



## **STANDARD AGREEMENT**

(version 5-1-2020)

This AGREEMENT (“Agreement”) is entered by and between **Boxx Modular, Inc.** (“Contractor”), located at **6811 Grant Road, Houston, Texas 77066** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

### **Terms:**

1. **Scope of Services:** Contractor will perform the services and/or provide the products as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **36-month rental of a 24 ft x 60 ft temporary modular office building located at Dallas Salmon WWTP, 703 N. Wisconsin Ave.** If there is a conflict between the terms of this Agreement and Exhibit A, the terms of Exhibit A will prevail.
2. **Term and Termination:** This Agreement shall commence on **June 15, 2020** and shall expire on **June 14, 2023**. The period from commencement to expiration is the Contract Term. City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Contractor. Upon such termination, City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination plus the early termination fee specified in Exhibit A. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
3. **Compensation:** Contractor shall be paid for the services/products as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$58,862.00** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services/goods only after such services are completed or goods are delivered and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Contractor must submit to City invoices for all goods delivered and services provided, which invoices must include details and dates of service or delivery. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Contractor, City shall give Contractor specific reasons for disapproval in writing.
4. **Insurance:** Contractor **is** required during the Contract Term to maintain insurance as follows: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) If Contractor will provide City “professional services,” as that term is used in Chapter 252 of the Texas Local Government Code, Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and (c) If at any point during the Contract Term it is foreseeable that Contractor will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000.

unless approved in advance by City. Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Contractor acknowledges that time is of the essence in performing this Agreement. City and Contractor (collectively, the “Parties”) agree that if Contractor is late in performing any obligation of this Agreement, City will suffer loss, damages, or other harm from Contractor’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred is incapable or difficult to precisely estimate, and therefore Contractor agrees to pay City liquidated damages for delay at a daily rate equal to the total compensation allowed under the Agreement divided by the number of days in the Contract Term. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Contractor’s delay; (ii) one of the reasons for City and Contractor to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Contractor are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Contractor hereby waives and appoints City to assert on Contractor's behalf Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.
8. **Confidentiality:** During the course of the services to be provided under this Agreement, Contractor may become privy to confidential information of City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify City of any misuse or unauthorized disclosure of City’s confidential information and upon expiration of this Agreement shall return to City all confidential information in Contractor’s possession or control. Contractor shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of City.
9. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City,

Contractor warrants and agrees that Contractor will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

10. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
11. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
14. **Force Majeure:** Neither City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising solely from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by the exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.

16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State and/or City Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency or the City's internal auditor (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement, including any amendment hereto, contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
21. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
22. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Contractor's responsibility.
25. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the

provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
29. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
32. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

*(signature block on next page)*

Executed on \_\_\_\_\_. *(date to be filled in by City Secretary)*

**BOX MODULAR, INC. - “Contractor”**

*Chris Rowe*

\_\_\_\_\_  
\_ Chris Rowe, VP

**CITY OF LEAGUE CITY – “City”**

\_\_\_\_\_  
John Baumgartner, P.E., City Manager

**Attest:**

\_\_\_\_\_  
Diana Stapp, City Secretary

**Approved as to Form:**

\_\_\_\_\_  
Office of the City Attorney

# Exhibit A

## Scope of Services/Description of Products/Payment Schedule

(There are 6 pages for Exhibit A, including this page)

See Next Page

This Rental and Services Contract ("**Contract**") includes this Cover Page and the Terms and Conditions and any BOXX attachments thereto.

**CUSTOMER:** City of League City  
144 Park Ave Ste 100  
League City, Tx, 77573  
Jody Hooks  
(713) 906-4370  
jody.hooks@leaguecity.tx.gov

**This Lease contract is in accordance with  
BuyBoard Contract #556-18  
Please use BuyBoard processing**

**Please make sure your PO references this  
Boxx Modular contract proposal**

## RENTAL CONTRACT DETAILS

**RENTAL START DATE:**

Jun 15, 2020

**MINIMUM GUARANTEED TERM:**

36 Months (Herein referred to as the  
"Minimum Commitment")

**EX WORKS:**

**RETURNED TO BOXX AT:**

**ACCOUNT MANAGER:**

Mike Lodes

**PHONE:**

(214) 534-5105

**EMAIL:**

mlodes@boxxmodular.com

**PROJECT/SITE INFORMATION:**

703 N. Wisconsin

League city, Texas 77573

**SITE CONTACT:** Jody Hooks

**PHONE:** (713) 906-4370

**EMAIL:** jody.hooks@leaguecity.tx.gov

The information contained herein is furnished at your request for your personal use only and is to be held in the strictest confidence.

