

SERVICE AGREEMENT TERMS AND CONDITIONS

By signing the Service Agreement, the “**Customer**”, agrees to the following terms and conditions: The Service Agreement and terms and conditions, as set forth below, are incorporated herein and therein, and together, shall be deemed to constitute one agreement, binding on all parties hereto. This Service Agreement shall be binding on WSECO upon its execution of the Service Agreement, and subject to availability of the Services and Goods.

1. OFFER TO SELL: Western States Equipment Company, an Idaho corporation, or its affiliates (“**WSECO**”) agrees to provide the services (“**Services**”) and supply the parts, goods, accessories, and attachments described in the Service Agreement (the “**Services and Goods**”) to the Customer, under the terms and conditions specified herein. Customer, together with WSECO, the “**Parties,**” and each a “**Party**”.

2. ORDERS. Customer’s intent to purchase the Services and Goods in accordance with this Service Agreement, and Customer’s acknowledgement and acceptance of the Service Agreement (including, the terms and conditions as incorporated herein), **shall be evidenced by any or all of the following:** (a) Customer’s acceptance of any quote, proposal, bid or any other document issued by WSECO for the Services and Goods (together with any exhibits, schedules, attachments and appendices thereto, a “**Bid**”); (b) Customer’s issuance to WSECO of a purchase order or other document evidencing Customer’s intent to purchase the Services and Goods (together with any exhibits, schedules, attachments and appendices thereto, a “**Purchase Order**”); (c) Customer’s acceptance of the Services and Goods when provided or delivered (notwithstanding that a Bid, Purchase Order, or other document or agreement is or is not signed); or (d) Customer’s payment of any invoice issued by WSECO for the Services and Goods. Any Bid accepted by Customer or Purchase Order accepted by WSECO shall constitute an “**Order**” for the Services and Goods described therein.

a. Acceptance and Rejection of Purchase Orders. WSECO has no obligation to accept any third-party Purchase Orders; however, WSECO may accept a Purchase Order by confirming the Purchase Order in writing or by delivering the applicable Services and Goods to Customer, whichever occurs first. WSECO may reject a Purchase Order without liability or penalty and without constituting a waiver of any of WSECO’s rights or remedies under this Service Agreement.

b. Partial Information. Customer understands and acknowledges that WSECO may perform the Services in reliance on representations made by Customer regarding, inter alia, the cleanliness, functionality, operational status, contents and/or nature of the property, equipment or machinery that will be the subject of the Services. Should any of the representations on which WSECO relied in providing the Services be false or incomplete, or if WSECO shall reasonably determine in the course of performing the Services that additional testing and analysis services are necessary to satisfy its obligations hereunder, WSECO shall promptly provide to Customer an estimated cost of the additional work necessary to satisfy its obligations hereunder (“**Additional Work**”). If Customer either declines or fails to agree to modify the Services Agreement and scope of Services to include the Additional Work within thirty (30) days, WSECO shall be entitled to terminate this Agreement

c. Change Orders. Subject to Section 2.b above, if either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other

Party in writing. WSECO shall, within a reasonable time after such request, provide a written estimate to Customer of (i) the likely time required to implement the change and (ii) any necessary variations to the fees and other charges for the Services arising from the change. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing. Notwithstanding the above, WSECO may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Services Agreement or relevant Change Order.

- d. **Cancellation or Modification of Orders.** Customer shall be obligated to purchase from WSECO the Services and Goods specified in an Order. Cancellation or modification of all or part of any Order is subject to WSECO's prior written consent in each instance. If cancellation or modification is allowed, Customer agrees to pay to WSECO all expenses incurred, and damage sustained by WSECO as a result of such cancellation or modification.
- e. **Shipment.** In the event of shipment of any Goods, WSECO shall select the method of shipment of and the carrier for the Goods. WSECO, in its sole discretion, without liability or penalty, may make partial shipments of the Goods to Customer. Each shipment will constitute a separate sale and Customer shall pay for the Goods shipped in accordance with the payment terms specified in this Service Agreement, whether such shipment is in whole or partial fulfillment of an Order.
- f. **Delivery.** Unless otherwise agreed in this Service Agreement, or writing, the sales price is offered F.O.B. at WSECO's designated facility as stated on the Service Agreement and Customer is responsible for all shipping charges as provided in this Service Agreement. WSECO will, at Customer's cost and expense, deliver the Services and Goods to the location specified in the Order (the "**Delivery Location**") using WSECO's standard methods for packaging and shipping.
- g. **Late Delivery.** Any time quoted for delivery of Services and Goods is an estimate only; provided, however, that WSECO shall use commercially reasonable efforts to deliver all Services and Goods within a reasonable time consistent with the Order.

