

RENTAL AGREEMENT TERMS AND CONDITIONS

Upon (a) the Customer's execution of the Rental Agreement and/or (b) the Customer's oral or physical acceptance of equipment, goods, and/or services to be performed as detailed in the Rental Agreement, the Customer agrees to the following Terms and Conditions. The Rental Agreement and Rental Agreement 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.

1. RENTAL OF EQUIPMENT AND PAYMENT: This is a rental of the equipment, vehicles, accessories, and attachments described on the Rental Agreement (the "**Equipment**" and may be referred to as "**goods**") by Western States Equipment Company, an Idaho corporation, or its affiliates ("**WSECO**") to Customer under the terms and conditions specified herein. Customer, together with WSECO, the "**Parties**," and each a "**Party**".

- a. Rental.** This is **NOT** a sale of the Equipment to the Customer. Customer hereby agrees to pay the rental rate stated on the Rental Agreement and as further provided in Sections 6 and 7, plus all expenses associated with the operation of the equipment such as fuel, freight, tire and belt wear, commercial general liability and physical damage insurance, maintenance and repair costs, overtime, and applicable sales, use, corporate activity or other applicable taxes. Unless otherwise set forth herein, WSECO will perform the required preventative maintenance during the Rental Period as prescribed in the Original Equipment Manufacturer's Operation and Maintenance Manual (the "**OEM Manual**"). Upon request, Customer will make the Equipment available for WSECO to perform such preventative maintenance during WSECO's regular business hours. Customer is not authorized to incur any expense for the account of WSECO.
- b. Purchase of Equipment.** Notwithstanding the provisions of Section 1.a, the Customer may purchase the Equipment, if expressly provided for in the Rental Agreement, and as further set forth in Sections 3 or 4.
- c. Taxes.** If 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.
- d. Normal Use.** Unless otherwise set forth herein, Customer agrees to pay any overtime charges, as determined by WSECO, for use of the Equipment in excess of Normal Use. Normal use means: a day = 8 hours, a week = 40 hours, 4 weeks = 176

2. OWNERSHIP OF EQUIPMENT: At all times, until a conversion and purchase of the Equipment as set forth in Section 3 (as applicable), the Equipment is personal property of WSECO, regardless of the manner in which it may be attached to any other property by Customer. **WSECO SHALL RETAIN TITLE TO THE EQUIPMENT AT ALL TIMES.** Customer will not acquire any equity or ownership interest in the Equipment by making rental payments or performing repairs. Customer will not place any liens on the Equipment and will not allow third parties to encumber WSECO's title to the Equipment. Under no circumstance may Customer assign, transfer, move, or otherwise sell any of the Equipment.

- a. **Location of Equipment.** Upon entering into the Rental Agreement, Customer represents that it will provide WSECO with the jobsite location of Equipment and project owner. Customer shall not move, or allow others to move, the Equipment from the location provided to WSECO without the written consent of WSECO. If approved, Customer shall inform WSECO, in writing, of the updated jobsite location and project owner, other than indicated on the face of the Rental Agreement, prior to moving the Equipment. Customer, upon WSECO's request, will deliver to WSECO a schedule of the physical locations of the Equipment and agrees to update the list upon WSECO's further request.
- b. **Examination and Notification of Damage.** WSECO and its designated representatives and agents shall have the right at all reasonable times to examine and inspect the equipment. Customer will not commit or permit damage to or destruction of the equipment or any material part of the equipment. Customer shall immediately notify WSECO of all cases involving the loss or damage of or to any material portion of the equipment and generally of all material happenings and events affecting the equipment.
- c. **Retaking of Equipment.** WSECO reserves all rights and remedies available at law or under contract in the event of a default by Customer, and WSECO may, at its option, demand that Customer immediately deliver the Equipment to WSECO's premises at Customer's expense. If the Equipment is not returned at the end of the Rental Term or for any reason it becomes necessary for WSECO to retake the Equipment to protect it from loss or damage, WSECO and its agents may, without notice or legal process, enter into any job, building, or place where the Equipment may be and repossess same by using all force necessary to do so. In the event of default, Customer waives all rights to a prior judicial hearing, any further right to possession of the Equipment and all claims for injuries, damages or loss arising out of the repossession of the Equipment. Customer shall pay all costs and expenses incurred by WSECO in retaking the Equipment.

