

## COMMERCIAL VEHICLE/EQUIPMENT LEASE AGREEMENT

Please print and fax to: 281-842-9345

Stutes Enterprise Systems, Inc. ("Lessor"), located at 1426 Sens Rd #5, LaPorte, Texas 77571, leases to \_\_\_\_\_, ("Lessee"), located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, all the vehicles and/or equipment listed in any attached schedule and/or in Stutes Enterprise Systems, Inc. equipment rental forms generated from time to time ("Vehicle" or "Vehicles"). This Lease is made on the following terms and conditions:

1. This Agreement becomes effective with respect to each Vehicle on the date that the Vehicle is tendered by Lessor to Lessee or 24 hours after the date Lessor notifies Lessee that the Vehicle is available for delivery, whichever occurs first. This Agreement will continue for the term specified in the attached schedule, if any, and/or Stutes Enterprise Systems, Inc. equipment rental forms, unless terminated earlier as provided below. Lessee shall be liable for the full rental period even though any Vehicles are for any reason returned to or taken possession of by Lessor prior to the expiration of the minimum rental period provided.
2. Lessee shall be responsible to Lessor for any and all losses or damage to the Vehicles, excluding normal wear, tear and depreciation. Without limitation, Lessee shall furnish Lessor with a copy of an insurance certificate/policy reflecting the liability limits equal to or greater than amounts hereinafter required.
3. Lessee shall not remove any of the Vehicles from the lower continental United States (i.e., the lower 48 states excluding Alaska) except with the prior written consent of Lessor.
4. Title to Vehicles leased under this Agreement shall not pass to Lessee. This is not a sale. Lessee shall keep the Vehicles free and clear of all levies, liens and encumbrances arising from Lessee's debts.
5. Lessee agrees to pay Lessor for each Vehicle the Rental amount designated in the attached schedule, if any, and/or Stutes Enterprise Systems, Inc. equipment rental forms generated from time-to-time. Rental payments must be made at Lessor's place of business or at any other place of business as Lessor or an assignee of the rent may direct. Rental payments are due and payable on receipt of an invoice for Rental payment. Lessee agrees to pay interest at the maximum legal rate on all delinquent rentals until paid.
6. All taxes and license charges levied on, or assessed against, Vehicles leased under this Agreement are borne by Lessee to the extent they arise from the leasing of the Vehicles during the term of the Agreement, except for any taxes based on or measured by income and/or ownership of Lessor.
7. Lessee promises to operate the Vehicles only in the normal and ordinary course of Lessee's business, and not in violation of any law, rule, regulation, statute, or ordinance. Lessee shall indemnify, defend, and hold Lessor harmless from and against all fines, forfeitures, seizures, confiscations, and penalties arising out of any violations.
8. Lessor may at all times inspect the Vehicles and observe their use. Lessee, whenever requested by Lessor, shall advise Lessor of the exact location of all of the Vehicles and their condition. Lessor may immediately remove any Vehicles from any job site, building or other place, without notice or

Initials \_\_\_\_\_

liability to Lessee, if upon inspection, Lessor determines in Lessor's opinion that any of the Vehicles are being used beyond capacity or in any manner improperly cared for or abused.

9. Lessee shall inspect the Vehicles within 48 hours after receipt. Unless Lessee notifies Lessor in writing within such period of the details of any defects, Lessee shall be conclusively presumed to have accepted the Vehicles in their present AS-IS, WHERE-AS condition. Lessor shall not be obligated to make any repairs or replacements. Lessee's expense, shall take good care of the Vehicles, and repair or replace any and all damage done to the Vehicles. Lessee shall not incur for Lessor's account or liability any expense therefore without Lessor's prior written consent. Thus without limitation, Lessee, at Lessee's expense, shall provide the following: (a) Oil, lubricants, tires, tubes, and all other operating supplies and accessories that are necessary for proper and efficient operation of the Vehicles. (b) Maintenance and repairs, e.g., all labor and parts that may be required to keep the Vehicles in good operating condition. (c) Towing service necessary because of mechanical and tire failure. Lessee, at Lessee's expense, agrees to provide all fuel for the Vehicles. If Lessee fails to perform any maintenance required hereunder within five (5) days of the occurrence of the need for maintenance, Lessor may, at Lessor's option and without limitation, (a) perform such maintenance and Lessee shall repay the costs for such work incurred by Lessor immediately upon demand, or (b) terminate this Lease upon three (3) days prior written notice from Lessor to Lessee. Lessee shall make no alteration of any of the Vehicles without Lessor's prior written consent.

