

## **Appendix A: Three Samples of Legal Contract**

Note: The following samples were presented at the March 17, 2006 workshop: Sustainable and Experiential Tourism in DownEast and Acadia by Peter Klein, formerly of Eaton Peabody Consulting Group, LLC, PO Box 1210, Bangor ME 04402.

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### **B&B Charters Inc. Worldwide Fishing Adventures Terms & Conditions**

#### **1. Acceptance of the Contract**

Upon purchase of the tour package, the terms and conditions set forth herein become a binding contract between the Purchaser and B&B Charters. Acceptance of this contract occurs when deposit is received by B&B Charters at its office. Purchaser represents by tender of payment that the itinerary has been reviewed and that it meets Purchaser's expectations and request.

#### **2. Definitions**

a. The Tour Package purchased by the Purchaser from B&B Charters consists of the itinerary prepared by B&B Charters or its affiliates and the vouchers for pre-paid travel services. The itinerary is the written travel schedule listing scheduled daily activities and travel services purchased. In the event of a difference between information contained in the brochure and that contained in the itinerary, the language of the itinerary shall control. Vouchers are coupons which constitute evidence of pre-payment by Purchaser for various travel services. B&B Charters is bounded by only the terms and conditions contained on the vouchers it delivers to the Purchaser.

b. Confirmation of travel arrangements. Travel Arrangements are not confirmed until B&B Charters has received the required deposits and Purchaser has received formal confirmation from B&B Charters.

c. Hotel/lodge accommodations. It is anticipated that the hotel accommodations shown in the brochure will be utilized; however, comparably classified accommodations may be substituted at the time the specific itinerary is prepared. Hotel accommodation classification standards used at the location involved do not refer to standards used at any other location.

d. Transfer refers to transportation from one location to another, generally between and hotel and, unless otherwise stated on itinerary, refers to a seat on a bus, van, car or other vehicle. Determination of the appropriateness of vehicle shall be determined by the provider of the service.

#### **3. Reservations and Payment**

To reserve space on any trip, we require a deposit of \$200-\$3,000 per person, depending on the specific tour program. Deposits are due no later than 10 days from the date of the reservation. Early reservations are essential to guarantee your accommodations on the date you wish to travel. Reservations made within 60 days of the departure require full payment, plus any additional charges for expenses incurred due to special mailing, fax charges, etc. Final payment is due 60 days prior to departure. If this final installment is not paid when due, B&B Charters reserves the right to treat the reservation as canceled.

#### **4. Participation**

Purchaser is responsible for selecting a trip appropriate to his or her health, physical abilities and interests. The right is reserved to decline to accept or retain a person as a tour member for any reason which affects the operation of the tour or the rights and welfare or enjoyment of the other tour members.

#### **5. Price of Tour Package**

The Tour Package price includes all the pre-paid travel services represented by the vouchers provided to the Purchaser, together with the charges by B&B Charters for its services in preparing the itinerary.

a. All prices are accurate and available at the time of publication, and include charges for planning, operation and servicing the package. Prices do not include airfare unless otherwise stated.

b. Until full payment is received from Purchaser, prices are subject to change, due to fluctuations in tariffs, exchange rates and other factors beyond B&B Charters' control. If the group falls below the minimum passenger requirement, the trip is subject to cancellation or repricing.

c. B&B Charters has no obligation to provide Purchaser with any information concerning the costs utilized in establishing the price of the tour package, either before, during or after the tour is completed.

d. Price does not include charges for passports, visas, inoculations, excess baggage charges, trip cancellation or interruption, accident and baggage insurance, or transportation not included in the itinerary, optional tours, items of a personal nature, items not specifically listed as included and international departure taxes.

#### **6. Cancellation Policy**

All cancellations are pursuant to the client's scheduled lodge cancellation policy. Refunds, if any, are given solely at the discretion of and by the particular lodge you were scheduled with. B&B Charters fees are non-refundable. We strongly ENCOURAGE you to purchase trip CANCELLATION insurance soon after registering for a trip. In the event that you must cancel your trip due to illness, family crisis or other emergency, this insurance reimburses you for the non-refundable trip costs. This insurance also provides for limited accident and baggage coverage. You may purchase trip insurance through your travel agent or obtain insurance forms directly from B&B Charters.

#### **7. Refunds**

No refunds are given for any unused pre-paid services included in the tour package or any changes made in the itinerary while enroute, including changes in hotel accommodations, excursions, and transportation services. Charges included for services provided by B&B Charters are not subject to refund.

