

MBS EQUIPMENT COMPANY
AGREEMENT CONTRACT TERMS & CONDITIONS
Vehicles and Equipment

PLEASE READ CAREFULLY. LESSEE IS LIABLE FOR LESSOR'S EQUIPMENT AND VEHICLES FROM THE TIME THEY LEAVE LESSOR'S YARD UNTIL THE TIME THEY ARE RETURNED TO LESSOR AND LESSOR SIGNS FOR THEM. LESSEE'S PICK-UP, ACCEPTANCE OF DELIVERY, AND/OR USE OF ANY OF LESSOR'S EQUIPMENT AND/OR VEHICLES CONSTITUTES LESSEE'S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1. **Indemnity.** _____ ("Lessee") agrees to defend, indemnify, and hold MBS Equipment Company ("Lessor") and its affiliates, parent, directors, officers, shareholders, partners, officials, employees, agents, representatives and contractors harmless from and against any and all claims, actions, causes of action, demands, rights, damages of any kind, costs, loss of profit, expenses and compensation whatsoever including court costs and reasonable outside attorneys' fees ("Claims"), in any way arising from, or in connection with, the vehicles and equipment rented/leased (which vehicles and equipment, together, are referred to in this document as "Equipment"), including, without limitation, as a result of its use, maintenance, or possession, irrespective of the cause of the Claim, from the time the Equipment leaves Lessor's place of business until the Equipment is returned to Lessor. The indemnities and releases described in this section or elsewhere in these Agreement Contract Terms and Conditions (the "Agreement") will continue in full force and effect notwithstanding the expiration or termination of this Agreement and are expressly made for the benefit of and will be enforceable by the indemnified parties. Lessee is responsible for loss, damage or destruction of the Equipment, including, but not limited to, losses while in transit, while loading and unloading, while at any and all locations, while in storage and while on Lessee's premises, except as follows:

- (a) Lessee shall not be responsible for damage to or loss of the Equipment caused by Lessor's gross negligence or willful misconduct;
- (b) Lessee shall not be responsible for damage or loss resulting from normal wear and tear, mechanical or structural defect or breakdown due to failure on Lessor's part to perform normal, routine or scheduled maintenance.

2. **Protection of Others.** Lessee will take reasonable precautions in regard to the use of the Equipment to protect all persons and property from injury or damage. The Equipment shall be used only by its employees or agents qualified to use the Equipment.

3. **Equipment in Good Working Order.** Lessor has tested the Equipment in accordance with reasonable industry standards and found it to be in working order immediately prior to the inception of this Agreement, and to the extent Lessee has disclosed to Lessor all of the intended uses of the Equipment, it is fit for its intended purpose. Other than what is set forth herein, Lessee acknowledges that the Equipment is rented/leased without warranty, or guarantee, except as required by law or otherwise stated in this Agreement.

4. **Fees and Charges. Delivery Dates.** In consideration of Lessor's rental of the Equipment to Lessee, Lessee shall pay to Lessor the rental fees and charges as specified in the Agreement and the corresponding Rental Documents (as defined below). Rental fees and charges for the Equipment shall be due and payable for all periods from the start date for the applicable Equipment (as indicated on the Rental Documents) and continuing up to and including the date of satisfactory return of the Equipment to Lessor. Any Equipment rented from Lessor on a specific P.O. shall remain charged to the original P.O. unless and until Lessee notifies Lessor in writing of any changes. Any changes shall be subject to Lessor receiving payment in full under the prior P.O. for the Equipment and not otherwise in breach hereof and shall be subject to Lessor's approval. The dates and times for delivery of each item of Equipment by Lessor or pick-up of each item of Equipment by Lessee, as applicable (the "Delivery Dates"), shall be as agreed upon by the parties in the Rental Documents and will be subject to reasonable industry standards to deliver or make the Equipment available for pick-up (as applicable) on the applicable Delivery Dates, subject to a reasonable cure period. The parties acknowledge that the Delivery Dates may change based on Lessee's production needs and other factors; provided, however, that any changes to the Delivery Dates shall be mutually agreed upon by the parties.

