



9200 East Mineral Avenue. Suite 166. Centennial, CO 80112  
855-206-7594. <https://zephyrboating.com>

## **FEE SHARING AGREEMENT**

This FEE-SHARING AGREEMENT (“Agreement”) is made and entered into as of the last date of execution below (“Effective Date”) between Zephyr Inc. dba Zephyr Boating, a Delaware corporation located at 9200 East Mineral Avenue (“Zephyr”) and (“Skipper”). Zephyr and Skipper are collectively referred to as the "Parties" and individually as a “Party.”

### **RECITALS**

WHEREAS, Zephyr has developed certain proprietary means of attracting prospective clients who seek to purchase boat rides and boating excursions featuring recreational marine activities.

WHEREAS, Zephyr agrees to contract with Skipper so that Skipper may provide such rides and boating excursions to boat riders that retain Zephyr;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties agree as follows:

### **ARTICLE 1**

1.1 Services. Skipper agrees to provide the following services: to serve as guide on boat rides and boating excursions for clients, and as such is referred to the Skipper by Zephyr.

1.2 Fee Arrangement. For each ride Zephyr provides to Skipper, Skipper must pay Zephyr 15% of the gross amount generated from the ride.

### **ARTICLE 2**

2.1 Background Checks. Skipper shall perform background checks and drug testing on all personnel whom Skipper proposes will provide the Services prior to boater clients being referred by Zephyr to these services. Zephyr reserves the right to reject Skipper's personnel at any time for any reason and to request that Skipper replace such personnel within a reasonable time period.

2.2 Disclosure. Except to fulfill its obligations under this Agreement, the Receiver (the Skipper) shall: (1) not use or disclose to any third party any Confidential Information disclosed by the Discloser (Zephyr); (2) maintain the confidentiality of the information using at least the same degree of care it uses to maintain its own Confidential Information, but in no case less than a commercially reasonable degree of care; and (3) disclose the Zephyr's Confidential Information only to Skipper's background validated employees only in order to fulfill their duties to Zephyr. Prior to commencing work, Skipper must sign non-disclosure agreements with Zephyr obligating the Skipper to maintain the Confidentiality of the Confidential Information using at least the same standard of care required of the Receiver (Skipper) under this Agreement. Skipper is responsible for any use or disclosure of Discloser's (Zephyr's) Confidential Information by Skipper's employees.

### ARTICLE 3

3.1 Taxes. All customs, value-added tax, levies, charges, and other taxes and duties other than income taxes owed by Skipper ("Taxes") arising in connection with the performance of this Agreement shall be paid by Zephyr in full without any withholding or deduction whether on account of any set-off, Taxes, or otherwise. If Skipper causes Zephyr not to pay any required taxes, Skipper shall be responsible for paying the required taxes or indemnifying Zephyr for the same.

3.2 Withholding. If Zephyr is required by law to make any such withholding or deduction, Zephyr shall increase the amount payable by Skipper to the extent necessary so that the amount receivable after such withholding or deduction is equal to the amount which would have been receivable had no such withholding or deduction been made. Upon request, Skipper shall provide Zephyr with the original Tax invoice and a certificate issued by the relevant tax office certifying that the Tax has been paid.

### ARTICLE 4

#### Indemnification

4.1 Skipper agrees to indemnify, hold harmless, and defend Zephyr and its officers, directors, employees, agents, successors and assigns with respect to any third party suit, claim or proceeding ("Claim") to the extent arising out of, related to, or resulting from: (1) Skipper's breach of this Agreement, including its representations, warranties and obligations; and (2) any actual or alleged personal or bodily injury (including, without limitation, death) or damage to tangible property.

4.2 Legal Counsel. Zephyr shall select legal counsel to defend such Claim at its sole expense. Skipper shall have the right to approve such counsel but shall not unreasonably withhold its approval.

- i) promptly giving notice to Zephyr of any such Claim;
- ii) giving sole control to Zephyr over the conduct of such Claim; and
- iii) cooperating with Zephyr.