3. RENTAL PURCHASE AGREEMENT: If provided in the Rental Agreement, Customer agrees to complete the purchase of the Equipment for the Rental Conversion Price. On or before the Completion Date, Customer shall pay the Rental Conversion Price, less the rental purchase payments paid to WSECO (excluding any interest or late fees paid), plus any repairs or maintenance performed by or paid by WSECO (and not paid by Customer) during the term of this Rental Agreement.

- a. **Right to Convert.** To be able to convert the Rental Rate payments to equity, Customer must timely make 100% of the monthly Rental Rate payments, as set forth in this Rental Agreement, and Customer must otherwise be in good standing under all other terms of this Rental Agreement and any and all other agreements between Customer and WSECO. If eligible to convert, all Rental Rate payments made by Customer under this Rental Agreement will be applied to the Purchase Price of the equipment, less the amount of any WSECO repairs, maintenance, interest payments, and late charges.
- b. **Non-completion of Purchase.** If the purchase of the Equipment is not completed by the Completion Date, and this Rental Agreement is not extended or renewed, Customer is in default of this Rental Agreement and WSECO will be entitled to exercise all its rights and remedies as provided in this Rental Agreement and applicable law. If the purchase of the Equipment is not completed on or before Completion Date, a separate, signed agreement may be entered into by Customer and WSECO, in order to extend or renew the "purchase" option of this Rental Agreement. In addition, WSECO, at its discretion, reserves the right to (a) re-evaluate and adjust the Purchase Price of the Equipment; and (b) replace the

Equipment with a like model that is equal in capabilities and function if the purchase does not occur, and a new agreement is requested by the Customer.

- c. **Acceleration of Purchase.** The purchase of the Equipment can be completed at any time by Customer upon (i) providing written notice to WSECO, and (ii) paying the balance due under the terms of this Rental Agreement (less WSECO repairs, and interest payments, and late charges) prior to the Completion Date, as amended.
- d. **Self-Perform of Maintenance.** Customer may elect, on the Rental Agreement, to perform all standard maintenance and repairs on the Equipment. In the event Customer elects to self-perform all maintenance, the following shall apply:
 - i) Customer shall be responsible to perform all standard maintenance on the Equipment at Customer's expense;
 - ii) Caterpillar parts are required for any and all maintenance performed by the Customer;
 - iii) All maintenance performed by the Customer must be completed to the manufacturer's defined standards;
 - iv) WSECO will electronically monitor the Equipment and provide the Customer with a detailed check list of any maintenance required by a defined due date ("**Maintenance Date**"). A WSECO Product Support Rep ("**PSSR**") or Machine Sales Rep ("**MSR**") will review the required maintenance with the Customer within 30 days of the Maintenance Date. Once the maintenance has been satisfactorily completed by the Customer, as determined by the PSSR or MSR, the PSSR or MSR will notify WSECO;
 - v) Any parts required for the defined maintenance will be delivered by WSECO and invoiced directly to the Customer before the Maintenance Date;
 - vi) If the maintenance is not performed by the Customer within thirty (30) days of the Maintenance Date, WSECO will dispatch a field technician to complete the maintenance. All parts and labor performed or used by WSECO required as part of the defined maintenance will be invoiced to the Customer at the current field labor rate;
 - vii) Any repair work needed on the machine (which is not deemed maintenance work) must be performed by WSECO. WSECO retains the right to approve specific repairs to be completed by the Customer at the expense of the Customer; and
 - viii) Failure to follow standard maintenance defined herein may result in denied warranty claims.