#### **8. Changes in Itinerary by B&B Charters**

B&B Charters reserves the right to:

a. Make changes or cancellations in services where such changes are made necessary by circumstances beyond B&B Charters' control, including changing carriers and substituting similar hotel accommodations for those designated in the itinerary.

b. Cancel any trip due to inadequate sign-up which makes the trip economically infeasible to operate. In such cases, a full refund of the cancelled trip cost is the limit of B&B Charters' liability.

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### 9. Warranty Disclaimer

No guarantees or warranties express or implied, are made that the tour package will meet all of the traveler's expectations, specifically regarding weather or fishing/hunting conditions or productiveness.

### 10. Airfare Considerations

B&B Charters cannot be responsible for any part of the fishing or hunting package that might be missed because of the cancellations or delays of commercial airlines. B&B Charters will make reasonable effort to assist the Purchaser in transferring to the fishing/hunting destination, but Purchaser is responsible for any additional expenses incurred in making this transfer.

### 11. Release

B&B Charters, its affiliates and all cooperating airlines and agencies act only in the capacity as agents in all matters of transportation and tour operation, and their liability is limited to the terms of the airline tickets and land accommodation contracts. Group organizers, travelers and tour participants, individually and jointly, release B&B Charters from any and all liability and responsibility, known or unknown, present or future, for any and all loss, injury to person, damage to property, or accident, or which may be the result of any delay or change of itinerary, or irregularity connected with the tour package purchased, which is beyond its control, included but not limited to, acts of God, transportation problems, fire, machinery or equipment malfunction or failure, government actions, wars, civil disturbances, labor disputes, riots, thefts, sickness or weather, and which includes all expenses or damages, direct or consequential, claimed or sustained by group organizers, tour participants, or travelers, and waive B&B Charters based on any claim of negligence by any of the suppliers of services included in the tour package.

The passenger tickets shall constitute the sole contract between and the purchaser of these tickets and/or passenger. All baggage shall be carried at participants own risk. Purchaser is solely responsible for obtaining necessary travel documents for the areas visited. This release is binding upon group organizers, tour participants, travelers, their representatives, heirs and assigns.

### 12. Choice Of Law And Venue

All questions of law in any action based upon any claim of breach of this agreement shall be determined in accordance with the laws of the State of Oregon as existing at the time of such action. Any action brought by either party based on any claim arising under or as a result of this contract or based on the tour package of which it is a part, shall be brought in a court of competent jurisdiction in Wasco County, Oregon.

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## Freewheeling Adventures Tour Agreement, Waiver, Assumption of Risk, & Rental Agreement