5. **Care, Maintenance and Repair of Equipment in Lessee's Possession.** Commencing upon pick up of the Equipment by Lessee, and continuing until the Equipment is returned and accepted by Lessor, Lessee shall be responsible for and hereby assumes all liability related to Lessee's possession, use, operation, storage, transportation and/or other acts or omissions related to the Equipment unless as otherwise stated herein. Lessee shall, at Lessee's sole expense, maintain the Equipment in good condition, repair, and operating order and in accordance with the Equipment manufacturer's specifications, throughout the term of this Agreement until the Equipment is returned and accepted by Lessor. Lessor will not be under any liability or obligation in any manner to provide service, maintenance, repairs, or parts for the Equipment, except as otherwise specifically agreed or as may be within the course and scope of employment by Lessee. Lessee shall be responsible for all expenses, including, but not limited to lubricants, and all other charges in connection with the operation of the Equipment. All installations, replacements and substitutions of parts or accessories by Lessee shall be subject to Lessor's prior approval, shall constitute accessions and shall immediately become part of the Equipment and shall be owned by Lessor. The rent on any of the Equipment will not be prorated or abated while the Equipment is being serviced or repaired for any reason for which Lessee is liable.

6. **Damage to Equipment; Loss.** Unless otherwise agreed in writing, Lessee shall be responsible to Lessor for the replacement cost value or repair costs of the Equipment (if the Equipment can be restored, by repair, to its pre-loss condition) whichever is less. If there is a reason to believe a theft has occurred, Lessee shall file a police report. Loss of use shall be determined by the actual loss sustained by Lessor. Accrued rental charges shall not be applied against the purchase price or cost of repair of the lost, stolen or damaged Equipment. Lessee hereby agrees that Lessor shall be subrogated to any recovery rights Lessee may have for damage to the Equipment rented/leased.

7. **Property Insurance.** Lessee shall, at its own expense, maintain at all times during the term of this Agreement, all risk perils property insurance ("Property Insurance") covering the Equipment from all sources (Equipment Rental Floater or Production Package Policy) including coverage for, without limitation, (i) theft by force; (ii) theft by fraudulent scheme and/or "voluntary parting"; or (iii) loss of use of the Equipment. Coverage shall begin from the time Lessee or its agents pick the Equipment up at Lessor's place of business, or take delivery of the Equipment, whichever is applicable, and shall continue until the time the Equipment is returned to and accepted by Lessor. The Property Insurance shall be on a worldwide basis, shall name Lessor as the loss payee with respect to the Equipment and shall cover all risks of loss of, or damage or destruction to the Equipment. The Property Insurance coverage shall be sufficient to cover the Equipment at its replacement value but shall, in no event, be less than \$1,000,000. For feature films, property insurance coverage shall be no less than the total replacement cost for all Equipment, generators and vehicles leased.

8. **Vehicle Insurance.** Lessee shall, at its own expense, maintain at all times during the term of this Agreement, business motor vehicle liability insurance ("Vehicle Insurance"), including coverage for loading and unloading Equipment and hired motor vehicle physical damage insurance, covering owned, non-owned, hired and rented vehicles, including utility vehicles such as trailers. Coverage for physical damage shall include "comprehensive" and "collision" coverage. Lessor (and any other person or entities that Lessor may reasonably require from time to time) shall be named as an additional insured with respect to the liability coverage, and as a loss payee with respect to the physical damage coverage. The Vehicle Insurance shall also include coverage for pollution caused by any vehicles. The Vehicle Insurance shall provide not less than \$1,000,000 in combined single limits liability coverage and actual cash value for physical damage and shall provide that said insurance is primary coverage with respect to all insureds, the limits of which must be exhausted before any obligation arises under Lessor's insurance.

9. **Workers Compensation Insurance.** Lessee shall, at its own expense, maintain at all times during the term of this Agreement, worker's compensation/employer's liability insurance during the course of the Equipment rental with minimum limits of \$1,000,000.

