

## BIGG-A-BED RENTAL AGREEMENT

We are excited to enhance your sleeping comfort this academic year. This Agreement describes what the rights and responsibilities of each party are. If you have any questions about anything in this Agreement, please contact us at [contact@biggabed.com](mailto:contact@biggabed.com) immediately. Certain terms are defined on your order form (“**Order Form**”) that was emailed to you at the time of rental which is incorporated into this Agreement and made a part hereof.

This Rental Agreement (the “Agreement”) is between Bigg A Bed, LLC d/b/a Bigg-A-Bed, (“**Lessor**” or “we” or “us” or “our”), and you (“**Lessee**” or “you” or “your”), and is dated as of your Order Date (as described on your Order Form).

The Parties agree as follows:

1. Lease. We agree to lease certain equipment (the “**Equipment**”) to you. The specifics of the Equipment are described on your Order Form. We will continue to own the property during the lease, and this is not a rent to own or security agreement.
2. Use of the Equipment. You are responsible for installing the Equipment according to the directions which are available at <https://www.biggabed.com/blank-page>. YOU MAY NOT INSTALL THE EQUIPMENT ON A LOFTED BED. YOU MUST INSTALL THE EQUIPMENT AGAINST A WALL. If you decide not to use the mattress provided by the college or university that you attend (the “**Institution**”), you will be responsible for storing it, returning it to your room and for any damage to it during the Term (as defined in Section 11). **You acknowledge that you will use the Equipment at your own risk. We will not be responsible for any damage to Institution property, your property or injury to you or anyone else as a result of the use of the Equipment.** You will, at your own expense, keep and maintain the Equipment in a good state of repair, normal wear and tear excepted, and you will use the Equipment only for its intended purpose and follow our instructions regarding the use and maintenance of the Equipment.
3. Rent. In consideration of your right to possess and use the Equipment during the Term you will pay the rent specified on your Order Form (“**Rent**”) in advance, prior to receipt of the Equipment.

If by the expiration of the Term, you do not return the Equipment to us in the condition and on the terms and conditions of Section 6 below, you will continue to comply with all the terms and conditions of this Agreement, including the obligation to pay 110% of the prorated daily Rent for each day from the expiration of the Term until the date on which you return the Equipment to us in accordance with this Agreement (“**Holdover Rent**”). You will not construe anything contained in this Section, including your payment of Holdover Rent, as our assent to the waiver of any obligation under this Agreement; or (b) assent to any renewal of this Agreement. Alternatively, if we determine in our discretion that you do not intend to return the Equipment, we will deem the Equipment lost and will charge you a Loss Fee of up to three times the Rent paid under this Agreement (the “**Loss Fee**”). Holdover Rent will be charged at our discretion. Once the Loss Fee is paid, Holdover Rent will cease to be charged.

Lessee shall reimburse Lessor for all costs incurred in collecting any late payments, Loss Fees and Holdover Rent, including, without limitation, attorneys' fees. Payment of any late charge does not excuse you of any default under this Agreement.

**You have provided us with a credit card that is valid through the expiration of the Term and you agree that we may charge the card on file for any Holdover Rent, extra cleaning fees (as described below) or Loss Fee that you may accrue. Your credit card information will be securely stored by a third-party processor (currently Square). You can read more about what Square does to keep your information secure [here](#).**

4. Limited Warranty. We will replace the Equipment with identical or similar Equipment if the Equipment fails to operate in accordance with our specifications or operation instructions. Such replacement shall be made as soon as practicable after you return the non-conforming Equipment. Contact us at [contact@biggabed.com](mailto:contact@biggabed.com) to make a claim under this warranty. Unless we specify otherwise, you will return the non-conforming Equipment at your expense and risk of loss to us at the location specified on the Order Form. Products manufactured by a third party (“**Third-Party Product**”) may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Equipment. Third-Party Products are not covered by the above limited warranty.

