Back 2 One Entertainment Productions-Rental/Sales Terms Of Service

Back 2 One Entertainment Productions ("Lessor") hereby agrees to rent/sell items and/or provide printed and/or manufacturing services to_____("Lessee") from time to time, upon the following terms and conditions.

- **Separate Rental Agreement Not Required.** Lessee agrees that all rented property shall be on the terms and provisions set forth herein; that a separate agreement need not be executed each time Lessee rents props or purchases printed/manufactured items from Lessor; and that execution by Lessee of the statement acknowledging delivery ("Delivery Receipt") of the rented property shall automatically make any such transaction subject to the terms and provisions hereof.
- **Charges.** All charges for the rental of props or to the purchase of items to be printed or manufactured by Lessor or the price to be charged for the outright purchase of items shall be based upon the most current prices of Lessor. Prices are subject to change by Lessor without notice to Lessee except as it pertains to any current agreement previously established between both parties. Any rental/rental reservation above $5,000.00 may, at the lessors discretion, require a deposit of a minimum of half the initial rental period amount.
- **Terms of Payments.** All Tier 1, Tier 0 and independent productions will be invoiced and payment is due at time of pick up (C.O.D.). Payment is due at the beginning of any subsequent extension period. All Tier 2 and above productions will be invoiced on fifteen(15) days net terms from date of invoice submission. All "pick and pull" order invoices will be rendered by Lessor within one week receipt of the items by Lessee unless other terms are imposed by Lessor at the time Lessee places its order. Amounts billed are due and payable on fifteen(15) days net terms from date of invoice submission. A service charge of 1.5% per week will be imposed on all amounts unpaid after fifteen(15) days from date of invoice submission. Service Fees will continue until payment is received from Lessee and account is settled in full. A $50.00 fee assessed for any returned check.
- **Rental Privileges.** Any client rental privileges m a y revert to C.O.D. rental status should any currently due invoice go unpaid after thirty(30) days from date of invoice submission and may be suspended entirely, at lessors discretion.
- **Rental Terms.** All rentals are for a minimum period of one (1) week (seven[7] days) ("Initial Rental Term") unless otherwise agreed upon at the time the order is placed by Lessee. The day the items are picked up by the Lessee is the first day of the Initial Rental Term. The day the rentals are returned is the last day of the rental term. All rental extensions must be communicated with and agreed to by Lessor. Items not returned by the close of business at the expiration of the Initial Rental Term or any Extended Rental Term, are subject to further rental charges for the additional minimum period of one (1) week (seven[7] days)each "Extended Rental Term".
- *Exclusions and exceptions may apply.
- **Production Rentals.** Production rentals are available upon request of Lessee only at the time the order is placed for the requested items. Production rentals will be billed at the price set forth in Lessors Price List as follows: Initial Rental Term (1st week) - full price: first and second Extended Rental Term (2nd and 3rd weeks) 100% of charges of Initial Rental Term: third Extended Rental Term (4th week) - free rental. Each four week Extended Rental Term thereafter - 50% of charges of Initial Rental Term for each first, second and third week Extended Rental Terms. No charge for fourth week Extended Rental Term.
- **Item Reservations.** Item reservation requires date reserved, date of pick up, production or Lessees name and contact information. General item rental reservations are for a maximum ten(10) day period. All arcade/pinball games, kids rides, jukeboxes, drum kits, taxidermy and other items at the Lessors discretion can only be reserved for a five(5) day period. Item reservations not picked up twenty-four(24) hours after scheduled pick up date will expire and a restocking fee may apply. Item reservations without dates and production information will not be accepted.
- **Canceled Orders.** If, after an order is submitted by Lessee and Lessor prepares the items for pickup, Lessee cancels all or part of the order, Lessee shall be required to pay a restocking charge of 25% of the rental to be charged for the Initial Rental Term for each such canceled item. Items ordered and picked up by Lessee are not subject to cancellation for any reason.
- **Lost or Damaged Items.** Lessee shall be required to pay for all items lost, stolen, or damaged beyond repair by any cause as whatsoever, within fifteen(15) days after date of Loss and Damage invoice based upon the value of each such item as set forth on the order receipt/invoice. Rental charges paid or accrued for each such item will not be applied against the replacement cost thereof. In lieu of payment for items lost, stolen, or damaged beyond repair, Lessee may replace the same with similar items of like kind and quality as determined by Lessor in its sole discretion. Lessee shall pay the cost of the repair of all items which are damaged due to Lessee's fault but capable of being repaired. Amounts due pursuant to this Paragraph not paid within fifteen(15) days of invoice shall be subject to a service charge of 1.5% per week. Lessee shall be responsible to Lessor for the full replacement costs, without depreciation, or repair costs of all equipment leased which is lost, stolen, or damaged. In the event the equipment leased is lost or stolen. Lessee shall file a police report. Lessor shall be under no obligation to replace or repair equipment until Lessee has paid for the damaged, lost, or stolen equipment. Loss of use shall be determined by the actual loss sustained by Lessor and at Lessors discretion accrued rental charges shall not be applied against the replacement cost or cost of repairs of lost, stolen, or damaged equipment. Notwithstanding anything to contrary contained herein, Lessee is not responsible for damage caused by Lessor, Lessor's gross negligence, willful misconduct, breach of this agreement, or latent or patent defects of the items.