### 24x56 36mo Lease - 24x56 Lease- League City

DESCRIPTION OF EQUIPMENT/ SERVICES	QTY	UNIT PRICE	MONTHLY PRICE	TOTAL
	1	\$1,000	\$1,000	\$36,000
Personal Property Fee	1	\$80	\$80	\$2,880
Installation	1	\$4,250		\$4,250
Install - Skirting	1	\$2,505		\$2,505
Install - Project management, travel per buyboard	1	\$1,054		\$1,054
Treated wood deck-ADA Ramp and stairs & rear deck	1	\$7,625		\$7,625
Delivery to Site	1	\$774		\$774
Dismantling with Anchor Removal- after lease at time of return	1	\$2,400		\$2,400
Return Transportation	1	\$774		\$774
Dismantle - Remove Skirting after lease upon return	1	\$600		\$600
<b>Total Monthly Rental Costs:</b>			\$1,080	
			<b>Total:</b>	\$58,862

**CONTRACT TOTAL: \$58,862**  
**TOTAL MONTHLY RENTAL COSTS: \$1,080**

## UNIT DETAILS

DESCRIPTION OF UNIT/COMPLEX	LONG SERIAL NO.	SHORT SERIAL NO.	REPLACEMENT VALUE
		Complex	\$120,000

## NOTES

Prices quoted exclude all sale taxes, property taxes, licenses, permits and fees. Delivery and installation prices are based on the site being accessible, level and having adequate drainage. Customer is responsible for obtaining any building permits and securing local installation and foundation approvals. Quote valid for 30 days.

Return Transportation and Dismantle amounts are estimates only. Actual charges to be specified at time of pick-up/dismantle.

If Customer provides evidence to BOXX Modular of property insurance as required in the Terms and Conditions covering the Structures (as defined in the Terms and Conditions) prior to delivery, the Structure Protection Plan Fee will be waived.

Regardless of whether Customer participates in the Structure Protection Plan, it shall be required to have and provide evidence of commercial general liability insurance coverage as set out in the Terms and Conditions.

**NOTICES FOR BOXX MODULAR:**

BOXX Modular Inc.

**Address:** 3475 High River Road, Fort Worth, TX 76155

**Attention:** Chris Rowe, Vice President, BOXX North America

**Copy to Legal Dep't Fax:** 1.403.237.6421

**NOTICES FOR CUSTOMER:**

City of League City

**Address:** 144 Park Ave Ste 100, League City, Tx 77573

**Attention:** Jody Hooks



## ACKNOWLEDGEMENT

Notwithstanding anything to the contrary in this Contract, and in addition to the rights under the force majeure clause in the Terms and Conditions, BOXX Modular Inc. and any of its affiliates, shall not be in default of any of its obligations hereunder, and shall not have any liability or be responsible for any claims or damages whatsoever incurred by the Customer, as a result of the non-performance or any delays in the performance of its service resulting from the unavailability of assets, resources, personnel, labour and support services caused by, directly or indirectly, the COVID-19 pandemic.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized agents.

**City of Leauge City ("Customer")**

Signature:

**Name:** Jody Hooks

**Title:** Director of Public Works

**Date:**

**BOXX Modular Inc.**

Authorized Signature:

*Chris Rowe*

**Name:**

**Title:** Vice President

**Date:** 05/04/2020

Please sign and return this copy to your sales representative

## RENTAL AND SERVICES CONTRACT - TERMS AND CONDITIONS

BOXX will lease the equipment, including a Module, together with any Carry-On Options and Ancillary Equipment, and all other contents and furnishings (collectively, "**Equipment**") and provide Transportation Services, Installation Services, Dismantle Services or other services, if any, (collectively, the "**Services**"), to Customer for the Minimum Commitment and any Holdover (collectively, the "**Term**") at the Site, in accordance with the attached Terms and Conditions. The Cover Page sets out the meaning for capitalized terms not defined in these Terms and Conditions.