The limited warranty above does not apply where the Equipment has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by us, or used with any Third-Party Product, hardware, software, or product that has not been previously approved in writing by us.

OTHER THAN AS SET FORTH ABOVE, WE MAKE NO WARRANTY WHATSOEVER, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY AGAINST INTERFERENCE; OR (d) WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

THE REMEDIES SET FORTH IN THIS Section 4 ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND OUR ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.

5. Title and Risk of Loss. Title to the Equipment remains with us throughout the Term, and Lessee shall acquire no right, title, or interest in the Equipment. You will not encumber the Equipment in any way. You will bear all risk of loss, damage, destruction, theft, and condemnation to or of the Equipment from any cause whatsoever (“**Loss**”) until the Equipment has been returned to Lessor to the destination specified in Section 6.1. If there’s a Loss you must notify us within 10 days of any Loss.
6. Return of Equipment. You will, at your risk and expense, no later than the expiration of the Term (a) deinstall, inspect, and properly return the Equipment, to the location specified on the Order Form. You will cause the Equipment returned for any reason under this Agreement to be in the same condition as when we delivered it to you, ordinary wear and tear excepted. We reserve the right to charge a cleaning fee for soiled mattress pads and covers that require extra cleaning.
7. Compliance with Law. You will comply with all applicable laws, regulations, ordinances and Institution rules.

8. Indemnification. You shall indemnify, defend, and hold us harmless against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by us relating to any claim by us or of a third party arising out of or occurring in connection with the Equipment or your negligence, willful misconduct, or breach of this Agreement. You shall not enter into any settlement without our prior written consent.
9. Term and Termination. The term of this Agreement commences on the date you place your order and continues until the return date specified on your Order Form (the "**Term**"). The expiration date of the Term is referred to as the "End of Term Date" on the Order Form. In addition to any remedies that may be provided in this Agreement, either Party may terminate this Agreement with immediate effect upon notice to the other Party, if the other Party: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. If you are in default of any of the terms and conditions of this Agreement, we, at your risk, cost, and expense may at any time enter your premises where the Equipment is stored or used and recover the Equipment.
10. Proprietary Design. The design of the Equipment is proprietary and you are prohibited from copying it.
11. Survival. This Section along with Sections 3, 4, 8, and 10 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.
12. Miscellaneous. This Agreement shall be governed by the laws of the State of Vermont, without regard to conflicts of laws principles. Any legal suit, action, or proceeding arising out of or relating to this Agreement must be instituted in the federal courts of the United States of America or the courts of the State of Vermont in each case located in the City of Burlington and County of Chittenden, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or

other document by certified mail in accordance with Section 11 will be effective service of process for any suit, action, or other proceeding brought in any such court. This Agreement may be executed in counterparts. If any one or more parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. This Agreement constitutes the entire agreement between the parties, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings of other agreements, whether oral or written, relating to the subject matter of this Agreement. No amendment to this Agreement will be enforceable unless in writing signed by both parties.

13. Notices. All notices, requests, consents, claims, demands, waivers, and other communications (each, a “**Notice**”) shall be in writing and addressed to us at [contact@biggabed.com](mailto:contact@biggabed.com) and to you at the address set forth on the Order Form (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
14. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving.
15. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Lessee's rights under Section 4 are your exclusive remedies for the events specified therein.
16. Assignment; Successors and Assigns. You will not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without our prior written consent. Lessor may at any time assign, transfer, or subcontract any or all

of its rights or obligations under this Agreement without Lessee's prior written consent. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

17. Limitation of Liability. **IN NO EVENT SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES[, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE], ARISING OUT OF OR RELATING TO ANY BREACH OF ANY PROVISION OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT LESSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL LESSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL OF THE AMOUNTS PAID TO LESSOR UNDER THIS AGREEMENT.**

18. Force Majeure. Lessor shall not be liable or responsible to Lessee, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Lessor including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.