4. RENTAL PURCHASE OPTION. Subject to the terms and conditions provided herein, as set forth in the Rental Agreement, WSECO may extend to Customer an option to purchase the equipment (the "**Option**"). If an Option is extended to the Customer, the Customer may exercise the Option to purchase the Equipment at any time prior to the expiration of the rental return date set forth on the Rental Agreement, subject to the following terms and conditions:

- a. A WSECO Sales Agreement must be fully executed by Customer and WSECO, evidencing the exercise of the Option; and

- b. Customer must be in good standing under the terms of this Rental Agreement and any and all other outstanding agreements between Customer and WSECO; and
- c. The Option does not extend beyond the period of this Rental and must be exercised, and payment received before the Rental Agreement is terminated; and
- d. After the Option is exercised, WSECO's Sales Agreement will govern the terms and conditions of Customer's purchase of the Equipment; and
- e. Upon payment of the Purchase Price, as indicated herein, WSECO shall transfer the Equipment to Customer "**AS-IS, WHERE-IS**" and "**WITH ALL FAULTS,**" regardless of defects, latent or otherwise. WSECO makes no warranties, express or implied, for any Equipment, or other items sold or furnished under this Rental Agreement, unless agreed to in a separate writing between Customer and WSECO.

Upon exercise of the Option, Customer shall pay the Purchase Price set forth on the Rental Agreement less any rental payments made pursuant to this Rental Agreement, plus a conversion charge of prime plus six percent (6%), plus all repairs and service performed by WSECO during the term of the Rental Agreement.

5. ACCEPTANCE AND TERMS AND CONDITIONS: Acceptance of this Rental 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 Rental Agreement, is expressly objected to and hereby rejected. Once accepted, this Rental 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 Rental Agreement (including, for purposes of clarity, any general terms and conditions contained in Customer's purchase order or other documents submitted by Customer). This Rental 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 Rental Agreement will be binding on WSECO. No waiver or modification of the terms and conditions hereof will be effective.

6. RENTAL PERIOD: The Rental Period will commence upon the earlier of: (i) the delivery date designated on the Rental Agreement, or (ii) upon delivery of the Equipment to the site designated at the "ship to" location on the invoice. This Rental Agreement will terminate upon the later of: (a) the return date specified on the Rental Agreement, or (b) upon the return of the equipment to the WSECO location from which it was delivered, or which was mutual agreed upon, in writing, by the parties. If the equipment is not returned on the Return Date, this Equipment, at WSECO's sole election, may be deemed to automatically extend on a month-to-month basis. No allowance is made for Saturdays, Sundays, holidays, time in transit, downtime, or any period the Equipment is not in actual use.

7. RENTAL PAYMENT TERMS: Customer shall pay to WSECO all invoiced amounts within thirty (30) days from the date of such invoice, unless otherwise set forth on the Rental Agreement and/or Credit Agreement for an Open Account with WSECO. Notwithstanding the foregoing, for any Customer who (i) does not have a Credit Agreement for an Open Account with WSECO, or (ii) payment terms are not set forth on the Rental Agreement, full payment shall be due at time of rental. A late charge of 1-1/2% per month is assessed against the delinquent unpaid balance of all Customers (except Montana) and a late charge of 1-1/4% per month is assessed against the

delinquent unpaid balance of Montana Customers. Rental Rate payments may not be placed on an Open Account unless WSECO has preapproved credit. In the event WSECO, in its sole and absolute discretion, deems Customer's financial condition to be unsatisfactory, WSECO has the right to (a) limit the amount of credit extended to Customer for the rental of the Equipment or purchase of the Equipment; (b) delay manufacture or shipment to Customer of the Equipment; (c) require full or partial payment in advance; (d) ship or deliver the Equipment C.O.D. or require payments to be secured by letters of credit; (e) require written guarantee(s) of payment satisfactory to WSECO; or (f) cancel, refuse to accept, or terminate any rental, lease, or other order from Customer then outstanding or thereafter placed.