3. TITLE TO EQUIPMENT. Title to the Goods shall pass to Customer upon receipt by WSECO of payment in full for the Goods, and any Services provided in conjunction with the Goods.

4. ACCEPTANCE AND TERMS AND CONDITIONS: Acceptance of this Service Agreement is limited to the express terms stated herein. Any proposal in Customer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the (i) terms and conditions or (ii) representations or warranties, of this Service Agreement, is expressly objected to and hereby rejected. Once accepted, this Service Agreement shall constitute the entire agreement between WSECO and Customer. WSECO is not bound by any representation or agreements, express, or implied, oral, or otherwise, which are not stated within this Service Agreement (including, for purposes of clarity, any general terms and conditions contained in Customer's Purchase Order or other documents submitted by Customer). This Service Agreement will supersede all previous communications, agreements, and contracts with respect to the subject matter hereof and no understanding, agreement, term, condition, or trade custom

at variance with this Service Agreement will be binding on WSECO. No waiver or modification of the terms and conditions hereof will be effective.

5. PAYMENT TERMS:

- a. Payment.** Customer shall pay to WSECO all invoiced amounts within thirty (30) days from the date of such invoice, unless otherwise set forth on the Service Agreement and/or Credit Agreement. Notwithstanding the foregoing, for any Customer who (i) does not have a Credit agreement with WSECO, or (ii) payment terms are not set forth on the Service Agreement, full payment shall be due at time of purchase. Customer shall make all payments in US dollars by check, credit card or wire transfer. For Customers who do not have an open credit account with WSECO, payment is due upon delivery of Services and Goods.
- b. Late Payments.** Customer shall pay interest on all late payments, calculated daily, and compounded monthly at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable Law, calculated daily and compounded monthly. Customer shall also reimburse WSECO for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
- c. Disputed Invoice.** Failure to notify WSECO in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counterclaim.
- d. No Set-off Right.** Customer shall not have, and acknowledges that it does not have, any right to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to WSECO under this Service Agreement.

6. UNSATISFACTORY CREDIT STATUS. Customer shall furnish WSECO with statements evidencing Customer's financial condition as WSECO may, from time to time, reasonably request, and shall notify WSECO immediately of any and all events that may have a material adverse effect on Customer's business or financial condition. If WSECO determines in its sole discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to WSECO's other rights, WSECO may without liability or penalty take any of the following actions:

- a.** require that Customer provide a standby letter of credit satisfactory to WSECO in its sole discretion;
- b.** accelerate all amounts owed by Customer to WSECO under this Service Agreement;
- c.** modify the payment terms specified in Section 5 (Payment Terms) for outstanding and future Orders, including requiring Customer to pay cash in advance;
- d.** cancel any previously accepted Orders;
- e.** delay any further shipment of Services and Goods to Customer;
- f.** terminate this Service Agreement; or

- g. any combination of the above.

No actions taken by WSECO under this Section 6 (nor any failure of WSECO to act under this Section 6) shall constitute a waiver by WSECO of any of its rights to enforce Customer's obligations under this Service Agreement including, but not limited to, the obligation of Customer to make payments as required under this Service Agreement.

7. HAZARDOUS SUBSTANCES. Customer shall submit each sample to WSECO with (i) a proper Safety Data Sheet ("**SDS**") and (ii) written notification (a "**Notification**") as to whether such sample contains Hazardous Substances (as defined below). If Customer submits any sample without an SDS and/or Notification and WSECO identifies such sample as containing Hazardous Substances, WSECO will notify Customer, as necessary, and hold the sample for ten (10) days for Customer to recover it. In the event Customer fails to recover such sample, WSECO will properly dispose of such sample and invoice Customer for all costs incurred by WSECO for said disposal. Customer shall indemnify, defend, and hold WSECO, its parent company and affiliates and their respective owners, officers, directors, employees, agents, successors and permitted assigns from and against any and all claims, damages, and losses caused by such Hazardous Substances unless caused, in whole or in part, by WSECO's negligence or the negligence of WSECO's parent company or their respective employees, agents or assigns. For the purposes of this Agreement, "**Hazardous Substances**" means all regulated or hazardous substances, other than used oil, #2 diesel or coolant (including without limitation, substances identified as "Hazardous Materials" under the Resource Conservation and Recovery Act, the Toxic Substances Control Act and/or any other federal, state, or local laws, rules and/or regulations purporting to deal with toxic or hazardous substances).

