

DO NOT TAPE ANYTHING TO BOX

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THERMAL TREK, INC  
 1913 BENCH MARK DRIVE  
 AUSTIN, TEXAS 78728  
 512-385-9243  
 Service 512-836-8000

Po # 24-0001080

Thermal Trek, Inc. Lease Agreement 6712, made on 10/12/2023, between Thermal Trek, Inc. (Hereinafter referred to as "Lessor"), and Texas Workforce Commission, (thereinafter referred to Lessee):

Address: 101 E. 15th Street, Room 116  
 City/State/Zip: AUSTIN TX 78778  
 Billing Address: 101 E. 15th Street, Room 116  
 City/State/Zip: AUSTIN TX 78778  
 Phone: 512-756-3856  
 Contact Person: Clayton Pocius

The Lessee agrees to Refrigerated Storage Unit (electric operation), (electric operation w/gasoline generator) or (diesel engine) hereinafter referred to as "RCU":

Note: Different lease/rental rates apply as to the different methods of operation for which the RCU is used.

RCU 108-1223, Year: N/A, Make: N/A, Serial No: N/A, License No. N/A State, TX. Refrigeration Unit Serial No. N/A, Model No. N/A; from Lessor and Lessor agrees to lease to the Lessee the above identified RCU.

WHEREAS, LESSOR is in the business of leasing RCUs and hereby represents that it is the owner of, or otherwise has lawful authority to lease, the RCU described above and in the Schedule(s) attached hereto; and

WHEREAS, LESSOR desires to lease said RCU to Lessee for the amounts and upon the terms and conditions hereinafter set forth; and

WHEREAS, LESSEE desires to lease said RCU solely for the purpose of mobile storage from LESSOR for the amounts and upon the terms and conditions hereinafter set forth. **In the event of any inconsistency between the terms and conditions of this contract award and Attachment 1: TWC Terms & Conditions, Attachment 1 shall take precedence;**

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NOW, THEREFORE, for and in consideration of the amounts to be paid and the covenants and agreements hereinafter set forth and other good and valuable consideration, the parties hereto covenant and agree as follows:

- I. **DURATION OF LEASE.** This Lease shall remain in effect from 10/12/2023 until 4/30/2024, as limited by Paragraph X hereof. Any amendments hereto shall be effective as of the date of Lessor's notice to the Lessee, **unless otherwise stated in the amendment.**

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II. USE. Lessee agrees to the following:

- A. Lessee will use the RCU unit in the ordinary course of its business.
- B. Lessee agrees not to overload the RCU beyond the manufacturer's recommended gross weight allowance and to pay for any and all damages resulting from loading in excess of such weight allowance.
- C. Lessee agrees to make reasonable efforts to ensure that each RCU is operated with due care and diligence so as to prevent loss and/or damage and injury of any kind or nature whatsoever.
- D. Lessee agrees to notify Lessor of improper performance or mechanical failure of the RCU as soon as such information comes known to Lessee.
- E. Lessee agrees not to knowingly permit or cause any person other than Lessor or persons authorized by Lessor to make any repairs or adjustments to the RCU leased hereunder provided, however, Lessee or its authorized representatives may authorize, limited to \$250.00 per occurrence, such minor emergency repairs or adjustments as may be reasonably necessary for the safe and efficient operation of said RCU when it is not practical in Lessee's opinion to secure Lessor's prior authorization.
- F. Lessee agrees to take reasonable precautions to protect the RCU from theft, perils and all other hazards while under Lessee's care, custody and control.
- G. Lessee agrees to reimburse lessor in full for damages caused by negligence, abuse, misuse, or willful destruction of RCU by lessee, its agents, servants or employees.
- H. Lessee agrees to make RCU reasonably available to lessor for inspections, repairs and maintenance.

III. Insurance. Lessee will, at all times, during the term of this Lease, at its own expense, carry and maintain or cause to be carried and maintained:

- A. Primary automobile and general liability insurance as required by Texas law in the minimum amount of five hundred thousand dollars (\$500,000) per occurrence, pursuant to conditions set forth in Paragraph II (A) (B) (C),
- B. Property damage insurance against all risk of physical loss or damage to the RCU in an amount at least equal to the replacement cost set forth in the Lease; and,
- C. Lessee will provide cargo insurance against all risk of physical loss or damage to the contents stored in the RCU, including consequential damage, in an amount at least equal to the replacement cost of such contents.

Lessee represents, warrants and covenants that Lessee will perform all actions required to maintain policies evidencing such insurance. In the case of both the casualty and public liability coverage, Lessee shall deliver to Lessor either certificates of insurance or such other evidence of insurance

as Lessor may reasonably require.

**LESSOR SHALL NOT BE LIABLE FOR, AND LESSEE WAIVES ALL CLAIMS AGAINST LESSOR IN RESPECT OF ANY LOSS, THEFT, DAMAGE (INCLUDING CONSEQUENTIAL DAMAGE) OR DESTRUCTION OF OR TO ANY CARGO OR OTHER PROPERTY LEFT BY LESSEE OR ANY OTHER PERSON IN OR UPON THE RCU AT ANY TIME OR PLACE.**

- IV. **DELIVERY.** Lessee shall pick up and deliver, or arrange for the pickup and delivery of, the RCU to the Lessee's site. Lessee shall provide proof of liability and property damage insurance as specified in Item III (A) and (B) prior to the RCU being released to Lessee or Lessee's agent. Lessor will be notified of the respective arrangements in order to release the RCU to the Lessee or Lessee's agent. Upon Lessee's request and pursuant to Lessee providing proof of liability and property damage insurance coverage, Lessor will arrange delivery, and will bill Lessee delivery charges.