Tour name: \_\_\_\_\_ Tour Date: \_\_\_\_\_

My name/Our names: \_\_\_\_\_

1. Trip changes: I acknowledge that Freewheeling Adventures Incorporated, whether carrying on business as Freewheeling Adventures or otherwise (hereinafter referred to as Freewheeling) reserves the right to change itineraries and prices without prior notice. I understand that significant currency changes may require a fair adjustment at final payment due date. In the event of a change of date, registrants no longer wishing to participate will be offered a full refund, as will be the case should the trip be cancelled and the registrants not wish to participate in any alternate trip available at that time. Should I substitute, or add to, or change the initially agreed upon trip as noted above, I acknowledge that all terms and conditions noted here will apply, and that any incidental or additional costs may be deducted from or charged to any deposit which might have been lodged with Freewheeling.
2. Inappropriate Behaviour: Freewheeling reserves the right to deny participation to anyone who, in its good faith estimation, endangers or disrupts the enjoyment of any other trip participants.
3. Promotional Materials: I agree that participating in a Freewheeling excursion constitutes permission for Freewheeling to use my name and likeness in promotional materials.
4. Waiver: I hereby acknowledge that the sports of bicycling, kayaking, and hiking expose participants to many risks and hazards, and by participating in these sports in conjunction with Freewheeling I am exposing myself to these hazards, some of which are inherent in the sports, and some of which may result from human error. I understand clearly that by signing this Agreement and Waiver, I release and forever discharge Freewheeling, its employees, officers, directors, agents, successors, and assigns, or one or more of them (hereinafter collectively referred to as "the Releasee") from claims, demands, actions, or causes of action arising or to arise from or connected with the rental of any property of Freewheeling, and/or the participation in any tour or excursion with the Releasee, including any instructions, guiding, training, or representation connected with the same, which I or my heirs, executors, administrators, or assigns can, shall, or may have against the Releasee, including claims arising from the negligence of the Releasee. I also acknowledge that I am entering into this contract with Freewheeling in both its personal capacity and as trustee for its officers, directors, employees, agents, successors, and assigns.
5. Rental Agreement: If I agree to rent equipment from Freewheeling, I agree to return all of this equipment at the end of the tour or the expiry of the agreed rental period in the same condition as when delivered to me, reasonable wear and tear only excepted. I also acknowledge that I am so responsible even when my use of the equipment is in a tour or excursion organised by Freewheeling. In the event of loss or constructive loss of the rental equipment, I agree to pay replacement value thereof to Freewheeling, should Freewheeling elect to replace the same equipment, otherwise I shall only be required to pay fair market value for that equipment, and in the event of damage which is less than a loss or constructive loss of the equipment, to pay for the cost of repairs, and I also agree that without prejudice to any other remedy Freewheeling might have, any and all amounts due hereunder can be deducted from or charged to any deposit which might have been lodged with Freewheeling.
6. Jurisdiction/Choice of Law: I acknowledge that this agreement is subject to Nova Scotia law, and that any dispute arising therefrom or any way connected with our involvement with Freewheeling, its officers or its employees, is subject to the exclusive jurisdiction of the courts of Nova Scotia.
7. Plurals: Use of the singular shall be deemed to include the plural when this document is signed by more than one person, in which case their obligations are joint and several.
8. Cancellation: I understand that if I cancel, my cancellation is subject to policies advertised by Freewheeling, and that I may be required to forfeit deposits or complete payment. I understand that it is my responsibility to obtain cancellation insurance.

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9. Travel Accident Insurance: I understand that I must secure traveler's accident insurance coverage, either through Freewheeling or from my own independent source. I understand that obtaining such coverage is mandatory prior to my participation on any Freewheeling excursion.

I(we) acknowledge having read this Agreement and Waiver in full, and I(we) agree to its terms.

Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_

**If participant is under 19 years old:**

I hereby execute this Agreement and Waiver on behalf of \_\_\_\_\_ (insert name of minor), and agree to indemnify and save harmless Freewheeling, its officers, directors, servants, and agents from any damage and expenses arising from any claim, which might be brought by the aforesaid minor contrary to the terms of this agreement.

Signature of parent or guardian: \_\_\_\_\_ Date: \_\_\_\_\_

Relationship to participant: \_\_\_\_\_

### Example Agreement between Tour Operator and Hotelier

(This example is based on an actual agreement between a Tour Operator and Hotelier, though the names have been changed. This example is for illustrative purposes and is not provided as an example of the ideal agreement between a Tour Operator and Supplier.)

Tour Operator:

Tour Operators, Inc.

Main Street

Ellsworth, ME

Phone and fax:

Hotelier:

Hotel of Machias

P.O. Box 1, Machias, ME

Main Street, Machias, ME

Phone and fax:

Sales Contact name and number:

Groups Contact name and number:

Room reservations contact name and number:

THIS DOCUMENT WILL BE USED AND RELIED UPON IN THE PRODUCTION OF HOLIDAY BROCHURES AND FOR THE PRODUCTION OF CUSTOMER INFORMATION AND MUST BE COMPLETED ACCURATELY AND FACTUALLY.

ERRORS IN THE REPRESENTATIONS CONTAINED IN THIS DOCUMENT MAY RESULT IN TOUR OPERATIONS, INC. BEING HELD IN VIOLATION OF CURRENT EUROPEAN COMMUNITY DIRECTIVES RELEVANT TO TOUR OPERATORS. ANY BREACH OF THESE DIRECTIVES RELEVANT TO TOUR OPERATORS (sic). ANY BREACH OF THESE DIRECTIVES CAN RESULT IN LEGAL ACTION BEING TAKEN AGAINST TOUR OPERATIONS, INC. AND ITS CONTRACTED SUPPLIERS.

