

## TERMS AND CONDITIONS

This agreement contains the terms and conditions (“Terms and Conditions”) that, together with the Invoice, govern the relationship between Heron Events, LLC d/b/a Total Production Services (also referred to herein as “TPS,” “Lessor,” “we,” “us” and “our”) and its clients (“Customer,” “Lessee,” “you,” or “your”). Therefore, for good and valuable consideration, Lessor and Lessee agree as follows:

1. As used herein, “Invoice” means your order or reservation identifying the services and/or items being provided to you hereunder; “Contract” means the Invoice together with these Terms and Conditions; “Item(s)” means the personal property identified on your Invoice (including any “Instructions” provided per Section [or “§”] 4 of this Contract); “Site” means the location where the Item(s) is/are to be delivered and/or used (if applicable), as set forth on the Invoice.
2. You agree TPS shall provide the service(s) specified on the Invoice (“Services”) for the period(s) specified on Invoice (the “Term”). You agree to pay us the applicable **Service** rate(s) set forth on the Invoice (the “Service Fee”), and all other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all associated injuries and damages, for the entire Term. Unless otherwise specifically agreed by TPS, all rates are for normal use of the Item(s) on a *single-event* basis and otherwise in accordance with the terms of this Contract and the “Instructions” described in § 4. Additional service rates at our maximum periodic rate will be due for overuse and late returns. No cancellation or reduction of Rent will be allowed for act(s) of God, events of *force majeure*, time in transit or any other period(s) of nonuse.

We have estimated the **Service Fee** based on the Services requested and your estimate of the length of the Term (the “Estimated Service Fee”). Unless otherwise agreed in writing by TPS, you: (i) will pay us: (A) the Estimated Service Fee, together with any deposit specified on Invoice in advance (together, the “Prepayment”); and (B) all other amounts coming due hereunder upon demand; and (ii) acknowledge and agree that: (A) we may deduct any amount you owe us from any Prepayment; (B) no interest will accrue on any Prepayment; (C) no Prepayment will be deemed a limit of your liability to us.

All **Deposits** are NON-REFUNDABLE unless you reschedule within three (3) months of the beginning of the event Term, in which case the Deposit will be applied to the costs associated with the rescheduled event. A cancellation fee will not be charged to you if Services are cancelled more than four (4) weeks prior to the beginning of the Event Term. If Services are cancelled at least two (2) weeks but not more than four (4) weeks before the beginning of the Event Term, a cancellation fee of 25% of the outstanding balance of the Service Fee will be charged to you. If Services are cancelled at least one (1) week but not more than two (2) weeks before the beginning of the Event Term, a cancellation fee of 50% of the outstanding balance of the Service Fee will be charged to you. If Services are cancelled less than seventy-two (72) hours before the beginning of the Event Term, the entire outstanding balance of the Service Fee will be charged to you. TPS, at its sole discretion, may waive its right, in whole or part, to keep your non-refundable

deposit. Any such waiver shall be in writing and explicitly state the specific amount of the Deposit, if any, TPS will return to you.

In the event any amount due and owing under the Contract is not paid in a timely manner, you shall pay a late fee in the amount of \$100 and all outstanding amounts due and owing will bear interest at a rate of 10% per annum. You authorize us to submit all amounts due and coming due hereunder to any debit or credit card(s) you provide (up to 150% of the new replacement cost of the Item(s)). You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Our maximum liability in connection with this Contract is limited to the Service Fee we actually receive from you hereunder for the Services and/or Items identified on Invoice. You agree to pay all sales, use and other taxes, as well as all tolls, fines, fees, assessments, and other charges related to the Item(s) and/or this Contract.

**3.** You will ensure the Site is clean, safe, secure and fit for delivery and use of any Item(s) used in conjunction with the Services provided by TPS. The Service Fee includes the fee for delivery, setup, installation and/or retrieval of any Items used in conjunction with the Services provided by TPS in the amount set forth on the Invoice. You agree to: (a) pay our regular charge(s) for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site at all times. We will not be responsible for mishaps or delay(s) caused by you, your agents or employees or any other parties, including providers of other goods or services ("Other Providers") for which you agree to indemnify, defend and hold harmless TPS. If you are not present upon our delivery, setup, installation or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including the status, condition, quality and quantities of the Item(s) and the Site).