Party to arrange:

Delivery By: THERMAL TREK

Delivery Address: 4800 North Lamar Blvd., Austin, TX 78756

Delivery Charge: \$225.00

The Lessee accepts delivery of the RCU when the RCU is picked up by Lessee or Lessee's agent at Lessor's location or other Lessor designated site.

- V. **RETURN.** The Lessee shall return or arrange for the return delivery of the RCU to the Lessor's location in accordance with the terms of the Lease. At the end of the Lease period, the Lessee or Lessee's agent shall give Lessor at least N/A (one day if not indicated) day(s) notice of its intent to return the RCU in order for Lessor to receive the RCU from the Lessee or Lessee's agent. Upon Lessee's request, Lessor will arrange return delivery and will bill Lessee those respective charges.

Party to arrange:

Return Delivery By: THERMAL TREK

Return Delivery Address: 1913 BENCHMARK DR AUSTIN, TEXAS 78728

Return Delivery Charge: \$225.00

- VI. **BILLING PERIOD.** Each monthly billing period will be from the first day of each month until the last day of each month, except for the first month of the Lease term, which will be **prorated** from the date the RCU is delivered until the last day of that month.

- ~~VII.~~ **RENT.** The Lessee shall pay \$2170.00 (this is for the first 28 day rental period) *Per MINIMUM RENTAL PERIOD.* Rent and other charges shall be due **within 30 days of receipt by TWC of a complete and accurate invoice in accordance with the State of Texas Prompt Payment Act, Tex. Gov't Code, Ch. 2251. in advance of rental period. Payment of each invoice issued to Lessee is due within N/A days seven [7] days if not specified otherwise herein) of the invoice date.** *WF SM*  
~~If any rent payment or other amount due to Lessor under the Lease shall not have been received by Lessor by the date such payment was due, Lessor shall have the right to charge Lessee interest of 2% of the unpaid balance, compounded per month, for each month or part thereof that the payment remains outstanding.~~

- A. If the RCU is delivered prior to the first day of the month the rent will be prorated from the date of delivery until the last day of the delivery month, and such prorated first month rental shall be payable upon delivery of the RCU

**to Lessor.**

~~B. If the RCU is returned prior to the 15th day of any month, Lessee will make rent payments to Lessor on a pro rata basis. If the RCU is returned after the 15th of any month, Lessee shall pay a full month's rent payment.~~

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If the RCU is not returned to Lessor in accordance with the terms hereof within (5 14) days after termination of the Lease, Lessor may without notice charge any higher daily rental rate it may choose, and with 30 days notice, following termination in accordance with Paragraph X hereof, charge Lessee the replacement value per RCU.

VIII. DEPOSIT AND OTHER CHARGES. Lessee shall deposit with Lessor or Lessor's agent a security deposit (the "security deposit") in the amount of \$500.00 to secure Lessee's performance pursuant to the terms of this Lease. The security deposit less any deductions made, if any, in accordance with the terms of this Lease, shall be returned to Lessee without interest, within three weeks of the termination hereof. If Lessee returns the RCU to Lessor or Lessor's agent in a damaged or altered condition (normal wear accepted), the full cost of these repairs shall be borne by the Lessee.

- A. A minimum *nonrefundable* cleaning charge of \$75.00 shall be paid by Lessee prior to delivery of the RCU by Lessor to Lessee. Cleaning charges in excess of this minimum shall be first deducted from the security deposit then excess will be billed to the lessor.
- B. In the event Lessee needs assistance in setting up the RCU for operation, a minimum labor set-up charge of \$75.00 will be paid by Lessee to Lessor (in advance). Any additional charges for labor or parts (e.g. electrical hook-up, additional extension cords, rail road ties, blocking, etc.) needed by lessee to set up unit for operation, will be invoiced to the lessee. In the event that Lessee or Lessee agent sets up and/or installs RCU incorrectly to electrical service or creates other installation problems that requires Lessor to come to Lessee premises to perform corrective action or complete setup installation, a \$75.00 minimum service call plus time and materials will be billed to Lessee for immediate payment. If payment for time and material has not been paid by lease termination date, it will be deducted from security deposit.
- C. Lessee will be responsible for all fuel/electricity used by the RCU. Lessor will deliver RCU full of fuel to Lessee. When lessee is finished with the RCU, it will be returned full of fuel. If RCU is not returned full of fuel, Lessee will reimburse Lessor for those costs.

IX. PLACEMENT. During the term hereof, the RCU shall be domiciled by Lessee solely at 4800 North Lamar Blvd., Austin, TX 78756 unless another address other than stated on page one.

X. TERMINATION. Lessor or Lessee shall have the right to terminate this Lease without cause upon 10 days written notice to the Lessee. Lessor may terminate this Lease upon written notice to Lessee with immediate effect if Lessee fails to comply with any covenant or condition to be performed by the Lessee. Lessor may terminate this Lease upon written notice to Lessee with immediate effect if Lessee does not pay when due any rent or other charges due hereunder. If Lessee fails to comply with any condition or covenant of this lease and/or fails to make such payments when due, Lessee waives any rights to

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advance notice or hearing prior to Lessor's exercise of any remedies available to it, with or without judicial process or notice, including without limitation, Lessor's entry onto the location or upon any premises in which the RCU may be kept, replevin, injunction, summary judgement, self-help, repossession, and any other remedy or action or proceeding designed to obtain possession of or to protect the RCU(s).

XI. ENCUMBRANCES. Lessee agrees not to pledge, sell, mortgage, or attempt in any other manner to encumber any RCU leased hereunder or to allow any liens or legal process to be incurred or levied thereon.