8. SALES TAX: Under certain state laws, WSECO is required to collect sales tax for sales made on Equipment. Prices stated in this Rental Agreement do not include any applicable state, county, city, or local sales taxes. This Agreement is accepted with the understanding that such taxes and charges shall be added, as required by law, at the time the Equipment is 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 Equipment 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 worksite and all improvements constructed therein or thereon. 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 Equipment, 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. EQUIPMENT OPERATION: The Equipment is authorized for use only for its ordinary purpose. Customer understands that the operation of the Equipment requires skill and experience and that failure to operate it safely may result in serious personal injury or death and/or property damage. Customer is responsible for ensuring that all persons in and around the Equipment follow the manufacturer's operation, maintenance, and safety instructions, and acknowledge that those

instructions have been provided by Customer. Customer's operation and use of the Equipment must comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the Equipment, including registration and/or licensing requirements, if any. Operating instructions and safety manuals will be located inside of the Equipment. If Customer is unable to locate operating instructions and safety manuals inside of the Equipment or if Customer has any questions or concerns regarding the safe operation of the Equipment, Customer must contact WSECO immediately.

With respect to trenching and rigging, and the rental of the same, WSECO shall rely on specifications provided by Customer with respect to provision of trenching and rigging. Customer shall comply with all OSHA rules and regulations and operate in accordance with specifications and rated capacities of the trench and associated rigging equipment. Additionally, Customer shall be responsible for inspecting equipment on each use, to ensure that all rigging is in proper repair and condition.

11. TIME OF DELIVERY AND SHIPPING: Orders to rent equipment are processed in the order of their acceptance by WSECO. WSECO will use commercially reasonable efforts to deliver the Equipment to Customer on the scheduled delivery date as stated in this Rental Agreement. 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 shortages, shipping delays, the equipment may not arrive on the scheduled date. WSECO shall not be liable for any damages caused by delays in delivery or shipment of the Equipment. WSECO shall select the method of shipment of, and the carrier for, the Equipment. As applicable, WSECO may, in its sole discretion, without liability or penalty, make partial shipments of Equipment to Customer. Customer is responsible for all freight, shipping, loading, and unloading costs. Unless otherwise agreed to in writing by the parties, the Equipment shall not be delivered to Customer until payment terms are mutually agreed upon.

12. RISK OF LOSS/SHORTAGES: Risk of loss of the Equipment shall pass to Customer as soon as the Equipment is properly loaded on the carrier, as elected by WSECO. WSECO's responsibility for shipment ceases upon delivery of the Equipment 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 Equipment 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. NONCONFORMING. All Equipment shall be subject to the standard manufacturing and commercial variation and practices of the manufacturer thereof. In the event of shipment of nonconforming equipment, WSECO shall be given a reasonable opportunity to replace the equipment with those which conform to the order. Any notices pertaining to nonconformity must be made in writing specifying in detail Customer's objections and such notices must be delivered within ten (10) days after delivery of the Equipment. It is agreed that in the event of rejection, Customer will store the Equipment or reship the Equipment to WSECO. Should Customer use the Equipment, such use shall be deemed an unequivocal acceptance of the Equipment. If Customer accepts Equipment tendered under this Rental Agreement, such acceptance shall be final and irrevocable; no attempted revocation shall have any effect whatsoever. **CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH HEREIN ARE CUSTOMER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS.** Except as specifically set forth in this Section 13, Customer has no right to return any Equipment which is rented or

purchased under this Rental Agreement to WSECO. For purposes of the foregoing, the term "nonconforming" means any goods received by Customer from WSECO that do not conform to the make, model number, UPC or SKU listed in the applicable invoice. WSECO, in its sole and absolute discretion, shall determine if the Equipment is nonconforming.