**4.** Upon the earlier of your receipt, or the delivery to the Site, of the Item(s) identified in the Invoice, unless you thereupon reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by us), carefully examined counted and tested by you or your agent(s); and (b) you: (i) have received reviewed and understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all applicable EPA, OSHA, ASME, IBC, IFC, NFPA, UL, IEEE, ASSP, ANSI and other applicable standards (collectively, "Instructions"); (ii) will fully comply therewith; (iii) have been made aware of the need to use all applicable safety equipment and devices; (iv) will use each Item only for **its intended purpose**, in a reasonable and safe manner; (v) will timely give all applicable notice(s) to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface (For line locations, call **811** and go to [www.NC811.org](http://www.NC811.org) in NC ([www.SC811.org](http://www.SC811.org) in SC) at least 3 full business days prior to delivery); (vi) will immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"); (vii) will promptly notify the police if any

Item(s) is/are stolen or involved in any accident; and (viii) will ensure that all others comply with this Contract. You will notify us immediately if any of the foregoing shall prove incorrect or misleading at any time.

**5.** In the event of a Malfunction as defined in § 4, you agree to immediately notify and return the Malfunctioning Item to, TPS, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of this Contract by, you or anyone you permit to use, operate, occupy or otherwise deal with any Item(s) (including your guests and invitees), we may, at our option: (a) repair the Malfunctioning Item; (b) provide you with a comparable item; or (c) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. The foregoing remedies are **EXCLUSIVE**. We will have no other obligation(s) regarding Malfunctions, all of which you waive (including without limitation, all direct, indirect, incidental and consequential damages).

**6.** TPS owns and will retain title to all Items at all times. You will have exclusive access to the Item(s) during the Term; *subject however*, to your obligation to fully and timely comply with this Contract at all times. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; (b) have any title or ownership interest in or with respect to any Item(s); or (c) **loan, transfer, sublease, repair, store, surrender or assign any Item or this Contract without our prior written consent (in our sole discretion)**. We may substitute, sell and/or assign any Item(s) and/or all or any part of our interests therein and/or in this Contract at any time, in which event, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of TPS.

**7. SAFETY WARNINGS:** THE ITEM(S) CAN BE **DANGEROUS**, AND MAY MOVE, SHIFT, TIP, SINK, OVERTURN, LEAK, OR COLLAPSE, PARTICULARLY DURING SEVERE WEATHER AND/OR ON STEEP TERRAIN. YOU AGREE TO: (A) EXERCISE, AND TO CAUSE ALL OTHERS TO EXERCISE, **EXTREME CARE** WHEN DEALING WITH SUCH ITEM(S); (B) PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S); (C) ensure that each Rented Item is used reasonably, safely and only: (i) **for its intended purpose(s)**; (ii) within its rated capacity; (iii) at the Site; (iv) BY PROPERLY TRAINED, QUALIFIED, CERTIFIED, FAMILIARIZED AND/OR LICENSED (AS APPLICABLE) ADULTS; and (v) otherwise in full compliance with this Contract and all applicable laws, rules and regulations, at all times.

**8. SAFETY PRECAUTIONS:** You will not, nor will you permit anyone else to abuse, misuse, overuse, conceal, place in storage with any third party, repair, modify or damage any Item. YOU ALSO AGREE TO: (A) **ENSURE THAT ALL CHILDREN IN, ON, OR NEAR ANY RENTED ITEM(S) ARE SUPERVISED BY A COMPETENT ADULT AT LEAST 21 YEARS OF AGE AT ALL TIMES;** (B) **POST AN OSHA-COMPLIANT EVACUATION PLAN ON OR NEAR EACH TEMPORARY STRUCTURE INCLUDED IN THE RENTED ITEM(S);** AND (C) **EVACUATE, AND PERMIT TPS TO DELAY DELIVERY, INSTALLATION AND/OR**

**USE OF, OR DISMANTLE AND/OR RETRIEVE ANY OR ALL ITEM(S)** (without obligating us to do so), IF ANY HAZARD (INCLUDING WITHOUT LIMITATION, **SEVERE WEATHER**) OCCURS OR THREATENS.

**9. NO WARRANTIES:** TPS IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEM(S) REFERENCED IN THIS CONTRACT, ALL OF WHICH ARE PROVIDED **“AS-IS”**. TPS MAKES NO WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF **MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE**, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR CONTAMINATION AND/OR GOOD AND WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM OR IN CONNECTION WITH ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) REFERENCED IN THIS CONTRACT, NOR DOES TPS MAKE ANY WARRANTY(IES) AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. NO DESCRIPTIONS, SPECIFICATIONS, DEPICTIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY PARTY REFLECTIONS, INC. **THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS CONTRACT.**

**10. INDEMNITY:** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **YOU: (A) ASSUME ALL RISKS**, INCLUDING WITHOUT LIMITATION, RISK(S) OF PERSONAL AND BODILY INJURY, ILLNESS, LOSS, PRODUCTS LIABILITY, PROPERTY DAMAGE AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND SERVICE(S) REFERENCED IN THIS CONTRACT, AS WELL AS ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DELIVERY, SETUP, INSTALLATION, DEINSTALLATION, TEARDOWN, MALFUNCTION, COLLAPSE, STORAGE, CLEANING, DISINFECTION, SERVICING, MAINTENANCE, REPAIR, AND/OR RETRIEVAL THEREOF, WHETHER OR NOT YOUR FAULT (COLLECTIVELY, “RISKS”); **(B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, TPS**, each TPO, their respective parents, partners, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, partners, agents, affiliates, employees, insurers, subrogees, representatives, successors and assigns (each, an “Indemnitee”), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees) arising from and/or in connection with the Item(s), this Contract and/or any breach hereof by you, your agents, employees, contractors, guests, invitees, sublessees, successors and/or assigns; and except only as provided in § 5, **(C) WAIVE** all rights and remedies available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.