#### Disclaimer

**EXCEPT AS SPECIFICALLY PROVIDED IN SECTION (REPRESENTATIONS AND WARRANTIES), ZEPHYR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE DAMAGES CAUSED BY RIDERS, INCLUDING THE WARRANTIES OF MERCHANTABILITY**

AND FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE 5

### Representations and Warranties

The Skippers represents and warrants that:

- (a) It is and will be in compliance with all applicable laws, regulations and rules during the Term of the Agreement;
- (b) It owns or has all rights to the boats in accordance with the terms of this Agreement;
- (c) It has the proper licenses to operate the boats and other equipment that will be used in providing the Service to Zephyr
- (d) It has the full authority to enter into and perform its obligations under this Agreement;
- (e) It has sufficient financial resources to perform all of its obligations under this Agreement; and
- (f) There are no pending claims or litigation against it that might affect its ability to carry out its obligations under this Agreement.

## ARTICLE 6

### Term and Termination

12.1 Term. Unless terminated earlier, this Agreement shall begin on the Effective Date and shall continue until one Party gives notice to the other of at least thirty (30) days seeking termination of this Agreement.

Either Party may terminate this Agreement: (a) for the other Party's breach, by providing notice, with a 30-day cure period; (b) immediately, without a cure period, for: (i) a material, incurable breach; (ii) if the other Party becomes insolvent; or, (iii) if without a successor, the other Party dissolves, liquidates or ceases to conduct its business operations in the ordinary course; or (c) for convenience.

## ARTICLE 7

Skipper will maintain all insurance necessary for operating, including, but not limited to: Agreement e.g. Professional Liability, Workers Compensation. Skipper shall be required to provide a Certificate of Insurance upon request.

## ARTICLE 8

### Choice of Law; Venue

This Agreement shall be governed by the laws of the state of Colorado, without regard to its conflict of laws rules. The Parties shall bring any disputes arising under this Agreement solely in the Denver, Colorado. The Parties expressly waive all rights to object to the jurisdiction and venue in Denver, Colorado.

### Attorneys' Fees

In case of a proceeding arising out of this Agreement, the prevailing Party shall be entitled to recover from the other Party all of its reasonable litigation costs, including reasonable attorneys' fees. The amount shall be determined by the court in such proceeding.

### Cumulative Remedies

Except as otherwise provided, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative and not exclusive of any other remedy conferred

hereby or by law, and the exercise of any one remedy shall not preclude the exercise of any other.

#### Entire Agreement

This Agreement, together with its Appendices, constitutes the entire agreement between the Parties with respect to its subject matter, replacing all prior written or oral negotiations or agreements.

#### Amendment

This Agreement may be amended only if set forth in writing and signed by each Party.

#### Assignment

All terms and provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective permitted transferees, successors, and assigns. Any attempt to assign this Agreement or any of its provisions otherwise shall be null and void.

#### Notices

All notices shall be in writing and effective: (i) immediately, if delivered by hand; (ii) after three days, if sent via prepaid, first class certified or registered mail, return receipt requested; or (iii) the next business day, if sent via commercial overnight courier service, to the address below, or such other address as a Party provides to the other:

To Zephyr:

Paul Reimers 9200 E. Mineral Avenue, Suite 166 Centennial, Colorado 80112

With a copy to:

T. Edward Williams, Esq. Williams, LLP 7 World Trade Center 250 Greenwich Street, Suite 4629 New York, New York 10007

To Skipper:

[Full Name and Address]

With a copy to:

[Full Name and Address of Outside Counsel, If Applicable]

#### Waiver

The waiver by any Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

#### Severability

If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement will continue in full force and effective so far as the intent of the Parties can be carried out.

#### Survival

The following sections shall survive termination or expiration of this Agreement: 1 (Definitions); 2 (Interpretation); 3 (License Grant); 4 (Users); 5 (Restrictions on Use); 7 (Confidential Information); 8 (Fees); 9 (Indemnification); 10 (Disclaimer); 11 (Warranties); 12 (Limitation of Liability); 13.3 (Effect of Termination); 19 (Alternative Dispute Resolution ); and 21 (General).

#### Headings

The headings of the sections of this Agreement are not intended to have any substantive significance when interpreting this Agreement.

Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one original. Digital signatures shall be acceptable.

IN WITNESS WHEREOF, Zephyr and Skipper have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[Service Provider's Full Legal Name] By: Name: Title: Date:

[Customer's Full Legal Name] By: Name: Title: Date:

Signature\_\_\_\_\_

Date:\_\_\_\_\_