A. Facilities General Description

1. Property/Supplier type:

- \_\_\_ Hotel
- \_\_\_ Motel
- \_\_\_ Apartments/Studios
- \_\_\_ Villa
- \_\_\_ Hotel
- \_\_\_ Inn/Resort
- \_\_\_ Ski Lodge
- \_\_\_ Condominium
- \_\_\_ Other: \_\_\_\_\_

2. Location/Setting:

- \_\_\_ Downtown
- \_\_\_ Oceanside
- \_\_\_ Lakeside
- \_\_\_ Mountains
- \_\_\_ Roadside
- \_\_\_ Isolated
- \_\_\_ Residential
- \_\_\_ Airport
- \_\_\_ Other: \_\_\_\_\_

3. Actual age of establishment/building(s) \_\_\_\_\_

4. Furnishings/Themes (basic/luxurious/new/old/contemporary/Victorian/colonial, etc.) \_\_\_\_\_

5. Dining Arrangements (where and how served): \_\_\_\_\_

6. Specific Customer Suitability:

- \_\_\_ Families
- \_\_\_ Couples
- \_\_\_ Elderly
- \_\_\_ Singles
- \_\_\_ Active
- \_\_\_ Quiet
- \_\_\_ Premium
- \_\_\_ Budget

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7. Refurbishing programs/building work (dates last completed/start and finish dates of any current or proposed work/details of work/likely effect on customers/machinery used/noise levels/alternative facilities):  
\_\_\_\_\_
8. Property Information:  
Number of Buildings \_\_\_\_\_  
Number of Elevators \_\_\_\_\_  
Number of rooms per building \_\_\_\_\_  
Total number of rooms per category:  
\_\_\_\_\_ Double/Double  
\_\_\_\_\_ King bed  
\_\_\_\_\_ Other: \_\_\_\_\_  
Minimum/Maximum room occupancy: \_\_\_\_\_  
Handicapped accessible rooms: \_\_\_\_\_  
Handicapped equipped rooms: \_\_\_\_\_  
Wheelchair access to all public areas: Yes/No  
Connecting rooms: \_\_\_\_\_  
Non-smoking rooms: \_\_\_\_\_  
Smoking rooms: \_\_\_\_\_  
Laundry service: \_\_\_\_\_  
Rollaway beds: \_\_\_\_\_  
Maximum age for children staying free in parent's room: \_\_\_\_\_
9. In-room facilities (stand room; check all that apply)  
\_\_\_\_\_ Shower  
\_\_\_\_\_ Tub  
\_\_\_\_\_ Telephone  
\_\_\_\_\_ Color TV with cable  
\_\_\_\_\_ Free movie channel  
\_\_\_\_\_ Tea/coffee machine  
\_\_\_\_\_ Mini bar  
\_\_\_\_\_ Refrigerator  
\_\_\_\_\_ Kitchenette  
\_\_\_\_\_ Safe  
\_\_\_\_\_ Hair dryer  
\_\_\_\_\_ Patio/balcony  
\_\_\_\_\_ Other: \_\_\_\_\_
10. On-site facilities:  
Restaurants:  
Type: \_\_\_\_\_  
Open months: \_\_\_\_\_  
Open days: \_\_\_\_\_  
Breakfast/Lunch/Dinner: \_\_\_\_\_  
Waiter/Buffer: \_\_\_\_\_  
Average meal cost: \_\_\_\_\_  
Bar(s):  
Type: \_\_\_\_\_  
Open months: \_\_\_\_\_  
Open days: \_\_\_\_\_  
Food: light fare/meals/no food: \_\_\_\_\_  
Entertainment:  
Nightclub: \_\_\_\_\_  
Game Room: \_\_\_\_\_  
Other: \_\_\_\_\_  
Recreation (for each, please indicate the dates available and costs and age restrictions):  
Bicycles: \_\_\_\_\_  
Fitness Center: \_\_\_\_\_  
Horseback riding: \_\_\_\_\_  
Sailing: \_\_\_\_\_  
Sauna: \_\_\_\_\_  
Tennis: \_\_\_\_\_  
Whirlpool: \_\_\_\_\_  
Golf: \_\_\_\_\_  
Pool: \_\_\_\_\_  
Other: \_\_\_\_\_
11. On-site general facilities (gift shop, parking, babysitting, etc.):  
\_\_\_\_\_  
\_\_\_\_\_
12. On-site security:  
\_\_\_\_\_ 24 hour security