14. CUSTOMER'S RESPONSIBILITIES: During the Rental Period and any extension thereof, Customer shall have the following obligations and responsibilities:

- a. Insurance.** Customer shall not move, load, transport or otherwise handle the Equipment on WSECO's premises without first having obtained insurance coverage. During the term of this Rental 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.
- b. Care of Equipment.** Customer must (i) protect the Equipment against misuse, exposure to adverse conditions and any other abuse or neglect, (ii) ensure that it remains in good operating condition and (iii) is returned to WSECO at the end of the Term, subject to any extension approved by WSECO in writing, in the condition required in Section 14.g. Customer will provide a qualified operator for the Equipment, pay all costs of its operation, and provide all necessary fuel, lubricants, accessories, and supplies.
- c. Compliance with Laws.** Customer shall at all times comply with all federal, state, and local laws, rules, or regulations applicable to this Rental Agreement, Customer's performance of its obligations hereunder, and Customer's use of the Equipment. 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 rental or purchase or use of the Equipment and (b) not engage in any activity or transaction involving the Equipment, by way of shipment, use or otherwise, that violates any federal, state, and local laws, rules, or regulations. Customer represents and warrants that Customer and any and all operators of the Equipment, while rented by Customer, shall have and maintain valid licenses and permits, as necessary, for operations in the respective State and local jurisdictions where the Equipment is operated.
- d. Delivery Inspection.** Customer acknowledges that Customer has received, inspected, examined, and accepted the Equipment and that it is safe, in good operating condition and repair and otherwise in all ways acceptable to Customer. Customer has selected the Equipment based on Customer's determination that it is appropriate for Customer's purposes, use, application, and environment, and not based on any recommendation by WSECO.

- e. **Towing.** When transporting the Equipment, Customer will have the proper towing device, hitches, and materials for use with the towed and towing vehicles and the same will be in good, safe, and operable condition. Customer is responsible for all damage caused to the Equipment by Customer's towing, towing devices and vehicles, hitches, and materials.
- f. **Daily Inspection, Maintenance and Safekeeping.** Customer will conduct daily inspection and routine maintenance of the Equipment consistent with the procedures in the manufacturer's operation and maintenance manuals provided with the Equipment. Unless otherwise agreed by the parties, WSECO will perform the required preventative maintenance during the Rental Period consistent with the procedures in the manufacturer's operation and maintenance manual. Upon request, Customer will make the Equipment available for WSECO to perform such preventative maintenance during WSECO'S regular business hours.
- g. **Return of the Equipment.** Customer agrees to return the Equipment in good working condition, reasonable wear and tear excepted. Customer further agrees to pay for repair/replacement of all or any portion of the Equipment which becomes necessary because of damage caused by Customer, or its employees, agents, and subcontractors, and also shall pay rental on the Equipment at the regular rental rate until repairs have been completed. Reasonable wear and tear means only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one-shift (eight hours per day, five days per week) basis. Without limiting the generality of the foregoing statement, the following shall not be deemed reasonable wear and tear: damage resulting from lack of lubrication or failing to maintain necessary oil, water, and air pressure levels; damage resulting from lack of daily inspection and maintenance; and damage resulting from exposure to leach pads, scrap metal operations or other corrosive or harsh environments. Repairs to the Equipment shall be made to the reasonable satisfaction of WSECO, and in a manner that will not adversely affect the operation or value of the Equipment as determined by WSECO (for example, welding repairs rather than replacing a part will be at WSECO's discretion).
- h. **Damage.** Customer is the insurer of the Equipment during the rental period. Customer bears all risk of loss, theft, damage, or destruction to the Equipment, regardless of cause (ordinary wear excepted). If the Equipment is lost, stolen, damaged or destroyed during the rental period, whether or not the same is Customer's fault, Customer will notify WSECO immediately and pay WSECO (i) the retail value of the parts and labor necessary to repair the Equipment if damaged, or (ii) the actual replacement value of a replacement unit if lost, stolen, destroyed or damaged beyond WSECO'S reasonable ability to repair it; and in either case, all packing, shipping, handling, storage and other associated costs. Rent previously paid will not be applied against the above-referenced charges and rental payments will continue to accrue during all repair and replacement periods. Customer shall furnish WSECO with a complete written report of any accident involving the Equipment, including, but not limited to names and addresses of all witnesses and persons involved.
- i. **Replacement.** If the Equipment is lost, stolen, destroyed, or rendered unfit for use (as determined by WSECO, at its sole discretion), Customer agrees to pay the full market value (as determined by WSECO), necessary repairs, or lost rent as the case may be, and monthly interest at the rates provided in Section 7 until all amounts due are paid in full. Repair and replacement of tires are not included in the Rental Rate. Customer shall