8. SALES TAXES: Under certain state laws, WSECO is required to collect sales tax for sales made on Services and Goods. Prices stated in this Service Agreement, Order, or Purchase Order, do not include any applicable state, county, city, or local sales taxes. This Service Agreement is accepted with the understanding that such taxes and charges shall be added, as required by law, at the time the Services and Goods are invoiced. Where applicable, WSECO will charge sales tax at the time of invoice unless the Customer has a valid sales tax exemption certificate on file. Valid sales tax-exempt certificates can be emailed to SalesTax@WSECO.com. In states where WSECO is not required to collect and pay Sales Tax, the Customer is obligated to self-report and pay the Sales and/or Use Tax to the Customer's appropriate state and or local Department of Revenue. In the event that Customer fails to pay any applicable tax or other charge as agreed herein or fails to provide a valid exemption certificate, Customer agrees to indemnify and hold WSECO harmless from any liability and expense by reason of Customer's failure to pay said taxes or assessments, including, but not limited to, WSECO's reasonable attorney's fees and costs and other necessary legal expenses resulting from such failure.

9. GRANT OF SECURITY INTEREST: To the extent permitted under applicable law, in order to secure payment and performance of Customer's obligations arising under this Agreement, Customer grants WSECO (i) a security interest in and to all right, title, and interest of Customer in, to, and under the Services and Goods and any and all additions, replacements, substitutions, and proceeds of the same ("**Collateral**") to secure payment of the sales price and any and all other obligations or amounts owed or owing by Customer hereunder whether now existing or hereafter created and all renewals, extensions, and rearrangement of such liabilities, and (ii) a mechanic's lien on the equipment or worksite and all improvements, constructed therein or thereon, as permitted by law. Customer appoints WSECO as Customer's irrevocable attorney-in-fact to file, at Customer's cost any financing statement(s) (and any amendments, renewals, and related instruments) (a) to perfect such security interest, and/or (b) to release, terminate and

void WSECO security interest. Customer shall execute any such statements or other documentation necessary to perfect such security interest. The security interest granted under this provision constitutes a purchase money security interest under the Idaho Uniform Commercial Code (“**UCC**”). Customer will reimburse WSECO for all expenses for the perfection and the continuation of the perfection of WSECO’s security interest in the Collateral. During such period in which WSECO has a security interest in and to the Services and Goods, Customer may not assign, transfer, move, or otherwise sell any of the Collateral without the written consent of WSECO. Customer promptly will notify WSECO before any changes in Customer’s name including any changes to the assumed business names of Customer.

10. LOADING AND UNLOADING. Customer is responsible for the loading and unloading of the Goods and any equipment related thereto. IF WSECO EMPLOYEES ASSIST IN LOADING OR UNLOADING THE GOODS OR EQUIPMENT, CUSTOMER ASSUMES THE RISK OF ANY RESULTING DAMAGE OR INJURY AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS WSECO FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEYS’ FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY WSECO’S NEGLIGENCE OR THE NEGLIGENCE OF WSECO’S EMPLOYEES, AGENTS OR ASSIGNS.

11. TIME OF DELIVERY: Orders for Services and Goods are processed in the order of their acceptance by WSECO. WSECO will use commercially reasonable efforts to deliver the Services and Goods to Customer on the scheduled delivery date as stated in this Service Agreement, Order, or Purchase Order. However, shipping and delivery dates are estimates and dependent upon factors outside of WSECO’s control including, but not limited to, the manufacturer’s production schedule, material and labor shortages, equipment and inventory shortages, shipping delays, the Goods necessary to provide the Services, may not arrive on the scheduled date. WSECO shall not be liable for any damages caused by delays in delivery or shipment of the Services and Goods. Unless otherwise agreed to in writing by the parties, the Services and Goods shall not be delivered to Customer until payment terms are mutually agreed upon.