XII. ATTACHMENTS. Thermal Trek, Inc. Lease Terms, Rates/Charges specifications R-1 and Equipment Interchange Receipt attached to this Lease are incorporated into this Lease and form an integral part hereof. **ATTACHMENT 1 TWC Terms & Conditions and Purchase Order #24-0001080" (TWC's PO)**

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LESSEE ACKNOWLEDGES AND AGREES BY HIS SIGNATURE HEREON THAT LESSEE HAS READ, ACCEPTS, AND AGREES TO COMPLY IN FULL WITH, THE TERMS AND CONDITIONS SET FORTH ON ALL PAGES OF THIS AGREEMENT.

For: Texas Workforce Commission  
Po # 24-0001080

Print: Susan Miller

Sign: Susan Miller

Date: 11/1/2023

For: Thermal Trek, Inc

Wayne Francis

Wayne Francis

11/1/2023

Lease No. 6712                      RCU 108-1223

All trailers are for STORAGE ONLY. Lessee is responsible for any and all damage, repairs or maintenance if used in the transportation of product.

**THERMAL TREK, INC**  
**LEASE TERMS AND CONDITIONS**

1. DELIVERY OF RCU

- (A) LESSOR SHALL USE ALL REASONABLE EFFORTS TO MAKE THE RCU AVAILABLE FOR PICKUP AND DELIVERY AS REQUIRED UNDER THE TERMS OF THE LEASE.
- (B) UPON DELIVERY/RECEIPT OF THE RCU, THE LESSEE OR THE LESSEE'S AGENT SHALL SIGN AND PROMPTLY RETURN TO LESSOR LESSOR'S EQUIPMENT INTERCHANGE RECEIPT. IF IN ACCORDANCE WITH PARAGRAPH IV OR V OF THIS LEASE THE DRIVER OF THE VEHICLE IS INSTRUCTED BY THE LESSEE TO COLLECT THE RCU FOR THE PURPOSE OF THIS SUB-PARAGRAPH, THE DRIVER OF THE VEHICLE SHALL BE DEEMED TO BE THE LESSEE'S AGENT.
- (C) THE LESSEE OR ITS AGENT'S EXECUTION OF AN EQUIPMENT INTERCHANGE RECEIPT SHALL CONSTITUTE CONCLUSIVE EVIDENCE THAT LESSEE HAS INSPECTED THE RCU AND FOUND IT (EXCEPT AS NOTED IN THE RECEIPT) TO BE COMPLETE, IN GOOD WORKING ORDER AND CONDITION AND IN COMPLIANCE WITH THE LEASE. THE FAILURE BY THE LESSEE OR ITS AGENTS TO NOTE ANY DAMAGE, DEFECT OR DETERIORATION TO THE RCU SHALL NOT RELIEVE THE LESSEE OF ANY OBLIGATION OR LIABILITY UNDER THE LEASE, INCLUDING LIABILITY FOR ANY REPAIRS TO THE RCU OR FOR DAMAGE OR LOSS TO THE RCU OR TO THE PERSONS OR PROPERTY OF OTHERS.

2. SECURITY DEPOSIT

- (A) THE SECURITY DEPOSIT, LESS ANY DEDUCTIONS MADE IN ACCORDANCE WITH THE TERMS OF THIS LEASE, MAY BE APPLIED TO ANY AND ALL UNPAID OR ACCRUED CHARGES IN ACCORDANCE WITH THIS LEASE, INCLUDING BUT NOT LIMITED TO DELIVERY, RENTAL, CLEAN-UP, AND REPAIRS PERFORMED ON BEHALF OF LESSEE.
- (B) IF THE RCU HAS BEEN RETURNED TO LESSOR IN A DAMAGED, ALTERED OR DESTROYED CONDITION OR HAS BEEN LOST OR STOLEN, LESSOR MAY APPLY THE SECURITY DEPOSIT, LESS ANY DEDUCTIONS MADE IN ACCORDANCE WITH THE TERMS OF THIS LEASE, TOWARD SUCH LOSS UNTIL SUCH TIME AS FULL SETTLEMENT HAS BEEN PAID TO LESSOR.
- (C) IF THE RCU HAS BEEN INVOLVED IN A COLLISION OR ACCIDENT, LESSOR MAY APPLY THE SECURITY DEPOSIT, LESS ANY DEDUCTIONS MADE IN ACCORDANCE WITH THE TERMS OF THIS LEASE, TOWARD THE SETTLEMENT OF ANY AND ALL CLAIMS OR LIABILITY OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM SUCH LOSS UNTIL SUCH TIME AS FULL SETTLEMENT IS PAID REGARDING SUCH COLLISION OR ACCIDENT.