10. Lessee shall cause the Vehicles to be operated and maintained by competent, well-trained employees (e.g., drivers must be at least 21 years of age and possess current valid commercial drivers licenses), and shall pay all expenses of operation.

11. Lessee agrees that the Vehicles will not be operated (1) to carry passengers for a consideration, whether express or implied; (2) in any race, test, or contest; (3) by any driver in possession of or under the influence of alcohol or any drug that may impair the ability to operate the Vehicle; (4) in a reckless or abusive manner; or (5) while improperly loaded or loaded beyond the manufacturer's recommended maximum gross weight. Lessee agrees to reimburse Lessor in full for damages, including expenses, resulting from any violation of this provision.

12. During the term of this Lease and until Lessee has properly returned all of the Vehicles to Lessor, Lessee, at Lessee's expense, shall carry and maintain with insurers (rated B plus or better in the most current A.M. Best Key Rating Guide) and on terms satisfactory to Lessor, the following insurance: (a) Comprehensive General Liability Insurance (with limits of not less than \$2,000,000 general aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence, including without limitation, blanket contractual), (b) Business Automobile Insurance (with C.S.L. not less than \$1,000,000 or limits of \$500,000/\$1,000,000 for bodily injury and \$500,000 for property damage), and (c) excess liability umbrella coverage in the amount of \$5,000,000 for each occurrence and in the aggregate. With respect to all the insurance provided for in this provision, Lessee and the insurer(s) shall waive any right of subrogation in connection with results or occurrences arising out of this Lease. Further, Lessor shall be named as additional insured on any liability insurance policies, Lessor shall be the sole loss payee on any insurance policies relating to loss or damage to the Vehicles, and the maximum deductibles amounts under all policies shall be \$5,000. Lessee shall

Initials \_\_\_\_\_

furnish to Lessor, immediately upon request, certificates of insurance evidencing such insurance and such waiver and containing the provision that no cancellation or material change in the policies shall become effective except on at least thirty (30) days prior written notice thereof to Lessor.

13. Lessee shall notify Lessor immediately of any accident or collision arising from the use of or otherwise involving any of the Vehicles. Lessee shall make a detailed report to Lessor concerning such collision in writing as soon as practicable, by the most expedient means of communication available. Lessee further agrees to render any other assistance to Lessor and any insurer in the investigation, defense, or prosecution of any claims or suits.

14. Lessee fully inspected the Vehicles, and acknowledges that the Vehicles are suitable for the purposes for which they are leased. Lessee accepts the Vehicles in their present AS-IS condition WITH ALL FAULTS. THE WARRANTIES STATED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED. Lessor's maximum liability, and Lessee's exclusive remedies for any claim or cause of action whether based on, including without limitation, contract, negligence, strict tort liability, is expressly limited to a total of \$5,000. Lessee could have negotiated a higher limit except that the negotiated Rental would in such case be higher. In no event does Lessor assume, nor shall Lessor be liable to Lessee for CONSEQUENTIAL OR INCIDENTAL damages.

15. Lessee acknowledges that there are hazards associated with the maintenance and use of the Vehicles and thus warnings and training must be communicated to all persons concerned with Vehicles. Lessee assumes all responsibility for the communication of warnings to and training of its employees, independent contractors and customers relating to hazards to person and property associated with the Vehicles.

16. Lessee shall defend, indemnify and hold Lessor, Lessor's agents and employees, harmless from and against any and all claims, actions, losses, damages, liability and expenses, for loss of life, personal injury, or damage to property arising from or out of any occurrence connected with the ownership, maintenance, use, or operation of any of the Vehicles, regardless of whether such loss, injury or damage is caused by the sole negligence of Lessor, or the joint negligence of Lessor and any other person or entity. It is the expressed intention of the parties hereto, both Lessor and Lessee, that the indemnity provided for in this provision is indemnity by Lessee to indemnify and protect Lessor from the consequences of Lessor's own negligence, whether that negligence is the sole or a concurring cause of the loss, injury, or damage.

17. The following events, without limitation, shall constitute default under this Lease: (a) the nonpayment of Rental by Lessee for a period of five (5) days of any sum required to be paid by Lessee. (b) The nonperformance by Lessee of any other term, condition or covenant of this Lease that is not cured within two days after notice of nonperformance from Lessor.