10. **Liability Insurance.** Lessee shall, at its own expense, maintain at all times during the term of this Agreement, commercial general liability insurance ("Liability Insurance"), including coverage for the operations of independent contractors and standard contractual liability coverage. The Liability Insurance shall name Lessor (and any other person or entities that Lessor may reasonably require from time to time) as an additional insured and provide that said insurance is primary coverage with respect to all insureds, the limits of which must be exhausted before any obligation arises under Lessor's insurance. Such insurance shall remain in effect during the course of this Agreement, and shall include, without limitation, the following coverages: standard contractual liability, personal injury liability,

completed operations, and product liability. The Liability Insurance shall provide general liability aggregate limits of not less than \$2,000,000 (including the coverage specified above) and not less than \$1,000,000 per occurrence and excess insurance coverage of no less than \$5,000,000.

11. **Insurance Generally.** All insurance maintained by Lessee pursuant to the foregoing provisions shall contain a waiver of subrogation rights in respect of any liability imposed by this Agreement on Lessee as against Lessor. Lessee shall hold Lessor harmless from and shall bear the expense of any applicable deductible amounts and self-insured retentions provided for by any of the insurance policies required to be maintained under this Agreement. In the event of loss, Lessee shall promptly pay the deductible amount or self-insured retention or the applicable portion thereof to Lessor or the insurance carrier, as applicable. Notwithstanding anything to the contrary contained in this Agreement, the fact that a loss may not be covered by insurance provided by Lessee under this Agreement or, if covered, is subject to deductibles, retentions, conditions or limitations, shall not affect Lessee's liability for any loss. Should Lessee fail to procure or pay the cost of maintaining in force the insurance specified herein, or to provide Lessor upon request with satisfactory evidence of the insurance, Lessor may, but shall not be obligated to, procure the insurance and Lessee shall reimburse Lessor on demand for its costs. Lapse or cancellation of the required insurance shall be deemed to be an immediate and automatic default of this Agreement. The grant by Lessee of a sublease of the Equipment rented/leased shall not affect Lessee's obligation to procure insurance on Lessor's behalf, or otherwise affect Lessee's obligations under this Agreement. All required insurance policies shall be maintained with insurance companies permitted in California and holding an AM best rating of no less than A-VIII.

12. **Cancellation of Insurance.** Lessee and its insurance company shall provide Lessor with written notice prior to the effective date of any cancellation or material change to any insurance maintained by Lessee pursuant to the foregoing provisions in accordance with the policy provisions, but in no event less than ten (10) business days.

13. **Certificate of Insurance.** Before obtaining possession of the Equipment, Lessee shall provide to Lessor Certificates of Insurance confirming the coverages specified above. All certificates shall be signed by an authorized agent or representative of the insurance carrier.

14. **Drivers.** Any and all drivers who drive the vehicles Lessee is renting/leasing from Lessor shall be duly licensed, trained and qualified to drive vehicles of this type. Although Lessor may, from time to time, recommend certain qualified drivers with whom Lessor is familiar, Lessor does not supply drivers. Lessee must supply and employ any driver who drives the vehicles (even if the driver is the registered owner of the vehicle or owner of a company that owns the vehicle) and that driver shall be deemed to be Lessee's employee for all purposes and shall be covered as an additional insured on all of Lessee's applicable insurance policies.

15. **Compliance with Law.** Lessee hereby agrees to comply with the laws of all states in which the Equipment is transported and/or used as well as all federal and local laws, regulations, and ordinances pertaining to the transportation and use of such Equipment. Lessee is solely responsible for all parking and moving violation citations issued to the vehicles during the term of this Agreement until the vehicle is returned to Lessor, including without limitation tolls.

16. **Bailment.** This Agreement constitutes an agreement or bailment of the Equipment and is not a sale or the creation of a security interest. Lessee will not have, or at any time acquire, any right, title, or interest in the Equipment, except the right to possession and use as provided for in this Agreement. Lessor is the sole owner (or authorized agent of the owner) of the Equipment.

17. **Identity.** Lessor has the right to place and maintain all warning and instructional signs on the exterior or interior of each piece of Equipment covered by this Agreement. Lessee will not remove, obscure, or deface the inscription or permit any other person to do so. Lessee shall not remove, alter, disguise, or cover up any ownership identification, numbering, lettering, insignia, or other markings of any kind on or in the Equipment.