3. RETURN

- (A) AT THE TIME OF THE RETURN OF THE RCU THE LESSEE OR THE LESSEE'S AGENT SHALL SIGN LESSOR'S EQUIPMENT INTERCHANGE RECEIPT UPON DELIVERY OF THE RCU TO LESSOR OR LESSOR'S AGENT. IF IN ACCORDANCE WITH PARAGRAPH IV OR V OF THIS LEASE, THE DRIVER OF THE VEHICLE IS INSTRUCTED BY THE LESSEE TO RETURN THE RCU SUCH DRIVER SHALL BE DEEMED TO THE BE LESSEE'S AGENT.
- (B) AT TIME OF RETURN OF THE RCU THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY:
- (i) THE EXECUTION OF LESSOR'S EQUIPMENT INTERCHANGE RECEIPT SHALL EVIDENCE THE CONDITION OF THE RCU AT THE TIME OF ITS RETURN.
- (ii) IF THE RCU IS RETURNED TO LESSOR IN A DAMAGED OR ALTERED CONDITION, NORMAL WEAR ACCEPTED, THE COST OF THE DAMAGES ASSESSED IN ACCORDANCE WITH AN ESTIMATE PREPARED BY THE REPAIRER APPOINTED BY LESSOR SHALL BE BORNE BY THE LESSEE.
- (a) LESSEE WILL CONTINUE TO BE RESPONSIBLE FOR MONTHLY RENTAL PAYMENTS UNTIL SUCH TIME AS (A) THE RCU IS RESTORED TO ITS ORIGINAL LEASABLE CONDITION AND (B) RETURN DELIVERY HAS BEEN MADE TO LESSOR.
- (iii) LESSOR OR LESSOR'S AGENT SHALL *IN ITS SOLE DISCRETION* DETERMINE WHETHER IT IS FEASIBLE TO REPAIR A DAMAGED OR ALTERED RCU. IF THE RCU IS DAMAGED OR ALTERED TO SUCH EXTENT THAT LESSOR DETERMINES IT IS NOT FEASIBLE TO REPAIR AND THEREFORE DEEMS SUCH RCU TO BE DESTROYED, LESSEE SHALL FORTHWITH MAKE FULL SETTLEMENT OF SUCH LOSS BY PAYING LESSOR THE REPLACEMENT VALUE OF THE RCU, AS SET FORTH IN THE LEASE, WITHIN TEN (10) BUSINESS DAYS OF SUCH LOSS.
- (a) LESSEE WILL CONTINUE TO BE RESPONSIBLE FOR MONTHLY RENTAL PAYMENTS UNTIL SUCH TIME AS FULL SETTLEMENT IS MADE TO LESSOR.
- (iv) IF THE RCU IS LOST OR STOLEN, LESSEE SHALL FORTHWITH MAKE FULL SETTLEMENT OF SUCH LOSS BY SUBMITTING TO LESSOR PROOF OF LOSS SATISFACTORY TO LESSOR AND BY PAYING LESSOR THE REPLACEMENT VALUE OF THE RCU, AS SET FORTH IN THE LEASE, WITHIN TEN (~~10~~ 30) BUSINESS DAYS OF SUCH LOSS.
- (a) LESSEE WILL CONTINUE TO BE RESPONSIBLE FOR MONTHLY RENTAL PAYMENTS UNTIL SUCH TIME AS FULL SETTLEMENT IS MADE TO LESSOR.

4. COMPLIANCE WITH LAWS

LESSEE SHALL COMPLY AT ITS OWN EXPENSE WITH ALL LAWS, REGULATIONS AND RULES OF FEDERAL, STATE AND LOCAL GOVERNMENTS AND AGENCIES WHICH AFFECT THE LEASE OF THE RCU. **Lessor understands there may be provisions in this contract that are not permitted by law in an agreement with State.**

5. TAXES/PERMITS/LICENSES/REGISTRATIONS

LESSEE AGREES TO PAY ANY AND ALL TOLL CHARGES FOR TRANSPORTING THE RCU TO THE LESSEE LOCATION, INCLUDING THOSE FOR HIGHWAYS, BRIDGES, AND FERRIES. LESSOR SHALL AT ITS SOLE COST AND EXPENSE PAY FOR AND, IF

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NECESSARY, PROCURE THE FOLLOWING: (A) RCU LICENSE PLATES FOR THE STATE(S) AND AT THE APPLICABLE WEIGHT(S); (B) STATE SALES TAXES APPLICABLE TO THE PURCHASE OF THE RCU LEASED HEREUNDER; (C) FEDERAL EXCISE TAXES AND (D) FEDERAL HIGHWAY VEHICLE USE TAXES. ANY AND ALL OTHER LICENSES, PERMITS OR REGISTRATIONS OF ANY SORT OR NATURE WHATSOEVER REQUIRED FOR THE LAWFUL OPERATION OF THE RCU LEASED HEREUNDER SHALL BE PROCURED BY LESSOR AT LESSEE'S SOLE COST AND EXPENSE PROVIDED THAT LESSEE'S PRIOR AUTHORIZATION AND APPROVAL FOR SUCH EXPENDITURE(S) HAS FIRST BEEN OBTAINED.

IT IS FURTHER AGREED AND UNDERSTOOD THAT ANY AND ALL PRE-EXISTING LICENSES, PERMITS OR REGISTRATIONS OF ANY SORT OR NATURE WHATSOEVER APPLICABLE TO OR APPLYING ON THE RCU AT THE TIME IT IS LEASED TO LESSEE UNDER THIS AGREEMENT SHALL INURE TO THE BENEFIT OF LESSEE WITHOUT THE PAYMENT OF ANY ADDITIONAL CHARGES BY LESSEE, WHETHER PROVIDED FOR IN THIS ARTICLE OR OTHERWISE.

LESSEE SHALL BE LIABLE FOR ALL USER TAXES, INCLUDING BUT NOT LIMITED TO TEXAS LIMITED SALES TAX, APPLICABLE TO THE LEASE OF THE RCU. LESSEE SHALL BE LIABLE FOR ALL CHARGES, FINES AND PENALTIES INCURRED WHILE THE RCU IS IN LESSEE'S POSSESSION.