1. **PRICE:** Customer must pay BOXX the Rent, other charges set out in this Contract and taxes.

2. **PAYMENT:** Unless stated otherwise on the Cover Page, Customer must pay BOXX: (i) the Rent each month during the Term and all other invoiced amounts within 30 days of the date of the invoice; (ii) interest at the rate of 1.5% per month (18% per year) on overdue amounts until paid; and (iii) all costs incurred by BOXX in collecting overdue accounts and repossessing Equipment.

### 3. **EQUIPMENT:**

(a) **Title:** BOXX will remain the owner of Equipment. This Contract is not a financing arrangement, and does not give Customer any ownership, rights in Equipment. BOXX may register a security interest under any applicable laws, and Customer waives any right to receive any related statements or notices from BOXX. Equipment is chattel and is not intended to be or become a fixture. If Site is located on lands not owned by Customer, Customer must obtain a release from the owner of the lands that Equipment will not be deemed a fixture and may be removed without notice at any time.

(b) **Care, Custody and Control:** Care, custody and control of Equipment will pass to Customer on "**Delivery**" which is the later of the date on which (i) Equipment is delivered to Site or (ii) the Installation Services, if any, are substantially complete. During the Term, Customer: (i) must retain care, custody and control of Equipment and keep it on Site; (ii) bears all risk of loss or damage to Equipment; and (iii) must not sub-rent or allow third parties to use Equipment. Customer grants BOXX a license to enter Site to inspect Equipment and to effect its remedies under Section 9(a).

(c) **Permits:** Customer must have all necessary licenses and permits, and pay all third party costs, charges, and taxes for the use of Equipment or related to Services, including tolls, ferry/tunnel charges, permissions and inspections. Any amounts for any such licenses, permits, costs, charges or taxes paid by BOXX will be invoiced to Customer.

(d) **Maintenance and Care of Equipment:** Unless Customer has agreed to a Maintenance Plan, Customer must maintain Equipment (normal wear excepted) by (i) replacing/cleaning air filters; (ii) cleaning fan blower wheels and motors of dust/debris; (iii) inspecting belt driven exhaust fans for belt wear; (iv) inspecting furnaces, hot water heaters, appliances, air units and systems and other similar equipment monthly; (v) inspecting smoke/heat detectors; and (vi) promptly reporting to BOXX any issues detected. No other alterations are permitted to Equipment. Customer must not add or change any signage. Customer is responsible for any damage resulting from accident, modification, misuse, abuse, neglect, unauthorized repairs/alterations, lack of or improper maintenance, fire, weather or other natural causes (collectively "**Damage**") to Equipment.

(e) **Return of Equipment:** Customer must clean, winterize and return Equipment at end of the Term in the same condition Equipment was in at Delivery, normal wear excepted. BOXX's costs to do any of the above, to repair any Damage to Equipment, and to return Equipment to the condition it was in at Delivery (normal wear excepted), will be invoiced to Customer.

(f) **Holdover:** If Customer does not return Equipment at end of Minimum Commitment, Customer will continue to rent Equipment until returned ("**Holdover**"), and BOXX may increase Rent on 30 days' notice.

### 4. **WARRANTY:**

(a) **Warranty:** BOXX provides only the following "**Warranty**":

Equipment	Warranty	Warranty Period from Delivery
New Modules	Free from defects in workmanship and materials	1 year
Used Modules	Serviceable	30 days
Carry-on Options (if new)	Original manufacturer's warranty	Original manufacturer's warranty
Ancillary Equipment with manufacturer cost >\$500 (if new)	Original manufacturer's warranty	Original manufacturer's warranty

(b) **Limitations:** Warranty is subject to the following limitations:

(i) BOXX will, acting reasonably, make all decisions regarding the Warranty, including validity, applicability and appropriate remedies;

(ii) Warranty will not be valid unless Customer (i) notifies BOXX within 5 days of noticing any issues with Equipment that may be covered by Warranty; and (ii) maintains Equipment as described in Section 3(d). Warranty will not be valid if Equipment was subject to Damage. Unless visually obvious and noted by Customer in writing and provided to BOXX's agent or truck driver at the time of Delivery, BOXX does not warrant that Equipment is at that time or will be during the Term, free from mold, bacteria, fungus or other biological contaminants ("**Biological Contaminants**").