18. **Expenses.** Lessee will be responsible for all expenses, including, but not limited to, fuel, lubricants, and all other charges in connection with the operation of the Equipment.

19. **Loading, Unloading and Transportation:** In the event that Lessee loads Equipment for transit to or from Lessor's place of business, it shall do so at its own cost, expense and shall assume all risk and liability for doing so.

20. **Risk of Loss; No Warranties:** The Equipment rented hereunder shall be used at Lessee's sole risk. Lessee assumes all responsibility for the Equipment during the term of this Agreement until the Equipment is returned and accepted by Lessor. Lessor shall be relieved from the risk of loss or damage to the Equipment upon acceptance of the Equipment by Lessee or removal of the Equipment by Lessee from Lessor's premises, whichever occurs first, and continuing through acceptable return of the Equipment to Lessor. No representations or warranties not specifically contained in this Agreement have been made by either party and Lessee specifically acknowledges and agrees that LESSOR MAKES NO WARRANTIES OF ANY KIND, MANNER OR DESCRIPTION, EXPRESS OR IMPLIED, RELATED TO THE EQUIPMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE.

21. **Independent Contractor:** None of Lessee, including its officers, agents, contractors, delegates, representatives or employees (collectively, the "Lessee Parties") shall be considered to be nor hold itself/himself/herself/themselves out at any time as agents, servants, workers, representatives or employees of Lessor, including its officers, agents, contractors, delegates, representatives or employees (collectively, "Lessor Parties") for any purpose whatsoever. No Lessee Party shall purport or attempt to bind Lessor or any Lessor Parties to any obligation for any purposes. Lessee shall be solely responsible for hiring, supervising, directing and paying all Lessee Parties, and for the payment and withholding of all payroll and other taxes imposed upon or determined by applicable wages and salaries of such Lessee Parties and for complying with all applicable workers and unemployment compensation laws, occupational disease and temporary disability laws.

22. **Right to Possession.** Lessee will be entitled to the absolute right to the use, operation, possession, and control of the Equipment during the term of this Agreement, provided Lessee is not in default of any provision of this Agreement or subject to any security interest Lessor may have given or may give to any third party during the term of this Agreement. Lessee will employ and have exclusive control, supervision, and responsibility over any operators or users of the Equipment, except when such operator or user of the Equipment is Lessor.

23. **Use.** Lessee will use the Equipment in a careful and proper manner and will not permit any of the Equipment to be operated or used in violation of any applicable federal, state, or local statute, ordinance, rule, or regulation relating to the possession, use, or maintenance of the Equipment. Lessee agrees to reimburse Lessor in full for all damage to the Equipment arising from any misuse or negligent act by Lessee, its employees or agents, and third parties. Lessee will indemnify and hold Lessor harmless from any liabilities, fines, forfeitures, or penalties, including Lessor's reasonable costs and attorneys' fees for violations of any federal, state, or local statute, rule, or regulation. Lessee agrees not to remove the Equipment from the state in which the Equipment was leased without specific written approval by Lessor. In no event, may the Equipment be removed from the territory of the United States.

24. **Accident Reports.** If any of the Equipment is damaged, lost, stolen, or destroyed, or if any person is injured or dies, or if any property is damaged as a result of its use, maintenance, or possession, Lessee will promptly notify Lessor of the occurrence, and Lessee will file all necessary accident reports, including those required by law and those required applicable insurers. Lessee, its employees, and agents will cooperate fully with Lessor and all insurers providing insurance under this Agreement in the investigation and defense of any claims. Lessee will promptly deliver to Lessor any documents served or delivered to Lessee, its employees, or its agents in connection with any Claim or proceeding at law or in equity begun or threatened against Lessee, Lessor, or both.