12. RISK OF LOSS/SHORTAGES: As applicable, risk of loss of any Goods shall pass to Customer as soon as the Goods are properly loaded on the carrier, as elected by WSECO. WSECO’s responsibility for shipment ceases upon delivery of the Goods to the carrier. In the event that WSECO serves as the carrier, WSECO’s responsibility for shipment will cease upon delivery acceptance by the Customer. Any claim by Customer for shortage in shipment shall be made by written notice to WSECO within ten (10) days after receipt of the shipment. Customer will be deemed to have accepted the Goods unless it notifies WSECO in writing of any nonconforming products during the inspection period and furnishes such written evidence or other documentation as required by WSECO.

13. COMPLIANCE WITH LAWS: Customer shall at all times comply with all federal, state, and local laws, rules, or regulations applicable to this Service Agreement, Customer’s performance of its obligations hereunder, and Customer’s use of the Services and Goods. Without limiting the generality of the foregoing, Customer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Services and Goods and (b) not engage in any activity or transaction involving the Services and Goods, by way of shipment, use or otherwise, that violates any federal, state, and local laws, rules, or regulations.

14. TERMINATION. In addition to any remedies that may be provided under this Service Agreement, WSECO may terminate this Service Agreement with immediate effect upon written

notice to Customer, for any reason or no reason, or if Customer: (a) fails to pay any amount when due under this Service Agreement; (b) has not otherwise performed or complied with any terms of this Service Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Any termination under this Service Agreement automatically operates as a cancellation of any deliveries of Services and Goods to Customer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Services and Goods had been accepted by WSECO. With respect to any Services and Goods that are still in transit upon termination of this Service Agreement, WSECO, in its sole discretion, may require that all sales and deliveries of such Services and Goods be made on either a cash-only or certified-check basis.

15. LIMITED WARRANTY.

- a. **New Goods.** If Customer is purchasing new Goods from WSECO, Customer acknowledges that (i) WSECO is not the manufacturer of the Goods; (ii) if the Goods include a manufacturer's warranty, WSECO will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, WSECO shall provide Customer a copy of the applicable manufacturer's warranty.
- b. **Remanufactured Goods.** If Customer is purchasing remanufactured Goods from WSECO, (i) WSECO is not the manufacturer of the remanufactured Goods; (ii) if the remanufactured Goods include a manufacturer's warranty, WSECO will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, WSECO shall provide Customer a copy of the applicable manufacturer's warranty. Customer acknowledges that the only warranties with respect to remanufactured Goods are those warranties, if any, expressly set forth in the manufacturer's warranty or as specifically set forth in the Sales Agreement.
- c. **Used Goods.** If Customer is purchasing used Goods from WSECO, Customer acknowledges that the only warranties with respect to such used Goods are those warranties, if any, expressly set forth in the Service Agreement.
- d. **Services.** For Services purchased by Customer from WSECO, WSECO warrants that its Services will be performed and completed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, with such service warranty extending for twelve (12) months, commencing from completion of the original Services. For example, if the service warranty is for a period of twelve months from completion of the original services, then if WSECO performs a repair pursuant to its service warranty, the warranty period remains twelve months from completion of the original Services; the twelve-month service warranty period does not start over with the repair. If replacement parts or goods used by WSECO in connection with the provision of Services include a manufacturer's warranty, WSECO will pass such warranty through to Customer to the extent permitted by the terms of the manufacturer's warranty. WSECO's service warranty will be voided in the event of any of the following: misuse or abuse of Goods by Customer; subsequent repairs performed by Customer or vendors other

than WSECO; use beyond ordinary wear and tear; failure to maintain and operate Goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer); or damage to the Goods or equipment due to theft, vandalism or casualty.