(iii) Warranty is limited to supply of parts and rates for non-union labor to remedy defective components, and all other expenses associated with Warranty work, including freight, travel expense, room and board and overhead must be paid by Customer. BOXX is not responsible for any actions, injuries, claims, liabilities, losses, damages, demands, penalties, fines, expenses (including legal expenses), costs, obligations and causes of action of any kind and nature whatsoever ("**Claims**") arising from defects except as set out in this Section 4(b)(iii).

(iv) In order for Warranty to apply, Module(s) must be connect to an electric power line. In the event the Module(s) are connected to any alternative power source, this Warranty is void.

### 5. **INSURANCE:**

(a) **Coverage:** Customer must at all times during the Term have commercial general liability insurance with coverage of not less than \$2,000,000 in aggregate and \$1,000,000 per occurrence. Such insurance policy must be primary and non-contributory; and name BOXX as an additional insured. Unless Customer has agreed to the Rental Protection Plan Fee, Customer must at all times during the Term have property insurance in place that covers Equipment at the full replacement value, against loss or damage from all perils, regardless of the cause, including negligence. Such policy must name BOXX as loss payee and must not contain penalty clauses or co-insurance, but if it does, specifically state that they will not be prejudicial to full reimbursement to BOXX. If the insurance proceeds are less than the full replacement value, Customer must pay the difference to BOXX.

(b) **Other Insurance Requirements:** Customer must ensure that: each insurance policy contains a waiver of subrogation in favor of BOXX, the insurer has a rating of no less than A- by the A.M. Best Rating Guide, and the insurer agrees to give BOXX at least 30 days' prior written notice of cancellation of or changes to the insurance policy. Customer must provide BOXX with a certificate of insurance prior to Delivery. Customer is responsible for payment of any insurance policy premiums and deductibles.

### 6. **SERVICES:**

(a) **Site Access:** Customer must provide BOXX with reliable and accurate information regarding transportation, Site conditions and access at least 5 business days prior to the date Equipment is to be transported to Site.

(b) **Transportation Damage:** BOXX is not responsible for any loss or damage to Equipment during transportation, unless such loss or damage is noted in writing and provided to BOXX's agent or truck driver at the time of Delivery.

(c) **Site:** Customer must ensure the Site is clear, level, able to bear the weight of the Equipment, and there must be a clear, flat working area that is 60 feet wider than the Module on each side unless otherwise agreed to by BOXX. Failure to meet the above requirements will void any Warranty or maintenance obligations BOXX may have, Equipment may not be installed or removed, there may be additional charges and Customer will be responsible for any delays.