6. PHYSICAL DAMAGE INSURANCE AND EXCLUSIONS.

LESSEE IS REQUIRED TO PROVIDE PHYSICAL DAMAGE INSURANCE UNDER THIS AGREEMENT. SAID COVERAGE SHALL BE MAINTAINED THROUGH A COLLISION AND COMPREHENSIVE PHYSICAL DAMAGE INSURANCE POLICY WRITTEN IN STANDARD FORM BY A REPUTABLE INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN ALL OF THE STATES IN WHICH THE RCU WILL BE USED OR OPERATED. LESSEE SHALL REMAIN OBLIGATED TO PAY OR REIMBURSE LESSOR FOR THE FULL AMOUNT OF ANY AND ALL (A) DEDUCTIBLE AMOUNTS, (B) DAMAGE AND DESTRUCTION TO, AND LOSS AND LOSS OF USE OF, THE RCU RESULTING FROM (I) USE OR OPERATION OF THE RCU IN VIOLATION OF ANY TERM OR CONDITION OF THIS AGREEMENT, (II) USE OR OPERATION BY LESSEE, ITS EMPLOYEES, DRIVERS AND/OR AGENTS OF ANY VEHICLE OR EQUIPMENT NOT LEASED HEREUNDER

(III) USE OR OPERATION OF THE VEHICLE OR RCU BY ANY DRIVER, EMPLOYEE AND/OR AGENT AFTER RECEIPT BY LESSEE OF A WRITTEN COMPLAINT FROM LESSOR SPECIFYING GROUNDS FOR REMOVAL OF SUCH DRIVER, EMPLOYEE OR AGENT FROM THE VEHICLE OR RCU, (IV) WILLFUL ACTS OR OMISSIONS OR ABUSIVE HANDLING OR RECKLESSNESS BY LESSEE, ITS DRIVERS, AGENTS OR EMPLOYEES, (V) FIRE, THEFT, UPSET, EXPLOSION, RIOTS, VANDALISM OR ACTS OF GOD, (VI) FAILURE TO SECURELY BRAKE, BLOCK OR LOCK THE RCU OR PROPERLY SECURE THE CARGO, (VII) COLLISION WITH ANY OVERHEAD OBJECTS, AND/OR (VIII) ANY DEFECT OR MALFUNCTION IN ANY RCU OR EQUIPMENT NOT BEING LEASED HEREUNDER IF ATTACHED TO (OR IN THE COURSE OF BEING ATTACHED TO OR UNCOUPLED FROM) THE RCU. THE ASSUMPTION OF RISK OF LOSS AND DAMAGE MADE BY LESSEE UNDER THIS SECTION IS MADE WITHOUT REGARD TO FAULT BY LESSEE AND IS ENFORCEABLE IRRESPECTIVE OF SUCH FAULT.

7. INSURANCE REQUIRED BY STATUTE OR REGULATION. LESSEE IS REQUIRED BY LESSOR TO PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ON THE RCU; HOWEVER, IF LESSOR IS NONETHELESS REQUIRED BY STATUTE, ORDINANCE OR REGULATION TO EXTEND INSURANCE COVERAGE TO THE LESSEE, SUCH INSURANCE COVERAGE SHALL BE LIMITED TO THE STATUTORY FINANCIAL RESPONSIBILITY MINIMUM AND SHALL BE EXCESS INSURANCE, AND LESSEE AGREES TO REIMBURSE LESSOR FOR AND HOLD LESSOR HARMLESS FROM, ANY AND ALL COST, EXPENSES, CLAIMS, CAUSES OF ACTION AND REASONABLE ATTORNEY'S FEES WHICH LESSOR SUSTAINS OR IS REQUIRED TO PAY AS A RESULT OF ANY REQUIREMENT OR REQUIREMENTS.

8. GENERAL CONDITIONS

TITLE TO THE RCU SHALL REMAIN AT ALL TIMES WITH LESSOR. THE LEASE IS INTENDED TO BE A TRUE LEASE AND NOT AS SECURITY FOR THE PAYMENT OR PERFORMANCE OF LESSEE'S OBLIGATIONS. IF LESSEE OBSERVES ALL OF THE TERMS AND CONDITIONS OF THE LEASE, IT SHALL HAVE QUIET POSSESSION OF THE RCU AND AS AGAINST ANY PERSON CLAIMING UNDER OR THROUGH LESSOR. LESSOR SHALL HAVE NO OTHER RESPONSIBILITY WHATSOEVER FOR, OR IN CONNECTION WITH, ANY RCU AFTER ACCEPTANCE OF THE DELIVERY BY LESSEE UNTIL THE ACTUAL RETURN THEREOF TO LESSOR. WITHOUT LIMITATION UPON THE FOREGOING, LESSEE HEREBY ASSUMES RESPONSIBILITY AND LIABILITY FOR, AND LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR, AND ALL LOSS, DAMAGE AND INJURY (INCLUDING PERSONAL INJURY OR DEATH, PROPERTY DAMAGE AND DAMAGE TO PROPERTY IN THE RCU, INCLUDING CONSEQUENTIAL DAMAGE, AND ALL INSURANCE CLAIMS INCLUDING PARTICULAR AND GENERAL AVERAGE) TO ALL PERSONS AND PROPERTY ARISING OUT OF THE OPERATION, MAINTENANCE, STORAGE OR OTHER USE OF THE POSSESSION OR OWNERSHIP OF ANY RCU. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR AND LESSOR'S AGENTS ALL CLAIMS FOR LOSS OR DAMAGE TO ANY PROPERTY OF LESSEE OR ANY OTHER PERSON'S PROPERTY LEFT IN, OR ABOUT THE RCU, EITHER BEFORE OR AFTER ITS RETURN TO LESSOR OR ON THE LESSOR'S PREMISES, WITHOUT REGARD TO ANY NEGLIGENCE BY LESSOR OR ANY OF ITS AGENTS OR EMPLOYEES. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, INJURIES, CLAIMS, DEMANDS, COST, AND EXPENSES ARISING OUT OF THE USE OR POSSESSION OF THE RCU INCLUDING BUT NOT LIMITED TO ANY AND ALL FINES, PENALTIES, AND FORFEITURES IMPOSED UNDER ANY FEDERAL, STATE, MUNICIPAL, OR OTHER STATUTE, LAW, ORDINANCE, RULE, REGULATION, OR INSURANCE POLICY PROVISION, AND TO THE EXTENT NOT COVERED BY INSURANCE, ANY CLAIMS OF, OR LIABILITIES TO THIRD PERSONS ARISING OUT OF THE ABANDONMENT, CONVERSION, SECRETION, CONCEALMENT OR UNAUTHORIZED SALE OF THE RCU BY LESSEE OR ITS DRIVERS, AGENTS OR EMPLOYEES, FOR THE CONFISCATION OF THE RCU BY ANY GOVERNMENTAL AUTHORITY FOR ILLEGAL OR IMPROPER USE OF THE RCU. ADDITIONALLY, LESSEE SHALL INDEMNIFY AND HOLD LESSOR HARMLESS FOR ALL LOSS, LIABILITY AND EXPENSE IN EXCESS OF THE LIMITS OF LIABILITY PROVIDED FOR HEREIN AS A RESULT OF BODILY INJURY, DEATH, DAMAGE OR PROPERTY DAMAGE ARISING OUT OF THE USE OR OPERATION OF RCU. FURTHER, LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR AND LESSOR'S AGENTS FROM ALL LIABILITIES, DAMAGE, LOSSES, CLAIMS, INTEREST, PENALTIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR INCIDENT TO (A) ANY FAILURE BY LESSEE TO COMPLY WITH THE TERMS OF THE LEASE OR ANY ATTEMPT BY ANY PARTY, WHETHER PRIVATE OR GOVERNMENTAL, TO HOLD LESSOR LIABLE TO BREACH BY LESSEE, OR LESSEE'S OBLIGATIONS UNDER THE LEASE; OR (B) THE MAINTENANCE, STORAGE, OR OTHER USE OF THE POSSESSION OF THE RCU.