25. **Default.** At Lessor's option, Lessor may, by written notice to Lessee declare Lessee in default on the occurrence of any of the following:

- (a) Failure by Lessee to make payments or perform any of its obligations under this Agreement;
- (b) Institution by or against Lessee of any proceedings in bankruptcy or insolvency, or Lessee's reorganization under any law, or the appointment of a receiver or trustee for Lessee's goods and chattels or any assignment by Lessee for the benefit of creditors;
- (c) Expiration or cancellation of any insurance policy to be paid for by Lessee as provided for under the terms of this Agreement;

- (d) Involuntary transfer of Lessee's interest in this Agreement by operation of law; or
- (e) Destruction or removal of the Equipment from the state in which the Equipment was leased, unless Lessee had specific written permission to transport the Equipment to a specific state.

After Lessee's default, and on notice from Lessor that Lessee is in default, Lessor will have the following options:

- (a) To terminate the Agreement and Lessee's rights under the Agreement;
- (b) To declare the balance of all unpaid rent and all other charges of any kind required of Lessee under the Agreement to be payable immediately, in which event Lessor will be entitled to the balance due together with interest at the rate of ten percent (10%) per annum, from five (5) business days after the date of notification of default to the date of payment;
- (c) To repossess the Equipment without legal process free of all of Lessee's rights to the Equipment. Lessee authorizes Lessor or Lessor's agent to enter on any premises where the Equipment is located and repossess and remove it. Lessee specifically waives any right of action Lessee might otherwise have arising out of the entry and repossession, and releases Lessor of any claim for trespass or damage caused by reason of the entry, repossession, or removal;
- (d) Removal of any discounts provided to Lessee by Lessor.

After default, Lessee will reimburse Lessor for all reasonable expenses of repossession and enforcement of Lessor's rights and remedies, together with interest at the rate of ten percent (10%) per annum from the date of default. Notwithstanding any other provisions of this Agreement, if Lessor places all or any part of Lessor's claim against Lessee in the hands of an attorney for collection, Lessee agrees to pay Lessor, in addition to other sums that may be awarded, Lessor's reasonable attorneys' fees and costs.

Lessor's remedies will be cumulative to the extent permitted by law, and may be exercised partially, concurrently, or separately. The exercise of one remedy will not be deemed to preclude the exercise of any other remedy.

26. **Return.** Upon the expiration date or termination of this Agreement with respect to any or all Equipment, Lessee will return the Equipment to Lessor, together with all accessories, free from all damage, and in the same condition and appearance as when received by Lessee, allowing for ordinary wear and tear. If Lessee fails or refuses to timely return the Equipment to Lessor, Lessor shall have the right to take possession of the Equipment upon expiration or termination of this Agreement and for that purpose to enter any premises where the Equipment is located without being liable in any suit, action, defense or other proceedings to Lessee.

27. **No Encumbrance.** Lessee will not pledge, encumber, create a security interest in, or permit any lien to become effective on any of the Equipment. If any of these events takes place, Lessee will be deemed to be in default, at Lessor's option. Lessee will promptly notify Lessor of any liens or other encumbrances of which Lessee has knowledge. Lessee will promptly pay or satisfy any obligation from which any lien or encumbrance arises and will otherwise keep the Equipment, and all title and interest, free of any liens and encumbrances. Lessee will deliver to Lessor appropriate satisfactions, waivers, and evidence of payment.

28. **No Assignment or Sublease.** Lessee will not sublease the Equipment or enter into any assignment of the Agreement. Any attempt to assign the Agreement or sublease the Equipment is hereby deemed void. Lessee must seek specific written permission from Lessor to assign or sublease the Equipment.

29. **Standard Operating Hours.** Lessor's standard operating hours are 8:00 AM to 6:00 PM, Monday through Friday, excluding national holidays. Lessee shall be billed for production-related afterhours/weekend work in accord with Lessor's current rate card. Main Equipment load-ins and load-outs are exempted.

30. **Shipping of Specialty Equipment.** Lessee shall pay shipping costs for Specialty Equipment. Prior to shipping Specialty Equipment, Lessee shall issue a specific purchase order for shipping costs of the Specialty Equipment before shipment is placed by Lessor.