pay for any tire damage, regardless of the cause. All tires substituted by Customer shall become WSECO's property.

- j. Smoking and Cleaning Fee.** WSECO maintains a non-smoking fleet, including a prohibition on the use of e-cigarettes in any Equipment. If the Equipment has an odor or is soiled from smoke or vapor of any kind, WSECO will charge a minimum of \$350 for odor removal. Additionally, a cleaning fee may be assessed for any Equipment that is returned dirty.
- k. Termination of Rental Agreement.** Upon the termination of this Rental Agreement, by Customer, prior to the Completion Date, will result in Customer being responsible for and being billed for all future rental payment up until the rental Completion Date.
- l. General Operational Policies.** Customer must promptly and properly report any accident, theft or vandalism involving the Equipment to WSECO and to the police (as applicable) in the jurisdiction in which such incident takes place. Customer and any operators of the Equipment must cooperate fully with WSECO's investigation of such incident and defense of any resulting claim. **FAILURE TO COOPERATE FULLY MAY VOID ANY AND ALL LIABILITY PROTECTION PURCHASED FROM, OR PROVIDED BY, WSECO.** For certain types of licensed, over the road Equipment, the rental rate charged to Customer will include a specified number of miles per billing cycle. Customer will be charged for miles in excess of the specified number (the "Additional Mileage Charge") upon the return of the Equipment.

15. RENTAL EQUIPMENT PROTECTION (REP). The Rental Equipment Protection and Cargo/In-Transit Protection (collectively "**REP**") program is **OPTIONAL AND MAY BE DECLINED. IMPORTANT:** If you decline REP, or if you fail to pay the REP Fee, you will be responsible for all damage, repair(s), and replacement(s) of/to the Equipment at its/their full (new) replacement value. REP cover construction, forestry, power, agriculture, material handling, and other non-excluded equipment. REP excludes vehicles licensed for the road, while in transit, and underground mining. In addition, if REP is declined, Customer is required to provide a certificate of insurance to WSECO showing coverage on the equipment, including, without limitation, fire, theft, liability and in-transit coverage, with such other insurance as necessary to protect Customer's and WSECO's respective interests in the Equipment, including, without limitation coverage for (i) rented equipment or (ii) damage caused during transportation of the Equipment. WSECO must be named as an additional insured and must include stipulations that coverage will not be cancelled or diminished without at least fifteen (15) days written prior notice to WSECO. Notwithstanding REP program, a Customer **WILL REMAIN LIABLE TO WSECO IN ALL EVENTS FOR DAMAGE OR LOSS CAUSED IN WHOLE OR IN PART BY:** (a) Customer's breach of any provision of the Rental Agreement; (b) criminal/fraudulent acts; (c) loss of use – REP program does not cover loss of use while the Equipment is being repaired; (d) mechanical/electrical breakdown; (e) missing property; (f) ordinary wear and tear; (g) weight of load; (h) damage to tires, unless such tire damage is caused by a covered peril; (i) pollution; (j) nuclear waste; (k) corrosion; (l) civil authority; (m) failure to return Equipment; (n) malicious mischief or illegal acts; or (o) use of any Equipment in violation of any policy of insurance.