9. MAINTENANCE AND REPAIRS

(A) RESPONSIBILITIES OF LESSOR

(i) LESSOR WILL UPON NOTIFICATION OF BREAKDOWN WILL TAKE ALL ~~REASONALBE~~ ~~REASONALBE~~ ~~REASONABLE~~ ACTION TO RETURN THE RCU TO OPERATING CONDITION WITHIN A ~~REASONALBE~~ ~~REASONABLE~~ AMOUNT OF TIME. REPAIR(S) AND MAINTENANCE WILL BE PERFORMED AT LESSOR'S REPAIR FACILITY.

(ii) LESSOR WILL INSPECT THE RCU AND BE RESPONSIBLE FOR MAINTENANCE AND REPAIR FOR NORMAL WEAR AND TEAR OF THE RCU AS TO BE IN GOOD AND SAFE OPERATING CONDITION. LESSOR AGREES TO PERFORM SAID REPAIRS AND MAINTENANCE PROMPTLY AT DOMICILE SITE IN TRAVIS COUNTY, TEXAS.

(a) LESSOR WILL FURNISH AND SUPPLY ALL PARTS, OIL, LUBRICANTS AND ALL OTHER OPERATING SUPPLIES AND ACCESSORIES NECESSARY FOR MAINTENANCE AND/OR REPAIR PURCUANT TO NORMAL WEAR AND TEAR FOR THE PROPER, SAFE AND EFFICIENT OPERATION OF THE RCU.



(iii) IF THE RCU IS DEEMED UNREPAIRABLE LESSOR SHALL MAKE EVERY REASONABLE EFFORT TO SECURE AND PROMPTLY DELIVER A SUBSTITUTE RCU TO LESSEE, AND SAID SUBSTITUTE RCU TO BE AS NEARLY AS PRACTICABLE THE SAME SIZE AS THE ORIGINAL RCU. SAID SUBSTITUTE RCU SHALL BE FURNISHED AT NO ADDITIONAL EXPENSE TO LESSEE AND SHALL BE SUBJECT TO ALL TERMS AND CONDITIONS OF THIS LEASE AGREEMENT. IF LESSOR IS UNABLE OR UNWILLING TO SO REPLACE THE RCU, AND SUCH INABILITY OR UNWILLINGNESS SHALL CONTINUE FOR MORE THAN ONE CALENDAR DAY AFTER THE FIRST CALENDAR DAY OF SUCH UNAVAILABILITY OR UNFITNESS, THE RENTAL FOR SUCH UNIT SHALL ABATE DURING THE PERIOD COMMENCING ON THE DAY WHEN SUCH UNAVAILABILITY OR UNFITNESS COMMENCED AND ENDING ON THE DAY WHEN THE FULLY REPAIRED UNIT OR A SUITABLE SUBSTITUTE UNIT IS DELIVERED TO LESSEE.

(B) RESPONSIBILITIES OF LESSEE

(i) LESSEE IS RESPONSIBLE FOR THE FOLLOWING DAILY ROUTINES:

(a) CHECK ENGINE OIL LEVEL DAILY AND ADD AS NECESSARY.

(b) CHECK ENGINE COOLANT LEVEL DAILY AND ADD AS NECESSARY.

(c) FUEL AS NECESSARY.

(ii) LESSEE WILL BE RESPONSIBLE FOR ALL SERVICE CALLS, MECHANICS TIME (INCLUDING OVERTIME) AND ANY OTHER CHARGES FOR REPAIRS DUE TO ABUSE, MISUSE, NEGLECT, REPAIRS NOT DEEMED ORDINARY WEAR AND TEAR. (I.E. OUT OF FUEL, FUEL FILTERS, TIRE REPAIRS, ELECTRICAL PROBLEMS SUPPLYING UNIT, ETC.)

(a) LESSEE SHALL HAVE THE RIGHT TO PERFORM ALL REPAIRS TO THE RCU FOR WHICH LESSEE IS RESPONSIBLE UNDER THE TERMS OF THIS AGREEMENT PROVIDED, HOWEVER, THAT SUCH REPAIRS SHALL BE MADE ONLY WITH THE PRIOR APPROVAL OF LESSOR (WHICH SHALL NOT BE UNREASONABLY WITHHELD) AND SHALL BE COMPLETED TO THE REASONABLE SATISFACTION OF LESSOR.