Initials \_\_\_\_\_

**18. If Lessee defaults, Lessor may exercise any one or more of the following remedies:**

**(a) Termination of the Lease and Lessee's rights under this Lease as to any or all items of leased property.**

**(b) A declaration that all due but unpaid rent and all other charges due under the Lease are due and payable immediately.**

**(c) Repossession of the Vehicles without legal process, free of all rights of Lessee in and to the Vehicles. By this provision, Lessee expressly authorizes Lessor or Lessor's agent to enter any premises owned or controlled by Lessee, or Lessee's agents and assigns, where any of the Vehicles are located for the purpose of repossessing and removing the Vehicles. Lessee specifically waives any right of action Lessee might otherwise have arising out of the entry and repossession, and releases Lessor from any claim for trespass or damage caused by reason of the entry, repossession, or removal. Any repossession of one particular Vehicle under this Lease with respect to which Lessee is in default does not constitute a termination of this Lease as to any other Vehicles, unless Lessor expressly so notifies Lessee in writing.**

**In the event of any breach by Lessee, Lessee agrees to pay all rental due, damages for any injury to the Vehicles, cost of returning the Vehicles to Lessor's possession, and all reasonable freight, storage, transportation, and other charges incurred by Lessor. The remedies of Lessor set forth in this provision are cumulative to the extent permitted by law and may be exercised partially, concurrently, or separately. The exercise of one remedy does not preclude the exercise of any other remedy.**

**19. Lessee shall immediately return each of the Vehicles to Lessor at the end of the term for each Vehicle. Lessee, at Lessee's expense, must return the Vehicles to Lessor at Lessor's facility in good and clean (e.g., without any residue) condition. Failure to return of any Vehicles in less than good and clean condition shall cause the Rental to continue to accrue unabated until Lessee complies hereto. Lessee upon return of the Vehicles shall also provide Lessor with copies of MSDS's (material safety data sheets) for any products transported in the Vehicles.**

**20. Lessee shall pay Lessor all of Lessor's costs and expenses, including without limitation, reasonable attorney's fees, incurred in collecting amounts due from Lessee or in enforcing any rights of Lessor under this Agreement.**

**21. Lessee may not assign this Agreement or any of Lessee's rights under this Agreement without the prior written consent of Lessor. Lessee may not sublease any of the Vehicles, or permit others to use them, without the prior written consent of Lessor.**

**22. Modifications or amendments to this Agreement are valid only when made in a writing that is signed by all contracting parties. Oral agreements purporting to modify or amend this Agreement are void and of no effect.**

**23. The provisions of this Agreement may be waived only by means of a writing that is signed by all contracting parties. No delay or omission by either party to exercise any remedy or right accruing on default impairs any remedy or right under this Agreement. An express, written waiver by either party of any breach of any provision of this Agreement by the other party may not be deemed to be a waiver of the breach of any other provision or of any subsequent breach of the waived provision.**

**Initials \_\_\_\_\_**

24. This Agreement is binding on, and inures to the benefit of the contracting parties and their respective heirs, successors, legal representatives, and assigns when permitted by this Agreement. Lessee must promptly notify Lessor in writing before any substantial changes in ownership or any material disposition of the assets of Lessee's business.

25. All notices, consents, waivers, or other communications, except invoices, required under this Agreement must be sent by certified mail, return receipt requested, and will be deemed to have been given when mailed to the parties at their respective addresses as set forth in the preamble or when mailed to the last address provided in writing to the other party by the addressee.

26. This Agreement is to be construed under, and in accordance with, the laws of the State of Texas, without regards to its conflict of laws rules. All obligations of the parties created by this Agreement are to be performed in Harris County, Texas.

27. This Agreement along with any attached schedule(s) and/or any Stutes Enterprise Systems, Inc. equipment rental forms are incorporated by reference and made an integral part of the Agreement, constitute the entire agreement between the parties with respect to its subject matter. All previous negotiations, understandings, or written or oral agreements have been merged in this Agreement. The terms and conditions of this Agreement prevail notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction, whether prepared and submitted by Lessor or by Lessee.

28. Time is of the essence in this Lease and in each and all of its provisions.

29. Without limitation, the warranties, indemnities, assumptions of risk, liabilities, and obligations of Lessee arising under this Lease will continue in effect after the termination of the Lease, regardless of the reason for termination.

30. If any one or more provisions of this Agreement are held invalid, illegal, or unenforceable in any respect for any reason, the remaining provisions remain valid, binding, and effective as if the invalid, illegal, or unenforceable provisions had never been contained in this Agreement.

Dated this \_\_\_ day of \_\_\_\_\_, 200\_\_.

LESSOR  
Stutes Enterprise Systems, Inc.

LESSEE  
\_\_\_\_\_

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its \_\_\_\_\_