- e. **Installation of Goods.** In the event WSECO provides Services to Customer and installs Goods, in conjunction with the provision of the Services, the Goods shall have a manufacturer's warranty of twelve (12) months, as described above, and an additional WSECO warranty of six (6) months, which WSECO warranty of Goods shall be "added" to the end of the manufacturer's warranty.
- f. **Limitation of Remedies:** During the limited warranty, if any, as provided herein, if, for any reason, the Services and Goods do not perform satisfactorily, as judged by WSECO in its sole discretion, WSECO may repair or replace the Services and Goods or any part thereof, at its option, without affecting any of the terms of this Service Agreement. This remedy does not apply if the Services and Goods has failed or performs less than satisfactorily due to Customer's improper use of the Services and Goods, accident (including, damage during shipment), neglect, abuse, misuse, or exposure of the Services and Goods to conditions beyond capacity, power, environmental design limits, or operation constraints, as specified by WSECO and/or the Services and Goods manufacturer. Customer is responsible for all expenses related to repair or replacement due to these causes.

THE REMEDIES IN THIS SECTION 17 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE LIMITED WARRANTY.

16. EXTENDED PROTECTION OR COVERAGE. Customer acknowledges that Customer may have the option of purchasing an equipment protection plan or extended services coverage (each, an "**Extended Protection Plan**") regarding the Goods, and Customer agrees that if an Extended Protection Plan is available and purchased by Customer at the time of sale, the Extended Protection Plan will be subject to the terms, conditions and exclusions contained in such applicable Extended Protection Plan.

17. DISCLAIMER OF WARRANTIES: Except for the limited warranties set forth in Section 15, (i) by receiving the Services and Goods, Customer acknowledges the Services and Goods to be in good, safe, and serviceable condition, and Customer accepts the Services and Goods "**AS IS, WHERE IS**" and "**WITH ALL FAULTS**," regardless of defects, latent or otherwise, and (ii) WSECO makes no warranties, express or implied, for any Services and Goods, equipment, product, or other items sold or furnished under this Service Agreement, unless agreed to in a separate writing between Customer and WSECO. **WSECO MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY WSECO, OR ANY OTHER PERSON ON WSECO'S BEHALF, EXCEPT AS SPECIFICALLY SET FORTH IN THIS SERVICE AGREEMENT. ALTHOUGH WSECO MAY ADMINISTER WARRANTIES ISSUED BY A MANUFACTURER, CUSTOMER**

ACKNOWLEDGES AND AGREES THAT (1) ANY EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF WSECO ; (2) SUCH MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY WSECO WHICH ARE NOT COVERED BY SUCH MANUFACTURER 'S WARRANTY. Any warranty by WSECO shall be null and void and have no legal effect if Customer fails to pay any amounts due for the Services and Goods at issue.

18. LIMITATION OF LIABILITY: In no event will WSECO, its subsidiaries, affiliates, agents or employees be liable for any liquidated, incidental, indirect, exemplary, punitive, enhanced, special, or consequential damages in connection with, arising out of, or relating to this Service Agreement or furnishing of any Services, Goods, equipment, or other items or any third party's ownership, maintenance, or use of any Services, Goods, equipment, or other items furnished under this Service Agreement, including, but not limited to, lost profits or revenues, loss of use of the Services and Goods or any associated equipment, damage to associated goods, costs of capital, cost of substitute goods, or claims of Customer for such damages, whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen by Customer, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. WSECO is not responsible for meeting any federal, state, local or municipal code, rules, regulations, or specifications (whether statutory, regulatory, or contractual), unless Customer specifies it in writing and WSECO agrees to it in writing. Customer agrees that it has selected the Services and Goods, and associated equipment, if any, based upon its own judgment and particular needs and disclaims any reliance upon any statements, advice, or presentations made by WSECO. **IN NO EVENT SHALL WSECO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SERVICE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, WARRANTY, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (a) TOTAL OF THE AMOUNTS PAID TO WSECO UNDER THE SERVICE AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM; AND (b) \$50,000** The parties recognize that the pricing associated with Services and Goods reflects this allocation of risk and is the basis of the bargain between the parties.

19. ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY SERVICES OR GOODS BY CUSTOMER, ITS SUBSIDIARIES, AFFILIATES, AGENTS, OR EMPLOYEES, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS, OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY WSECO, BY WAY OF TECHNICAL ADVICE, CONSULTING, DEMOS, TRAINING, OR OTHERWISE, RELATED TO THE USE OF THE SERVICES AND GOODS.