(b) REPAIRS TO THE RCU WHICH LESSOR HAS AGREED TO PERFORM ON BEHALF OF LESSEE SHALL BE COMPLETED WITHIN A REASONABLE PERIOD OF TIME TO THE REASONABLE SATISFACTION OF LESSEE AND AT A REASONABLE COST TO LESSEE.

(iii) OUTSIDE OF TRAVIS COUNTY, TEXAS, LESSEE WILL BE RESPONSIBLE FOR ANY SERVICE CALLS, MECHANICS TIME (INCLUDING OVERTIME) AND TRAVELING CHARGES FOR ROUTINE MAINTENANCE AND REPAIR TO UNIT AND REFRIGERATION UNIT.

(iii) ALL FUEL/ELECTRICITY REQUIRED TO OPERATE THIS RCU SHALL BE PROVIDED AND PAID FOR BY LESSEE.

(C) LESSOR SHALL HAVE NO OBLIGATION TO, BUT MAY AT LESSEE'S REQUEST, FURNISH A TEMPORARY RCU IF A DISABLED RCU IS OUT OF SERVICE FOR ORDINARY MAINTENANCE AND SERVICE OR IS OUT OF SERVICE BECAUSE OF DAMAGE FOR WHICH LESSEE IS RESPONSIBLE UNDER THIS AGREEMENT. SAID SUBSTITUTE RCU SHALL BE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

10. FAILURE TO PERFORM

LESSOR SHALL INCUR NO LIABILITY TO LESSEE FOR FAILURE TO SUPPLY ANY RCU, REPAIR ANY DISABLED RCU OR OTHERWISE PERFORM HEREUNDER IF SUCH FAILURE RESULTED FROM AN ACT OF GOD OR FIRE, RIOT, OR ANY GOVERNMENTAL REGULATION OR RESTRICTION, OR ANY OTHER CAUSE BEYOND THE CONTROL OF LESSOR. EXCEPT AS OTHERWISE PROVIDED FOR IN ARTICLE 9 OF THIS AGREEMENT, DURING SUCH PERIOD OF FAILURE, THE APPLICABLE FIXED RENTAL CHARGES SPECIFIED HEREIN SHALL ABATE AND LESSEE SHALL HAVE NO LIABILITY THEREFOR.

11. ACCEPTANCE

THE LEASE SHALL BECOME EFFECTIVE UPON SIGNATURE BY BOTH PARTIES. IF, HOWEVER, THE LESSEE DOES NOT RETURN A SIGNED COPY OF THE LEASE TO LESSOR WITHIN SEVEN DAYS OF RECEIPT, OR DOES NOT GIVE LESSOR WRITTEN NOTICE OF DISAPPROVAL OF THE CONDITIONS HEREIN, AND IF THE LESSEE RETAINS THE RCU IN ITS POSSESSION AFTER SAID SEVEN DAY PERIOD, THEN THE LEASE SHALL HAVE THE SAME FORCE AND EFFECT AS IF IT HAD BEEN SIGNED BY THE LESSEE.

12. JURISDICTION

UNLESS OTHERWISE SPECIFIED HEREIN THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, COUNTY OF TRAVIS, AUSTIN, TEXAS.

13. SERVICE OF PROCESS

PROCESS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING SHALL BE DEEMED DULY SERVED IF SENT BY REGISTERED MAIL TO THE LESSEE AT THE LESSEE'S ADDRESS AS SET FORTH IN THE FIRST PARAGRAPH OF THE LEASE.

14. NOTICES

ANY NOTICE WHICH MAY BE OR IS REQUIRED TO BE GIVEN UNDER THIS AGREEMENT SHALL BE IN WRITING AND SHALL BE SENT BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE ADDRESS ON PAGE ONE OR OTHERWISE ATTACHED. ALL SUCH NOTICES SHALL BE DEEMED TO HAVE BEEN GIVEN WHEN SUCH NOTICE, PROPERLY ADDRESSED, IS RECEIVED.

15. ASSIGNMENT

LESSOR MAY GRANT A SECURITY INTEREST IN THE LEASE OF THE RCU AND MAY ASSIGN ALL OR ANY PART OF ITS RIGHTS, TITLE OR INTEREST IN THE LEASE, OF THE RCU OR THE LEASE, OR ANY OF ITS RIGHTS OR INTEREST UNDER THE LEASE BY OPERATION OF LAW OR OTHERWISE.

16. INSPECTION

LESSOR RESERVES THE RIGHT TO INSPECT THE RCU AT ANY TIME DURING THE TERM OF THE AGREEMENT, WHEREVER THE RCU MAY BE LOCATED.

