

# SIR SAN DIEGO LLC

4620 Santa Fe Street; San Diego, CA 92109

## ON-LINE RENTAL AGREEMENT

AGREEMENT between SIR San Diego LLC (Lessor) and you (Lessee) governing the rental of specific property from Lessor by Lessee as herein provided.

### **1. Terms of Rental**

- (a) This is a rental agreement only and by signing the related rental order form (hereinafter, the "Order Form"), Lessee agrees to all terms and conditions in the Order Form and to those set forth in this on-line rental agreement (hereinafter, the "Agreement"). In the event of a conflict between the terms of this Agreement and the Order Form, the terms of the Order Form shall govern.
- (b) The property leased under this Agreement by Lessee shall be hereinafter referred to as the "Rented Property".

### **2. Duration of this Agreement**

- (a) This Agreement shall commence upon receipt of the Rented Property by Lessee or Lessee's agents and continue until the Rented Property is returned to or picked up by Lessor.

- 3. Rental Is Not a Sale** This is a rental agreement only, and all right, title, and property interest in the Rented Property remains at all times with Lessor. No part of the Rented Property that is leased pursuant to this Agreement shall be deemed the property of the Lessee, nor shall Lessee acquire any proprietary interest or security interest in the Rented Property by virtue of this Agreement or any oral representation. None of the Rented Property may be transferred, sold, assigned, or pledged pursuant to this Agreement.

### **4. Lessee's Responsibility to Protect the Rented Property/Limitations on Use**

- (a) Lessee shall, at all times after delivery and acceptance of the Rented Property maintain said Rented Property in good condition and will not permit any practice that will injure or damage the Rented Property in any manner whatsoever.
- (b) The Rented Property shall be used only by the Lessee and/or its employees and independent contractors, Lessee's clients, employees or independent contractors engaged by said client.
- (c) Lessee agrees to use Rented Property in accordance with the manufacturer's specifications and not to alter the Rented Property.

### **5. Receipt of Property in Good Condition**

- (a) The receipt by Lessee of the Rented Property described on the Order Form shall constitute acknowledgement that the Rented Property is in good, safe, serviceable condition, reasonable wear and tear excepted and fit for the use for which it has been rented.
- (b) Lessee agrees to notify Lessor, in writing, of all defects and impediments to intended use within 24 hours of delivery.

### **6. Lessee's Responsibility to Return Rented Property/Timeliness**

- (a) Lessee is responsible for the safe and timely return of the Rented Property. All items must be returned in the same condition received. Should Lessee fail to return all Rented Property in the same condition received, Lessee agrees to reimburse Lessor for the repair of any item returned damaged or destroyed or replacement value of any item not returned, payment to be immediately due and payable.
- (b) It is the Lessee's responsibility to return all equipment, freight prepaid, to the Lessor's office of origin unless alternative arrangements have been made in writing and approved by Lessor. Lessee is responsible for any loss or damage to the Rented

Property that occurs during return delivery to Lessor, if made by any carrier other than Lessor. Lessee shall solely bear the cost of any insurance it purchases on the Rented Property in connection with its return delivery to Lessor.

- (c) Rented Property returned late, for any reason, shall continue to accrue rental charges at rates applicable under the Order Form.

### **7. Lessee's Responsibility to Repair or Replace The Property**

- (a) In the event of loss, destruction, mysterious disappearance of or damage to the Rented Property, or any part thereof, by any cause whatsoever, during the period of the Agreement, or while the Rented Property is in the possession or under the custody and/or control of Lessee, or Lessee's employees, agents and/or representatives, Lessee shall be liable to Lessor for the full replacement value of the leased property so lost, destroyed, damaged, or stolen. Lessee will cooperate with Lessor in Lessor's efforts to recover under any insurance policy that may cover the loss of the Rented Property.
- (b) Should the Rented Property not be in serviceable condition upon return to Lessor, as ascertained by an inspection thereof by Lessor, Lessor will do all things necessary to place said Rented Property in serviceable condition, the rental term shall continue for such period during which Lessor is placing said Rented Property in serviceable condition, and Lessee shall be responsible for paying rental charges for the time period by which the rental term is extended but only for the actual loss sustained, such charges will not exceed the value of the equipment.

### **8. Equipment Security**

- (a) As a condition to leasing the Rented Property, Lessee may be required to provide Lessor with a security deposit for the full replacement value of the Rented Property. A security deposit may, at Lessor's discretion, be given in the form of an authorization to charge Lessee's credit or debit card for the amount of the security deposit in the event the Rented Property is not returned, returned late or in disrepair.
- (b) In the event the Rented Property is not returned in good, safe, and serviceable condition, Lessor will be entitled to keep Lessee's security deposit and apply said deposit towards any fees imposed upon cancellation, late return fees, the cost of any repairs needed to the Rented Property and the replacement of the Rented Property if it is a total loss.
- (c) Lessor's recourse to Lessee's security deposit is not Lessor's exclusive remedy for Lessee's breach of this Agreement and, therefore, even if Lessor keeps Lessee's Security Deposit, Lessor shall remain entitled to pursue available legal or equitable remedy for any damages it suffers as a result of Lessee's breach of any provision of this Agreement.
- (d) Lessee may be required to provide proof of insurance covering the Rented Property naming Lessor as an additional insured and such policy shall be issued by a company licensed or authorized to do business in the State of California.