For purposes of clarity, REP is a waiver of claims to WSECO for perils covered by REP to WSECO's equipment. It is not insurance for the Customer but can serve to supplement or replace physical damage insurance for the Customer on rented equipment belonging to WSECO. Cargo/In-Transit Protection is a waiver of claims to the WSECO for covered perils to a third party caused during the Customer's transportation of the Equipment.

16. DISCLAIMER OF WARRANTIES: By receiving the Equipment, Customer acknowledges the Equipment to be in good, safe and serviceable condition, and Customer accepts the Equipment "**AS IS, WHERE IS**" and "**WITH ALL FAULTS**" or, if purchased pursuant to Section 3, the equipment is purchased "**AS IS, WHERE IS**" and "**WITH ALL FAULTS**," regardless of defects, latent or otherwise. Whether rented or purchased, WSECO makes no warranties, express or implied, for any Equipment, goods, product, service, or other items sold or furnished under this Rental Agreement unless agreed to in a separate writing between Customer and WSECO. **WSECO MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE EQUIPMENT, 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 RENTAL AGREEMENT.** Any warranty by WSECO shall be null and void and have no legal effect if Customer fails to pay any amounts due for the Equipment at issue.

17. LIMITATION OF REMEDIES: If, for any reason, during this Rental Agreement, the Equipment does not perform satisfactorily, as judged by WSECO, in its sole discretion, WSECO may repair or replace the Equipment or any part thereof, at its option, without affecting any of the terms of this Rental Agreement. Alternatively, WSECO may terminate this Rental Agreement and Customer will be billed only for the time the Equipment was used by Customer. These remedies do not apply if the Equipment has failed or performs less than satisfactorily due to Customer's improper use of the Equipment, accident (including, damage during shipment), neglect, abuse, misuse, or exposure of the Equipment to conditions beyond capacity, power, environmental design limits, or operation constraints, as specified by WSECO and/or the Equipment 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 AGAINST WSECO.**

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 Rental Agreement or furnishing of any equipment, goods, services or other items or any third party's ownership, maintenance, or use of any equipment, goods, services or other items furnished under this Rental Agreement, including, but not limited to, lost profits or revenues, loss of use of the Equipment or any associated goods, 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 Equipment, and associated equipment and goods, based upon its own judgment and particular needs and disclaims any reliance upon any statements or presentations made by WSECO. **IN NO EVENT SHALL WSECO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS RENTAL AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, WARRANTY, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE TOTAL RENT PAID UNDER THE RENTAL**

AGREEMENT FOR THE PRIOR SIX (6) MONTHS OR (ii) \$25,000. The parties recognize that the pricing associated with Equipment 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 RENTAL, AND ASSOCIATED EQUIPMENT 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 RENTAL, AND ASSOCIATED EQUIPMENT OR GOODS.

20. INDEMNITY: 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 Equipment, operation, handling, retaking, or transportation of the Equipment (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 Equipment while on rent or subject to this Rental Agreement, (iii) the operation of the Equipment, by Customer, or its employees, agents, consultants, or third-parties authorized to operate the Equipment by the Customer, (iv) any breach by Customer of this Rental Agreement or any applicable law, (v) use of the Equipment in any manner that does not materially conform with the usage specifications provided by WSECO or the equipment manufacturer, as applicable, or (vi) 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, wilful misconduct, negligence or otherwise.

21. DEFAULT BY CUSTOMER:

- a. Event of Default.** An "Event of Default" shall occur if (a) Customer fails to pay when due any Rental Rate payments; (b) if a rental purchase option is available, Customer fails to complete the purchase of the Equipment by the Completion Date, as set forth in Section 3; (c) Customer fails to perform or observe any covenant, condition, or agreement to be performed by Customer; (d) 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; (e) Customer attempts to sell, transfer, or encumber, sublease or convey the Equipment or any part thereof; (f) WSECO, in good faith, believes that the Equipment is being subjected to improper use; or (g) WSECO, in good faith, deems itself insecure relative to payment of the Rental Rate payments and/or the Purchase Price, as applicable.