17. DEFAULT/BANKRUPTCY/ADJUDICATION. IF LESSEE SHALL BE IN DEFAULT IN ANY OF THE PAYMENTS REQUIRED TO BE MADE AND/OR IN THE PERFORMANCE OF ANY COVENANT OR CONDITION TO BE PERFORMED BY LESSEE HEREUNDER, THIS AGREEMENT MAY BE TERMINATED IMMEDIATELY BY LESSOR WITHOUT FURTHER NOTICE AND, IN SUCH EVENT, LESSEE SHALL SURRENDER THE RCU TO LESSOR IMMEDIATELY UPON LESSOR'S DEMAND. IF LESSEE SHALL NOT IMMEDIATELY SURRENDER THE RCU, LESSOR MAY IMMEDIATELY, WITHOUT DEMAND OR HEARING, WHICH ARE HEREBY EXPRESSLY WAIVED, TAKE POSSESSION OF THE RCU AND ANY ATTACHMENTS AND/OR LADING (AND FOR THIS PURPOSE LESSOR MAY ENTER UPON PREMISES WHERE SAID RCU MAY BE AND REMOVE SAME) WITHOUT INCURRING LIABILITY TO LESSEE, AND WITHOUT PREJUDICE TO ANY OTHER REMEDIES LESSOR MAY HAVE. IN THE EVENT OF SUCH DEFAULT, LESSEE SHALL PROMPTLY PAY LESSOR ALL COST AND EXPENSES INCURRED BY LESSOR IN RECOVERING OR ATTEMPTING TO RECOVER THE RCU AND LESSEE SHALL CONTINUE TO BE LIABLE FOR RENTAL AND OTHER CHARGES ACCRUING DURING THE PERIOD THE RCU IS RETAINED BY LESSOR. THIS AGREEMENT SHALL TERMINATE AUTOMATICALLY WITHOUT NOTICE TO LESSEE IF A PETITION IN BANKRUPTCY IS FILED BY OR AGAINST LESSEE, OR IF LESSEE SHALL HAVE MADE AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS, SHALL HAVE BEEN VOLUNTARILY OR INVOLUNTARILY ADJUDICATED A BANKRUPTCY BY ANY COURT OF COMPETENT JURISDICTION, OR IF A PETITION FOR REORGANIZATION OF LESSEE OR FOR AN ARRANGEMENT WITH CREDITORS IS FILED BY, OR AGAINST LESSEE, OR IF A RECEIVER SHALL HAVE BEEN APPOINTED FOR ALL OR FOR A SUBSTANTIAL PART OF LESSEE'S BUSINESS OR IF LESSEE SHALL HAVE PERMITTED OR SUFFERED AN ATTACHMENT, LEVY OR EXECUTION TO BE MADE AGAINST ALL OR A SUBSTANTIAL PART OF THE PROPERTY OF LESSEE OR AGAINST THE RCU. IF THIS AGREEMENT SHALL SO AUTOMATICALLY TERMINATE, LESSOR SHALL BE ENTITLED, IN ADDITION TO ITS AFORESAID RIGHTS REGARDING REPOSSESSION OF THE RCU, TO ALL RENTS AND CHARGES ARISING HEREUNDER BUT REMAINING UNPAID BY LESSEE. SHOULD LESSOR EMPLOY ANY ATTORNEY IN ANY COURT PROCEEDING TO ENFORCE ANY OF ITS RIGHTS UNDER THIS AGREEMENT, LESSEE SHALL PAY LESSOR ALL REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES INCURRED IN CONNECTION WITH SUCH PROCEEDING.

18. MISCELLANEOUS

THE RCU IS LEASED, AND THE LESSEE ACCEPTS THE RCU, "AS IS" AND "WITH ALL FAULTS", AND LESSOR WARRANTS ONLY THAT IT CORRESPONDS WITH THE DESCRIPTION SET OUT IN THE LEASE (OR IN ANY FURTHER SUCH AGREEMENT WHICH MAY HEREAFTER ADOPT THESE CONDITIONS), AND THAT THE LESSEE SHALL HAVE QUIET POSSESSION AS AGAINST ANY PERSON CLAIMING UNDER OR THROUGH LESSOR; AND, SAVE AS AFORESAID, THAT LESSOR MAKES AND ASSUMES NO GUARANTY OR WARRANTY WHATSOEVER OF ANY KIND PERTAINING TO THE RCU OR ANY ITEM THEREOF, AND ALL CONDITIONS AND WARRANTIES IN RELATION HERETO, WHETHER EXPRESS OR IMPLIED, WHETHER STATUTORY, COLLATERAL HERETO OR OTHERWISE, WHETHER IN RELATION TO THE FITNESS OF THE RCU, OR ANY TIME HEREOF FOR ANY PARTICULAR PURPOSE, OR TO COMPLIANCE WITH ANY CONVENTION, STATUTE, REGULATION ORDER OR OTHER PROVISIONS OF LAW OR STANDARD, OR WHETHER IN RELATION TO MERCHANTABILITY OR AS TO DESCRIPTION, STATE, QUALITY, OR CONDITION OF THE RCU, OR ANY ITEM THEREOF AT DELIVERY OR AT ANY OTHER TIME ARE HEREBY EXCLUDED AND EXTINGUISHED.

19. ENTIRE AGREEMENT

THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES HERETO, THEIR RESPECTIVE HEIRS, ADMINISTRATORS, EXECUTORS, LEGAL REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, AND LESSEE SHALL NOT ASSIGN THIS AGREEMENT OR ANY INTEREST THEREIN WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF LESSOR. THIS DOCUMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN LESSOR AND LESSEE, SUPERSEDING ANY PRIOR OR OTHER WRITTEN OR ORAL REPRESENTATIONS, AGREEMENTS, OR UNDERSTANDINGS BETWEEN THE PARTIES RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, AND ANY FUTURE REPRESENTATIONS, AGREEMENTS, UNDERSTANDINGS OR WAIVERS MUST BE REFLECTED IN A WRITING SIGNED BY BOTH PARTIES. LESSOR'S FAILURE TO STRICTLY ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT BE CONSTRUED AS A WAIVER THEREOF OR AS EXCUSING THE LESSEE FROM FUTURE PERFORMANCE. IF ANY PROVISION OF THIS AGREEMENT IS INVALID UNDER ANY LAWS OF ANY STATE WHERE USED, SUCH PROVISION SHALL BE DEEMED NOT TO BE A PART OF THIS AGREEMENT IN SUCH STATE, BUT SHALL NOT INVALIDATE ANY OTHER PROVISION HEREOF.