20. INDEMNITY:

- a. Customer agrees to indemnify, defend and hold harmless WSECO from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including but not limited to consequential and incidental damages), liabilities, deficiencies, fees, interest, awards, penalties, fines, costs (including, but not limited to, attorney fees and court costs), judgements, and settlements, (including those brought or incurred by or in favor of Customer's employees, agents and subcontractors), arising out of or related to (i) the selection, delivery, loading, unloading, towing, possession, use, misuse, failure or

maintenance of the Services, operation, handling, retaking, or transportation of the Services (inclusive of any of the foregoing by employees or agents of Customer, or third parties), (ii) personal injury, death or property damage or loss of any nature whatsoever arising out of or related to the Services subject to this Service Agreement, (iii) any breach by Customer of this Service Agreement or any applicable law, (iv) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by WSECO or the equipment manufacturer, as applicable, or (v) any act or omission of Customer or Customer's employees, agents, contractors, subcontractors, affiliates or invitees. Additionally, Customer agrees to defend, at its expense, any and all suits brought against WSECO either alone or in conjunction with others (including any third-party suits or actions) and additionally to satisfy, pay and discharge any and all judgments and fines against WSECO in any such suits or actions, whether based in gross negligence, willful misconduct, negligence or otherwise.

- b. **WSECO Indemnification.** Subject to the limitations and conditions set forth in Section 18, WSECO shall indemnify, hold harmless, and defend Customer from and against any third-party claims related to the Services provided by WSECO, to the extent such third party claims (including, but not limited to claims related to the death or injury of any person(s) or damage to or destruction of any real or personal property) are caused by WSECO's negligent acts or omissions in provision of such Services.

21. INSURANCE. During the term of this Service Agreement, each Party shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (i) commercial general liability in occurrence form with a minimum limit of \$1,000,000 per occurrence, plus a minimum \$2,000,000 general aggregate limit; (ii) workers' compensation in an amount no less than the minimum required by law and employers' liability in a sum no less than \$1,000,000; and (iii) any additional insurance WSECO may reasonably require, in each case with financially sound and reputable insurers. Upon either Party's request, the other Party shall provide the requesting Party with a certificate of insurance from such Party's insurer evidencing the insurance coverage specified above. The certificate of insurance shall name the requesting Party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days' advance written notice in the event of a cancellation or material change in the insured Party's insurance policy. Except where prohibited by law, the insured Party shall require its insurer to waive all rights of subrogation against the requesting Party and the requesting Party's insurers.

22. DEFAULT BY CUSTOMER:

- a. **Event of Default.** An "Event of Default" shall occur if (a) Customer fails to pay when due the sales price; (b) Customer fails to perform or observe any covenant, condition, or agreement to be performed by it hereunder; (c) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing an inability to pay debts as they become due, files a petition in bankruptcy, or if owners, shareholders, or members of Customer's business organization take actions towards dissolution or liquidation of Customer; (d) Customer attempts to sell, transfer, or encumber, sublease or convey the Goods or any part thereof; or (e) WSECO, in good faith deems itself, insecure relative to payment of the sales price.
- b. **Occurrence of an Event of Default.** Upon the occurrence of any Event of Default, WSECO may exercise the following rights and remedies: (i) declare the sales price immediately due and payable; (ii) require Customer to assemble the Goods and make them available to WSECO at a place and time designated by WSECO; (iii) WSECO shall

have full power to enter upon the property or jobsite of the Customer and take possession of and remove the Goods; (iv) WSECO shall have full power and authority to sell, lease, transfer or otherwise deal with the Goods or proceeds thereof; (v) if WSECO chooses to sell or lease the reclaimed Goods, WSECO may obtain a judgment against Customer for any deficiency remaining on the sales price after application of all amounts received from the exercise of its rights under this Service Agreement; and (vi) all rights and remedies of a secured creditor under the provisions of the Idaho Uniform Commercial Code, as amended from time to time. All of WSECO's rights and remedies, whether evidenced by this Service Agreement or other related agreement, shall be cumulative and may be exercised singularly or concurrently. Customer agrees to pay all costs incurred by WSECO in enforcing this Service Agreement or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the Goods, whether or not legal action is commenced.

23. DATA GOVERNANCE: The Goods governed by this Service Agreement may be equipped with a wireless data communication system or similar system. In such case, Customer understands data reflecting the machine performance, condition, operation, and other information is being transmitted to WSECO and Caterpillar, Inc., to better serve the Customer and to improve upon WSECO's and Caterpillar, Inc.'s products and services. Upon entering this Service Agreement, Customer agrees to Western States Data Governance Statement, as set forth at [Western States Terms & Conditions | Western States Cat](#), and the Caterpillar, Inc. Data Governance Statement, as set forth at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html>, each as amended from time to time.