**9. Cancellation Policy**

- (a) To cancel an order, Lessee must give **written notice** delivered by 10:00 a.m. on the day prior to the date the Rented Property is due to arrive at its delivery destination. Notice must be delivered by email to the following address, [sdinfo@sir-usa.com](mailto:sdinfo@sir-usa.com), or by fax to (858) 274-1906.
- (b) Orders cancelled after 10:00 a.m. on the date prior to the date the Rented Property is due to arrive at its delivery destination, but not delivered, are subject to the following terms: (1) A restocking fee equal to 50% of the original amount of the cancelled order plus applicable sales tax; plus (2) 100% of any subcontracted services; plus (3) any applicable contracted labor charges and labor will be subject to a minimum of four man-hours.
- (c) Orders that are cancelled upon delivery are subject to the same terms as Section 9(b) plus one-way delivery charges.

**10. Lessee's Additional Orders Under This Agreement.** Lessee may place orders for additional Rented Property by communicating Lessee's request in writing via email to Lessor. Lessee's assent to the terms of this Agreement constitutes authorization for its agents and employees to place orders for Rented Property solely by submitting Lessee's request in writing and without re-executing this Agreement.

**11. Lessee's Indemnification of Lessor**

- (a) Lessee agrees to, and does hereby, **defend, indemnify, and hold harmless Lessor** against any and all loss, damage, expense and penalty, including costs, expenses, and reasonable attorneys' fees, arising from any and all causes of action on account of or in connection with: (i) any injury to person or property of any character whatsoever occasioned by the operation or handling of the Rented Property both during the rental period, and thereafter until the Rented Property is returned to the custody of Lessor; or (ii) the breakdown or failure of the Rented Property, and/or any part or parts thereof during the rental period term or thereafter until the Rented Property returns to the custody of Lessor, including, but not limited to, the costs or damages of musicians, vocalists, concert or event promoters, sponsors or investors, except to the extent caused by the gross negligence or willful misconduct of Lessor.

**12. Limitation of Liability**

- (a) Lessee agrees that, to the fullest extent permitted by law, Lessor, or its agents, officers, directors, employees, or shareholders (öLessor's Agentsö) shall not be liable to Lessee for any special, indirect or consequential damages whatsoever, whether caused by Lessor, or Lessor's Agents' negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever, including but not limited to, loss of use of equipment or facility, and loss of profits or revenue. Lessee further agrees that, to the fullest extent permitted by law, the total liability of Lessor and Lessor's Agents, to Lessee, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the rental of the property, from any cause or causes including but not limited to Lessor's, or Lessor's Agents' negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed the amount Lessee has paid to rent the property.

**13. Entire Agreement.** This Agreement contains the entire agreement of the parties hereto concerning the subject matter contained herein and supersedes any other prior written, or oral, agreements between them. There are no representations, agreements, arrangements or understandings between the parties hereto concerning the subject matter of this Agreement, whether oral or written, which are not fully expressed or referenced in the Agreement.

**14. Choice of Law.** The parties agree, without regard to conflict of laws principles, that the Agreement shall be interpreted and governed by the laws of the State of California and that all claims and disputes arising from or concerning this Agreement shall be decided in accordance with the substantive law and statutes of the State of California.

**15. Arbitration and Choice of Forum.**

- (a) Any dispute arising out of or relating to the Agreement, its interpretation or application, or any future issue between the parties, shall be resolved by final and binding arbitration before one arbitrator designated by the American Arbitration Association, pursuant to the then prevailing rules of the AAA for the resolution of commercial disputes, in San Diego County, California. The arbitrator's decision shall be final and binding and subject to confirmation in any court of competent jurisdiction with the prevailing party being awarded reimbursement of the arbitration filing fees, the arbitrator's fees, any court filing fees and costs incurred in obtaining court confirmation, and any court filing fees and costs incurred in defending or pursuing any court appeals with respect to the arbitrator's decisions. The arbitrator shall determine the validity, enforceability, and scope of this arbitration provision and of this Agreement.
- (b) The parties irrevocably and unconditionally (i) agree that any judicial proceeding relating to such arbitration proceedings shall be brought in a court with subject matter jurisdiction located in San Diego County, California, (ii) consent to the exclusive jurisdiction of such a court in any such proceeding, and (iii) waive any objection to the laying of venue of any such proceeding in any such court. The parties also irrevocably and unconditionally consent to the service of any process, pleadings, notices or other papers in connection with any such judicial proceeding and submit to personal jurisdiction in such venue.

**16. Rule of Construction.** The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.