31. **Limitation of Liability.** In the event of a dispute between the parties arising out of this Agreement, Lessor's liability shall be limited to any amounts paid to Lessor in accordance with this Agreement and in no event shall Lessor be liable for any claim or demand for any amounts representing loss of profit or loss of business nor shall Lessor be liable for any special, indirect, incidental, consequential, or punitive damages.

32. **Notices.** Except as otherwise expressly provided by law, any notices or other communications required or permitted by this Agreement or by law, to be served on or given to either party by the other party, will be in writing and will be deemed duly served or given when personally delivered to the party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Lessee at _____, and to Lessor at MBS Equipment Company, 1600 Rosecrans Avenue, Manhattan Beach, CA 90266, Attention Richard J. Nelson. Either party may change its address for the purpose of this provision by giving written notice of the change to the other party in the manner provided in this provision.

33. **Additional Equipment.** Additional Equipment may from time to time be added as the subject matter of this Agreement, as agreed on by the parties. Any additional Equipment will be added in an amendment describing the Equipment, the monthly rental, security deposit, and stipulated loss value of the additional Equipment. All amendments must be in writing and signed by both parties. Other than by this amendment procedure, this Agreement may not be amended, modified, or altered in any manner except in writing signed by both parties.

34. **Entire Agreement.** This Agreement and any attached customer information forms, customer account setup forms, rental sheets, orders, schedules, deal memos, quotes, and any other documentation relating to Lessee's orders hereunder and agreed upon or confirmed by the parties (collectively, the "Rental Documents"), which are incorporated by reference and made an integral part of the Agreement, constitute the entire agreement between the parties with respect to the subject matter hereof; provided, however, that to the extent any terms and conditions contained in or attached to any purchase order, order form, or other document issued by Lessee conflict with the terms and conditions set forth herein, this Agreement shall control. The terms and conditions in this Agreement shall constitute the master terms and conditions governing all rentals of Equipment by Lessor to Lessee for the project identified in the applicable customer account setup form.

35. **Ownership of Photographs/Footage.** Lessor acknowledges that between Lessor and Lessee, Lessee shall own all photographs, film, videotape and/or audio and/or video recordings made by Lessee using the Equipment ("Recordings"), including distribution rights in any and all media now known or hereafter devised, and Lessor has no rights in or to any such Recordings by reason of this Agreement. However, Lessee must obtain written permission to use Lessor trade names, trademarks, logos etc. in any Recordings. Notwithstanding the foregoing, Lessee acknowledges that Lessor makes no representations or warranties with respect to the Lessee's right to the Recordings. Lessee will indemnify Lessor from any damages, claims, suits or demands by third parties resulting from Lessee's use of the Recordings, including, without limitation, any trademarked or copyrighted symbols, or other intellectual property incorporated in the Recordings.

36. **Governing Law and Waiver of Jury.** The validity, interpretation and performance of this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to its conflict of law principles. Any legal action or proceeding with respect to this Agreement shall be brought in the state or federal courts sitting in Los Angeles, California, and the parties waive any claim or defense that such forum is not convenient or proper. The parties to this Agreement hereby agree to a court ("Bench") trial and waive a jury trial in the event that there is litigation between the parties.

37. **Authority.** Lessee represents and warrants that it has the full right, power and authority to execute and deliver this Agreement and to perform its duties and obligations hereunder, without the need for any additional authorizations, consents or approvals, and that this Agreement constitutes the valid and binding obligation of each of

the parties hereto, in accordance with the terms herein. Each party hereto represents and warrants that the person(s) executing this Agreement on such party's behalf is/are authorized to do so, and that the execution of this Agreement by such person(s) shall bind such party to the terms and conditions of this Agreement.

38. **Severability.** If any provision of this Agreement or the application of any of its provisions to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of those provisions to the other parties or circumstances, will remain valid and in full force and effect.

WE AGREE TO THE ABOVE TERMS AND CONDITIONS
AUTHORIZED REPRESENTATIVE OF LESSEE:

_____	_____	_____
NAME (PLEASE PRINT)	SIGNATURE	DATE

AUTHORIZED REPRESENTATIVE OF LESSOR:

_____	_____	_____
NAME (PLEASE PRINT)	SIGNATURE	DATE