24. MARKETING. The Customer consents that, in the provision of the Services, Customer's equipment may be used in any WSECO or third-party promotional materials, pictures, videos, or other mediums. The Customer's name or trademarks shall not be used without express written consent from the Customer.

25. WAIVER. No waiver of any provision of this Service Agreement shall be effective unless it shall (a) be in writing; (b) specifically identify this Service Agreement; (c) specifically state that such document waives certain terms of this Service Agreement; and (d) be accepted and signed by an authorized representative of WSECO. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Service Agreement: (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Service Agreement; or (ii) any act, omission, or course of dealing between the Parties. Unless otherwise specified, remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good funds).

26. FORCE MAJEURE: WSECO shall not be responsible or liable, and WSECO's obligation to perform under this Service Agreement will be excused during each period of delay, for any delay or failure to deliver any or all of the Goods and/or performance of the services where such delay or failure is caused by any act of God, any worldwide or national epidemic or pandemic, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of power, shortage of labor,

material fuel, supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond WSECO's control, which prevents, hinders or interferes with manufacture, assembly or delivery of the Services and Goods or performance of the services. Any such cause, contingency, occurrence, or circumstances shall release WSECO from performance of its obligations hereunder. In the event of a Force Majeure event, such party shall: (i) immediately notify the other party of the Force Majeure event and its expected duration, and (ii) take all reasonable steps to recommence performance as soon as possible.

27. JURISDICTION AND VENUE: This Service Agreement and the relationship between WSECO and Customer shall be governed and construed according to the laws of the State of Idaho. At the sole and exclusive election of WSECO, jurisdiction and venue for any action or dispute arising under this Service Agreement shall be in the in the Fourth Judicial District of the State of Idaho, in and for Ada County, which is WSECO's corporate headquarters and principal place of business, wherein the parties acknowledge having done business sufficient to establish minimum contacts under the Idaho long arm statute, and which is a mutually convenient forum. In addition, Customer waives any and all rights to jurisdiction and/or venue in any other forum, including waiver of any and all rights to remove the action from any court originally acquiring jurisdiction.

28. FAILURE OR OMISSIONS. No delay or failure by either party to exercise any right or remedy under this Service Agreement, and no partial or single exercise of that right or remedy, shall constitute a waiver of that or any other right or remedy, unless otherwise expressly provided in this Service Agreement.

29. SEVERABILITY. If any part of this Service Agreement shall be determined to be invalid, illegal, or unenforceable, or declared null and void by any court of competent jurisdiction, then (i) such part shall be reformed, if possible, to conform to the law and (ii) in any event the remaining parts of this Service Agreement shall be fully effective and operative insofar as reasonably possible.

30. ASSIGNMENTS: No right or interest in this Service Agreement shall be assigned by Customer without the written permission of WSECO, and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of WSECO. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

31. AMENDMENTS. No amendment to or modification of or rescission, termination or discharge of this Service Agreement is effective unless in a writing signed by an authorized representative of each Party.

32. ENTIRE AGREEMENT. This Service Agreement, and associated invoices, constitute the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties. The Parties intend for the express terms and conditions contained in this Service Agreement (including any invoice and these Service Agreement terms and conditions) to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Service Agreement, and this Service Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any purchase order, third-party agreement, or other request or communication by Customer pertaining to the Services by WSECO, and any attempt to modify, supersede, supplement, or otherwise alter this Service Agreement, will not

modify this Service Agreement (inclusive of any Customer's invoice) or be binding on the parties. The entering of a Service Agreement with WSECO, the issuance of a purchase order for the Services to be provided by WSECO, or the receipt, acknowledgement, or acceptance of the Services provided by WSECO, constitutes Customer's acceptance of the Service Agreement, and these Service Agreement Terms and Conditions exactly as written. WSECO reserves the right, in its sole discretion, to modify or replace any of these Terms and Conditions at any time, and such modifications or replacements shall apply to all Services from WSECO after the date of such modification or replacement. It is Customer's responsibility to review the Service Agreement Terms and Conditions each time Customer receives Services from WSECO.