- (d) **Extra Services:** BOXX may, at its discretion, perform any obligation of Customer, which Customer has failed to perform, perform additional services at the request of Customer, or as required to provide the requested Equipment and Services if information provided by Customer is incomplete or inaccurate (collectively "**Extra Services**"). At BOXX's option, the charges for the Extra Services will be calculated by BOXX in its sole discretion based on (i) a lump sum fee, or (ii) its time and materials cost, plus an applicable percentage mutually agreed upon by the parties.
- (e) **Delays:** If Equipment off/on-loading or performance of Services is delayed due to transportation delays, Site access conditions, Customer not fulfilling its obligations under this Contract or any delay caused by Customer, Customer will pay Rent and be invoiced for charges resulting from the delay at BOXX's cost plus 15%.
- 7. INDEMNITY AND LIMITATION ON DAMAGES:**
- (a) **Indemnity:** Except to the extent prohibited by law, and Except to the extent caused by BOXX's negligence or willful misconduct in performing Services or BOXX's breach of this Contract, Customer will be liable for and will indemnify BOXX, its affiliated entities, and each of their respective directors, officers, employees, agents and contractors (the "**BOXX Parties**") against any Claims suffered by BOXX Parties which: (i) are caused by Customer's negligence, willful misconduct or breach of this Contract; (ii) relate to or arise during Customer's care, custody and control of Equipment; or (iii) relate to or arise from Biological Contaminants.
- (b) **Limitation on Liability:** Except for third party indemnification Claims or the Termination Fee, no party will be liable to the other party or obligated to indemnify the other party for exemplary, special, incidental, indirect, consequential or punitive damages or damages relating to loss of goodwill, use, revenue, profit or opportunity. BOXX's maximum liability to Customer for any Claim in relation to this Contract may not exceed an amount equal to the total Rent during the Minimum Commitment.
- 8. FORCE MAJEURE:** BOXX will not be in default of the performance of any of its obligations under this Contract if it is prevented from doing so due to an event beyond its reasonable control, including but not limited to acts of God, acts of war, terrorism, strikes, lockouts, civil disturbances, explosions, fires, transportation disruptions and weather conditions, but only to the extent and for the time period that performance of such obligation is so prevented.
- 9. TERMINATION:**
- (a) **Termination for Cause – BOXX:** BOXX may immediately terminate this Contract upon notice to Customer if Customer: breaches a material term of this Contract, including failing to make payments when due or is in breach of any other agreement with BOXX, and fails to remedy the breach within 10 days of notice from BOXX. If BOXX terminates this Contract, Customer must pay BOXX an amount equal to: (A) the Rent that Customer is obligated to pay BOXX from the date of termination until the end of the Minimum Commitment, plus (B) the charge for the removal and transportation of Equipment back to BOXX (collectively, the "**Termination Fee**"), which fee is a genuine estimate of the damages BOXX would have suffered as a result of Customer's default and is not a penalty. Customer must also pay any costs incurred by BOXX under Section 3(d). Within 3 days of BOXX's termination of this Contract, Customer must make arrangements and cooperate with BOXX for the return of Equipment, failing which BOXX may enter Site and retake possession of Equipment without further notice. Notwithstanding such repossession, Customer will be liable for and indemnify BOXX against all costs incurred by BOXX relating to the repossession of Equipment and collection of amounts owing. BOXX will not be responsible for any damage arising from the repossession of Equipment, unless arising from BOXX's gross negligence, or for any personal property in or attached to the Equipment.
- (b) **Termination for Cause – Customer:** Customer may immediately terminate this Contract upon notice to BOXX if: BOXX breaches any material provision of this Contract, and fails to remedy the breach within 10 days of notice from Customer.
- (c) **Termination – Holdover:** Either party may terminate this Contract during a Holdover for any reason by providing the other party with 30 days' notice.
- 10. CHANGE ORDERS:** The Parties may, from time to time, agree to revise or modify the Cover Page by completing and executing a change order in the form provided by BOXX. Once each Party has executed the change order it will amend the Cover Page as of the effective date of the change order. Except as amended in the change order, this Contract will remain valid and unchanged.
- 11. GENERAL:** Every notice to be given under this Contract must be in writing and sent to the other party's Address for Notices set out in Cover Page. A party may change its Address for Notices by providing notice. This Contract will be governed and construed under and in accordance with the laws of Texas without regard to conflict of law principles. Each party submits itself to the jurisdiction of the courts of Texas. During the Term, each party must comply with all laws that apply to such party's performance, or are necessary for the other

party's performance under this Contract. This Contract constitutes the entire agreement between the parties pertaining to the rental of Equipment and provision of Services. No modification or waiver of this Contract in whole or in part is binding unless it is in writing and duly executed by each party. No waiver of any provision in this Contract will constitute a waiver of any other provision, whether similar or not, or constitute a continuing waiver unless otherwise expressly provided. BOXX may assign this Contract in whole or in part upon notice to Customer. Customer must not assign this Contract. If Customer sends BOXX a purchase order in respect of the Services or rental of Equipment, then that purchase order will be used to assist Customer in its internal accounting only and any terms or conditions contained in such purchase order will have no effect whatsoever on this Contract. Where a conflict exists between the Terms and Conditions and Cover Page, the provisions of the Terms and Conditions will take precedence. If any provision of this Contract is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability will attach only to such provision and all other provisions in this Contract will continue in full force and effect. Sections 1, 2, 3, 6, 7, 9(a) and 10 will survive the termination of this Contract and continue in full force and effect for the benefit of, and will be binding upon, the parties. This Contract may be executed by the parties using electronic copies in separate counterparts each of which when so executed and delivered will constitute one and the same document.

Short Form Equipment Rental and Services Agmt (BOXX US) FINAL (Oct 19 2016)

Customer Initials	BOXX Initials
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Customer Initials	BOXX Initials
	