- **Responsible for Items.** Lessee assumes all responsibility for rented items and acknowledges that all items are rented on an as is, as available basis and while in possession of items promises to return the same to Lessor in as good conditions as when received. Notwithstanding anything to contrary contained herein, Lessee is not responsible for damage caused by Lessor, Lessor's gross negligence, willful misconduct, breach of this agreement, or latent or patent defects of the items. Lessee will immediately discontinue use of any item should it at any time become unsafe or in a state of disrepair. Further, Lessee will immediately notify Lessor that such item is unsafe and in disrepair and until such time as Lessor has obtained possession of such item, Lessee agrees to take all steps reasonably necessary to prevent further damage to the item and to prevent injuries to any person and property from such item. From the time Lessee takes delivery of the equipment leased, until the equipment is returned to Lessor during normal business hours and Lessor accepts the returned equipment, Lessee assumes all risks of loss and responsibility for any damage Lessee causes to the equipment, property or persons(s), including but not limited to all risks and losses while in transit, while at all locations, while in storage and while on Lessee's premises. Lessee agrees to a $10.00/Box charge for any re-boxing or re-packaging of all books, paperwork and/or specified items.
- **Indemnity and Hold Harmless.** Lessee expressly agrees to indemnify and hold Lessor harmless of, from and against any and all losses, costs, damages, reasonable outside attorneys fees or liabilities in connection with Lessee's use of any of the items rented or sold to it by Lessor. Lessee agrees to indemnify, and hold Lessor free and harmless from and against any and all claims, liabilities, losses, costs, and out of pocket expenses (including reasonable outside attorney's fees) arising out of, or in connection with the equipment leased, its use or transportation, or out of operations conducted by Lessee, its agents, employees, contractors, representatives, guests, invitees, or customers, including, but not limited to gross, active and/ or passive negligence, save and except claims or litigation arising through the sole negligence or sole willful misconduct of Lessor. Lessee will take all necessary precautions in regard to the use of the equipment rented to protect all persons and property from injury or damage. The equipment leased shall be used only by Lessee's employees or agents qualified to use such equipment. Lessee warrants that it will not sub-rent any of the equipment leased without prior written consent of Lessor. Notwithstanding anything to contrary contained herein, Lessee's indemnity shall not apply to claims due to damage caused by Lessor, Lessor's gross negligence, willful misconduct, breach of this agreement, or latent or patent defects of the items
  All items are used at the Lessee's expense.
- **Insurance**
- Lessee shall, at its own expense, maintain at all times during the lease all risk perils insurance covering the equipment rented from all sources (equipment rental floater) for full replacement cost, except vehicles (see below), and for loss of use (rental value) of the equipment. Coverage shall begin from the time Lessee or its agents take delivery of the equipment rented and continue until the time the equipment is returned to and accepted by Lessor. Such insurance shall be on a worldwide basis, name Lessor as the loss payee for loss or damage to the equipment rented and cover all risk of loss of, or damage to the equipment. Limits of insurance coverage shall be sufficient to encompass all property at risk, regardless of source, but in no event less than $1,000,000.00. Lessee shall, at its own expense, maintain business motor vehicle liability 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 the perils of "comprehensive" and "collision". Lessor shall be named as an additional insured with respect to the liability coverage, and as a loss payee on the hired motor vehicle physical damage coverage. The insurance shall provide no less than $1,000,000.00 in combined single limits liability coverage and actual cash value for physical damage coverage. Lessee shall, at its own expense, maintain worker's compensation/ employer's liability insurance during the course of the equipment rental with minimum limits of $1,000,000.00. Lessee shall, at its own expense, maintain commercial general liability insurance which includes coverage for independent contractors and contractual liability coverage, specifically referring to this Agreement and to the hold harmless agreement, contained herein. Said insurance shall name Lessor 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 the rental, and shall include the following coverage: broad form contractual liability, personal injury liability, construction defect liability, completed operations, and product liability. Such insurance shall provide general liability aggregate limits of not less than $2,000,000.00 (including the