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- \_\_\_\_\_ Security personnel employed  
\_\_\_\_\_ Security patrols  
\_\_\_\_\_ Security cameras in use  
\_\_\_\_\_ Perimeter fence  
\_\_\_\_\_ Beach security
13. Health/Safety:  
\_\_\_\_\_ Fire inspection certificate. Issued by: \_\_\_\_\_  
\_\_\_\_\_ Date of issue/expiration: \_\_\_\_\_  
\_\_\_\_\_ Fitted fire alarms  
\_\_\_\_\_ Fitted smoke alarms  
\_\_\_\_\_ Fitted emergency lighting  
\_\_\_\_\_ Fitted sprinkler system  
\_\_\_\_\_ Fire extinguishers  
\_\_\_\_\_ Emergency plan  
\_\_\_\_\_ Staff emergency training  
\_\_\_\_\_ Fire exits with "crash" doors  
\_\_\_\_\_ Fire instruction displayed for guests  
\_\_\_\_\_ Health inspection certificate. Issued by: \_\_\_\_\_  
\_\_\_\_\_ Date of issue/expiration: \_\_\_\_\_

If any of the information above relating to the product facilities changes or closes in a way which will affect hotel guests, Tour Operator, Inc. must be notified at least 70 days prior to the date of such change, cancellation or closure.

### B. Terms and Conditions

#### 1. Room Rates

All room rates are net, non-commissionable and per room per night. All room rates are guaranteed to be at least 35% below the applicable rack rates. These rates apply to all bookings made by Tour Operators. All unsold Tour Operator pre-blocked inventory will be released to the hotel by the specific release date on the space inventory contract unless other arrangements have been made, will not be subject to any cancellation charge up to 4:00 p.m. on the day of arrival. Cancellations received after this time (or no-shows) may be subject to a cancellation penalty of one (1) night's room and tax (no penalty on meals). All confirmed rooms are guaranteed for late arrival by Tour Operators. No rooms are to be released or relocated without prior written approval from Tour Operators. In the event of a relocation, the hotel agrees to provide equitable compensation to both Tour Operators and its customers. Due to the possibility of communications problems from time to time, it is the Hotel's responsibility to check with Tour Operators if group rooming lists have not been received by the release date. Rooming lists serve to communicate the details of reservations and a release of any unsold space.

#### 2. Meals. All meals are to include the following specifications:

*Continental breakfast:* Choice of juice, cold cereal, toast or muffins, selection of preserves, fresh fruit, milk, coffee/tea/decaf  
*Full American Breakfast:* Choice of juice, cold cereal, minimum of one hot entrée with breakfast meat, toast or muffins, selection of preserves, fresh fruit, milk, coffee/tea/decaf  
*Dinner:* soup or appetizer, salad, vegetable, potato/rice/pasta, entrée (minimum of four choices) rolls and butter, dessert, beverage.

#### 3. Deposit and Payment Procedures

No deposits will be required by the hotel or forwarded to Tour Operators for any pre-blocked inventory. All Tour Operators bookings will be on a direct bill basis. If required, a credit application will be completed and returned for direct billing. Full payment will be forwarded by Tour Operators upon receipt of the Tour Operators voucher. The Hotel must collect these vouchers from each individual booking or from one of the Tour Operators Director or their representative. Tour Operators agrees to remit payment within 30 days from the receipt of the invoice. Individuals are responsible for their own incidental charges. Tour Operators will not be responsible for payment of incidental charges incurred by any passengers.

#### 4. Liability and Conditions of Service

In accepting the booking, the Hotel guarantees its contractual services for the entire duration of the contract period. In particular, the Hotel assumes responsibility for flawless and impassable operation (accommodations, meals, service, general facilities). Should any construction work take place at or near the property or should any of the amenities or services offered at the hotel become temporarily or permanently unavailable and this proves likely to affect the enjoyment of the client's stay, the supplier is to inform Tour Operator immediately in writing via fax. The Hotel also guarantees that it has and will at all times maintain all appropriate insurance policies, including public liability insurance, with a reputable insurance company and/or companies to cover any liabilities of the Hotel arising out of the provision of service and/or products.

The Hotel agrees to indemnify and keep fully and effectively indemnified Tour Operators from and against any actions, proceedings, losses, claims, charges, damages, or liabilities incurred by or assessed against Tour Operators arising out of or as a consequence of or in connection with the provision of services by the Hotel or Tour Operator's customers regardless of the jurisdiction in which such actions, proceedings, losses, costs, claims, charges, damages, or liabilities arise.

#### 5. Confidentiality

All terms and conditions of the agreements are confidential between Tour Operators and Hotel and details cannot be revealed to passengers, clients, or any third party.

Note: This is a general agreement between a supplier and tour operators, subject to an annual pre-order of rooms and mechanisms for ordering and releasing rooms which were pre-ordered.