b. Occurrence of an Event of Default. Upon the occurrence of any event of default, as set forth above, WSECO may exercise the following rights and remedies: (i) declare the Rental Rate payments, and overtime charges, and the Purchase Price (as applicable pursuant to Section 3) immediately due and payable; (ii) require Customer to assemble the Equipment and make it 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 Equipment; (iv) WSECO shall have full power and authority to sell, lease, transfer or otherwise deal with the Equipment or proceeds thereof, and in connection therewith WSECO may bid on the Equipment and that a commercially reasonable price for said reclaimed Equipment may be determined by WSECO based upon current national auction values, market trends relating to supply and demand, and related factors for Equipment or goods of similar type and condition; (v) if WSECO chooses to sell or lease the reclaimed Equipment, WSECO may obtain a judgment against Customer for any deficiency remaining on the Rental Rate payments, overtime charges, and the Purchase Price (as applicable pursuant to Section 3) after application of all amounts received from the exercise of its rights under this Rental 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 Rental 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 Rental Agreement or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the Equipment, whether or not legal action is commenced.

22. DATA GOVERNANCE: The Equipment governed by this Rental 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. and its subsidiaries and affiliated entities (collectively, "**Caterpillar**"), to better serve the Customer and to improve upon WSECO's and Caterpillar's products and services. Upon entering this Rental Agreement, Customer agrees to Western States Data Governance Statement, as set forth at <https://www.westernstatescat.com/termsandconditions>, 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.

23. DATA PRIVACY—PERSONAL INFORMATION. Customer acknowledges that Caterpillar and WSECO each collect, use, retain, disclose, and otherwise process personal information for, among other purposes, providing information about warranty, customer marketing and promotional material about Caterpillar and/or WSECO products or services. Caterpillar's Global Data Privacy Statement (GDPS) is available at www.caterpillar.com/dataprivacy. WSECO's privacy statement is available at <https://www.westernstatescat.com/privacy-policy>. WSECO and Caterpillar may share or disclose said personal information with the other. Customer agrees that nothing contained herein impacts any authorization or consent previously provided to Caterpillar or WSECO relating to the same.

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 Rental Agreement shall be effective unless it shall (a) be in writing; (b) specifically identify this Rental Agreement; (c) specifically state that such document waives certain terms of this Rental 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 Rental Agreement: (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Rental 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 Rental Agreement will be excused during each period of delay, for any delay or failure to deliver any or all of the Equipment 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 Equipment 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 Rental 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 Rental Agreement shall be 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. This Rent Agreement, and the Equipment rented herein, is controlled by the laws of the State of Idaho.

28. FAILURE OR OMISSIONS. No delay or failure by either party to exercise any right or remedy under this Rental 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 Rental Agreement.

29. SEVERABILITY. If any part of this Rental 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 Rental Agreement shall be fully effective and operative insofar as reasonably possible.

30. ASSIGNMENTS: No right or interest in this Rental Agreement shall be assigned by Customer without the written consent and 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 Rental Agreement is effective unless in a writing signed by an authorized representative of each Party.

32. ENTIRE AGREEMENT. The Open Account Agreement, if approved, Rental Agreement, associated invoices, and monthly statement, 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 Rental Agreement (including any invoice and these Rental Agreement Terms and Conditions) to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Rental Agreement, and this Rental 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 rental of equipment by WSECO, and any attempt to modify, supersede, supplement, or otherwise alter this Rental Agreement, will not modify this Rental Agreement (inclusive of any Customer's invoice) or be binding on the parties. The entering of a Rental Agreement with WSECO, the issuance of a purchase order for rental of any equipment from WSECO, or the receipt, acknowledgement, or acceptance of equipment or goods for rental by Customer constitutes Customer's acceptance of the Rental Agreement, and these Rental 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 rentals of equipment from WSECO after the date of such modification or replacement. It is Customer's responsibility to review the Rental Agreement Terms and Conditions each time Customer rents equipment or goods from WSECO.