coverage specified above) and of not less than $1,000,000.00 per occurrence. All insurance maintained by Lessee pursuant to the foregoing provisions shall be issued by an insurance carrier authorized to do business in the State of New Mexico. Lessee shall provide lessor with not less than 30 days written notice prior to the effective date of any cancellation or material change to any insurance maintained by Lessee pursuant to the foregoing provisions. Before obtaining possession of the equipment rented, if requested Lessee shall provide to Lessor a Certificate of Insurance and applicable endorsements confirming each of the coverage specified above. All certificates shall be signed by an authorized agent or representation of the insurance carrier. Failure of Lessor to request proof of aforementioned insurance coverage does not relinquish Lessee's obligation to procure and provide said insurance.Should Lessee fail to procure or pay the cost of maintaining in force the insurance specified herein, or to provide Lessor upon the request with satisfactory evidence of the insurance, Lessor may, but not shall not be obliged to, procure the insurance and Lessee shall reimburse Lessor on demand for its costs. Lapse or cancellation or the required insurance shall be deemed to be an immediate and automatic default of this agreement.The grant by Lessee of a sub-rental of the equipment leased shall not affect Lessee's obligation to procure insurance, or otherwise affect Lessee's obligations under this agreement. Lessee hereby agrees to strictly comply with the laws of the state in which the equipment rented 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 warrants and represents that it is fully aware of any and all dangers and risks, patent as well as latent, involved in the use, transportation, and handling of the equipment rented.

