Section 1. TenTuk's Obligations. At all times relevant to this Agreement, TenTuk must:

(a) Make a commercially reasonable effort to timely deliver the Equipment to the Drop-off Location;

(b) Take commercially reasonable care in unloading the Equipment at the Drop-off Location;

(c) Make a commercially reasonable effort to timely pick up the Equipment from the Pick-up Location;

(d) Take commercially reasonable care in loading the Equipment for transport from the Drop-off Location; and

(e) Inspect and document the condition of the Equipment as described in Section 4.2. hereof.

Article 6. Consideration.

Section 1. Renter's Consideration. Renter's consideration hereunder consists of Renter's warranties, promises, and the performance of all Renter's obligations hereunder, including Renter's unconditional promise to pay the Equipment Rental Fee described on Schedule 1.

Section 2. TenTuk's Consideration. TenTuk's consideration hereunder consists of TenTuk's warranties, promises, and the performance of all TenTuk's obligations hereunder.

Article 7. Release, Indemnification, and Waiver of Liability.

Section 1. Release. Except as expressly provided herein, Renter hereby fully releases TenTuk from any and all past, present, and future liability for any damages, caused for any reason and pertaining to any property damage, personal injury, or death, or any other harm whatsoever, related to Renter's rental or use of the Equipment or TenTuk's provision thereof (collectively "Personal Injuries"), whether any such Personal Injuries were caused by Renter, other persons in Renter's party, TenTuk, TenTuk Personnel, the manufacturer of the Equipment, or any other natural person or legal person, and whether any such Personal Injuries may have been the result of any such person's negligence or gross negligence.

Section 2. Indemnification. Renter hereby agrees to indemnify and defend TenTuk against any of Renter's claims, and all third-party claims, arising in connection herewith, and covenants not to sue TenTuk, and to defend TenTuk from any third-party lawsuits, in connection with any Personal Injuries occurring in connection with Renter's rental of the Equipment hereunder.

Section 3. Waiver of Liability. Renter hereby assumes all foreseeable risks related to their use of the Equipment, and waives any and all liability TenTuk might otherwise have to Renter in connection with Renter's rental of the Equipment hereunder, including but not limited to liability for any Personal Injuries.

Article 8. Miscellaneous.

Section 1. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Section 2. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 3. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or

render unenforceable such tremor provision in any other jurisdiction.

Section 4. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement, said other documents incorporated herein by reference and the related exhibits and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Agreement shall control.

Section 5. Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

Section 6. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 7. Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided in Sections 2.2., 4.3., and 5.2. to the contrary.

Section 8. Equitable Remedies. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 9. Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

Section 10. Successors and Permitted Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Section 11. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12. Governing Law. This Agreement and all related documents including all documents attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Tennessee, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Tennessee.

Section 13. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or must be instituted in any United States federal court or state court located in the state of Tennessee in the City of Camden and County of Benton (or the federal court situated nearest thereto), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by certified mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably

and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

Section 14. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.14.

Section 15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 16. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, pandemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency; and (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. The party suffering a Force Majeure Event shall give notice within five (5) business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

Section 17. Attorney's Fees. In the event that any party institutes any legal suit, action, or proceeding, including arbitration, against the other party arising out of or relating to this Agreement, the prevailing party in the suit, action, or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including actual attorneys' fees and expenses and court costs, which must be paid by the non-prevailing party.

Section 18. Time of the Essence. Time shall be of the essence in this Agreement.