**11.** You agree to protect, properly maintain and care for each Item at all times, keep it safely and securely locked when not in use, and return it to TPS clean, free of contamination, burns, cuts, stains, discoloration and debris, and in good condition.

If an Item is returned unclean, then in addition to your other obligations arising under this Contract, you will pay to TPS a cleaning fee of \$250 to clean the Item.

If an Item is returned damaged (beyond normal wear and tear) then, in addition to your other obligations arising under this Contract, you will pay to TPS the total cost of repair of the Item as reflected on a repair invoice presented to you. If the Item cannot be repaired, or repair costs make repair unfeasible, you shall pay to TPS the total cost of replacement of the Item in addition to a one-time administrative fee in the amount of \$150.00 for the time/costs related to procuring a replacement item.

If any person on Site purposefully throws and/or drops a microphone at any time during the Term you will pay to TPS an additional fee of \$100 regardless of whether any damage results to the microphone. The \$100 fee is in addition to any fees charged to clean or repair the microphone as a result of being thrown or dropped.

**12.** We may, without further notice or liability to you, inspect and/or monitor (in person or electronically, including via the use of GPS and/or telematics) any Item(s) at any time, and all information thereby obtained will be our property. You consent to such inspection(s) and monitoring and waive all claims with respect thereto. You hereby grant to TPS a perpetual, royalty free, worldwide, right and license to create, edit, display and distribute one or more images of your event(s) that include one or more Item(s).

**13.** Your obligations hereunder shall be UNCONDITIONAL, and without setoff, reduction or counterclaim. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract, any other agreement(s) ("Other Contract(s)") between you and any Indemnitee, and/or any of your obligations arising (t)hereunder or in connection (t)herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent or bankrupt; or (d) die or cease conducting business; if TPS reasonably deems itself insecure; or if any Item(s) shall be lost or, unless covered by LDW per § 13, damaged, you will be in **DEFAULT** under this Contract and such Other Contract(s), whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) cancel the Term and/or the subject Contract(s) (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, restrict, shut down, disassemble and/or disable such Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations (t)hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, fees for the entire scheduled Term, overtime, loss of use, interest, attorneys' fees, and all costs associated with retrieval/repossession costs, collection and administration); and/or (vii) pursue any one or more other rights and/or

remedies available (t)hereunder, at law and/or in equity, all of which are and will remain cumulative.

**14.** This Contract shall be governed by and enforced under the laws of North Carolina. At our option, dispute(s) with respect to this Contract and/or its subject matter shall be submitted to binding arbitration before a single arbitrator selected by us at the offices of the American Arbitration Association located in or nearest to Wake County, NC. The arbitrator's decision shall be final and binding and may be entered in any court of competent jurisdiction. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely in the federal, state and local courts located in or nearest to Wake County, NC (unless waived by TPS). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **YOU WAIVE YOUR RIGHTS TO TRIAL BY JURY AND TO PARTICIPATE IN ANY CLASS OR JOINT ACTION.**

In the event any legal action is commenced in connection with this Contract, the prevailing party will be entitled to recover its costs and expenses associated therewith (including without limitation, attorneys' fees and expenses) from the non-prevailing party. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available under or in connection with this Contract will constitute an election of remedies or a waiver of any of our rights or remedies, all of which are cumulative.

**15.** This Contract and any addenda(um) we provide constitute(s) the entire agreement between you and TPS, *superseding* all other agreements and representations. The terms of this Contract are severable. If any provision hereof shall be deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and enforceable. This Contract cannot otherwise be modified without our written consent. Time is of the essence. These Terms and Conditions apply to all Item(s) identified on Invoice, and to *all other items* you obtain from us at any time (unless we otherwise agree in writing). This Contract shall bind and be enforceable by and against you, the other Indemnitees and their respective permitted successors and assigns (there being no other third-party beneficiaries hereto). Digital, electronic, photocopied and facsimiled signatures and initials hereon will be deemed originals.

If any performance required of us is delayed or impaired as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God," event of *force majeure*, or any other event, fact or circumstance beyond our reasonable control (including without limitation any epidemic, pandemic and/or governmental or regulatory action or mandate), we will be excused from such performance. You waive the benefits of all statutes of limitations regarding our rights and remedies.