- **Express and Implied Warranty Disclaimer**. Lessee acknowledges and agrees that Lessor provides no warranties, expressed or implied, that the item(s) being rented or purchased are merchantable or fit for a particular purpose. Lessor shall not be liable for any incidental or consequential damages of any nature or for any reason including, but not limited to Trademarks, Copyrights and/or any Product Clearance. Lessor warrants and represents that (i) it holds title to the goods where applicable (ii) the goods are free and clear of all security interests, liens and encumbrances, (iii) the goods do not infringe any patent, copyright, trademark or other intellectual property right to the best knowledge of the Lessor and unless otherwise stated at time of rental, (iv) Lessee may have to acquire third party permission for clearance to use certain items in situationally specific formats. (v) the Props are in good repair and working order, excepting defects known and observed at time of rental, and in full compliance with all applicable laws, rules and regulations to the best knowledge of the Lessor, as of the delivery date; and (vi) the Props are free of latent defects or illegal conditions of which Lessor is or should be aware or that was otherwise unknown or unobserved at the time Lessee took possession of the goods. Lessor will indemnify Lessee, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors, representatives, contractors, and employees from and against any third-party claims, liabilities, losses, damages, costs, proceedings, demands, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of a breach of any of Lessor's representations, warranties and covenants contained in this Agreement. Except as provided herein. Lessee acknowledges that the Props are leased without warranty or guarantee.
- If any of the Props rented under this Agreement should become inoperable or fail to function in the manner for which it was designed or intended ("Malfunctioning Props"), Lessee shall promptly notify Lessor. Lessee shall have the option, in its sole discretion, to repair the Malfunctioning Props itself or at a repair facility selected by Lessor at Lessor's sole expense, or, if Lessee requires, Lessor agrees to replace said Malfunctioning Props with operable replacement Props ("Replacement Props") of at least equal quality and capability as shortly thereafter as may be reasonably commercially possible. Provided the Malfunctioning Props' failure to perform is not the result of Lessee's sole gross negligence, there shall be no additional charge for the Replacement Props above and beyond what was established in the initial rental contract. If Lessor is unable to provide Replacement Props or repair the Malfunctioning Props within twenty-four (24) hours, or a time that may be reasonably commercially possible, from notice by Lessee, then Lessee shall have the option to: (a) accept Replacement Props of equal or lesser quality at same or reduced rate for the remainder of the rental period; (b) terminate the rental of the Malfunctioning Props, while continuing the rental of other functioning Props, and receive a reduced rental rate reflecting the loss of the Malfunctioning Props; or (c) terminate this Agreement in its entirety and return all Props rented hereunder. If this Agreement is terminated, then all rental charges shall cease on the date of Lessor's receipt of the Malfunctioning Props and/or any other rental Props pursuant to this Agreement at Lessor's facilities, and Lessor shall refund the pro-rated portion of the rental fee already paid, to which Lessee is entitled. If any rental charges are due as of the date of termination of this agreement, Lessee shall pay same within ten (10) business days from the date upon which this Agreement was terminated.
- **Violation of Law.** Lessee covenants and agrees that it will not use any of the items in violation of any law, ordinance or governmental regulation.
- **Orders and Pickup.** Orders for printing and manufacturing services or rentals need not be in writing regardless of the term, the number of items, or the charges therefor Lessor and Lessee agree that orders submitted by Lessee orally shall be valid and binding upon Lessee. At the time of pickup of the items ordered, Lessee, or its agents, representatives, or employees shall be required to sign a Delivery Receipt for the same.
- **Legal Expense.** Lessee will reimburse Lessor for all fees of attorneys or collection agencies, or all expenses, costs, and charges paid, or payable, to third persons or suffered or incurred by Lessor in attempting or affecting protection, preservation, or recovery of any items rented to Lessee or for enforcement of any provision hereof, whether or not legal action be instituted. Lessee agrees any and all potential litigation or arbitration between parties shall take place in a court or appropriate environment and will follow all laws, rules and regulations as dispensed in and of the State of New Mexico.
- **Agreement.** This agreement contains the sole agreement between the parties hereto representing the subject matter hereof. There are no other representation, warranties, or agreements of any kind or nature other than those expressly set forth herein.
- **Terms of Lessee's Purchase or Rental Orders.** If Lessee shall submit a Purchase Order or Rental Order for an item or items and if the terms thereof should be in conflict with the terms hereof, the parties agree that the terms of this Agreement shall prevail. Lessor agrees that its sole and exclusive remedy for Lessee's breach or alleged breach of or non-compliance with any of the provisions of this Agreement shall be limited to the right to recover monetary damage including, but not limited to, any assessed loss and damage, accounting, late, and restocking fees in an action at law and in no event shall Lessor be entitled by reason of any such breach, alleged breach or non-compliance seek or obtain any equitable remedy, including, without limitation, injunctive relief or any other equitable remedy which would enjoin, restrain or otherwise impair the production, distribution, exhibition, advertising or any other means of exploitation of the Project or any subsidiary or ancillary rights in connection therewith. In the event Lessee is in default, breach of or non-compliance with any of the provisions of this agreement the Lessor shall be entitled to terminate or rescind this agreement and all its provisions therein within ten(10) days of submitting written (email will suffice) notice to cure if Lessee does not cure within that time.
- **Rights.** Lessor acknowledges and agrees that Lessee and it's assignees, successors and licensees, shall exclusively own all rights in and to any photographs, motion pictures and recordings taken by Lessee or its assigns upon using the Props and that Lessee shall enjoy the irrevocable and perpetual right throughout the universe to use such photographs, motion pictures and other recordings in and in connection with the production, exhibition, promotion and exploitation of the Project, any 'behind-the-scenes', 'blooper' or similar footage, any merchandising or commercial tie-ins, in any manner and in all media, whether now known or hereinafter devised, including without limitation, all forms of television, home video (e.g. video cassettes, videodiscs and DVD),and interactive "electronic" media (e.g. Internet and CD-ROM). Lessee is not obliged actually to use Props or to included any of said photography and/or said sound recordings taken of, on or using the Props in any motion picture or other production. Lessor hereby waives any claims it may have in connection with the use of such recordings by Lessee and its successors, assigns, and licensees, including, without limitation, claims for rights of privacy, publicity, copyright and/or Trademark infringement. If Lessee photographs the Props, Lessee shall have the right to refer to the Props or any part thereof by any fictitious name, and the right to attribute any fictitious events as occurring in and/or around the Props.
- **Signature** is a statement of authorization and acceptance to the terms of service listed herein.

Authorized Signature: _____ Print Name:_____ Date:_____

Position:_____ Company Name:_____ Project Description:_____

Back 2 One Entertainment Productions:_____ Print Name:_____ Date:_____